**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV**

Appeal No. ST/1606/2010-ST[SM]
[Arising out of Order-in-Appeal No. IND-I/181/2010, F.No. 126-ST/Ind/Appl/2010/954 dated 29.07.2010, passed by the Commissioner of Central Excise, Indore]

For approval and signature:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Laxmi Solvex **....Appellant**

Vs.

C.C.E. Indore **....Respondent**

Appearance:

None, for the Appellant
Sh. H.C. Saini, AR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 23.12.16

FINAL ORDER NO. 56383 /2016-Cu[SM]

Per V. Padmanabhan

The appeal has been filed challenging the Order-In-Appeal dated 28.7.2010. The appellant is engaged in the manufacture of soya bean extract. For exporting the items manufactured by them, they availed several services. They have filed refund claim under Notification No. 41/2007 dated 06.10.2007 and claimed refund of the Service Tax paid on specified services used in relation to export of goods for the quarter ending December, 2008. Refund claim was rejected by the Original Authority vide his order dated 16.12.2009. When the issue was challenged, the Commissioner (Appeals) upheld the order passed by the Original Authority. Hence, the present appeal.

2. Heard Shri H.C. Saini, Ld. AR. None appeared for the appellant.

3. After going through the records, I find that the refund stands rejected in respect of Service Tax paid on the following services.

A	Freight {Section 65(105)(zzp)} paid for the purpose of export of Soya DOC	Rs. 49192/-
B.	Port Service{Section 65(105)(zzl)} for the purpose of export of Mild Steel	Rs. 216313/-
C.	Freight {Section 65(105)(zzp)} paid for the purpose of Mild Steel	Rs. 27642/-
D.	Various Port Services & other services {Section65(105)(zzl)(105)(zzn)} used for export purpose	Rs. 163929/-
E.	Insurance Premium {Section 65(105)(d)}	Rs. 16896/-
	Total	Rs. 473972/-

4. I find that the issue regarding refund of Service Tax paid on all the above services have since been decided by the Tribunal, in several recent decisions, in favour of the appellants. Some of these decisions are mentioned below.

1. ***SRF Ltd. vs. CCE, Jaipur I [2015 (40) STR 980 (Tri-Del)];***

2. ***M/s. Shivam Exports, M/s. Mecshot Blasting Equipment Pvt. Ltd. vs. CCE, Jaipur [2016-TIOL-376-CESTAT-DEL]***
3. ***M/s. Suncity Art Exporters and others [2014-TIOL-2319-CESTAT-DEL)]***
4. ***Vippy Industries Ltd. vs. CCE Indore [2013 (30) STR 238 (Tri-Del)]***
5. ***Faizan Shoes Pvt Ltd vs CST, Chennai [2014 (34) STR 205 (Tri-Chennai)]***
6. ***CCE, Surat vs. ABG Shipyard Ltd. [2011 (24) STR 620 (Tri-Ahmd)]***

5. The Commissioner (Appeals) in the impugned order has observed that the appellant has not submitted documents to fulfill all the conditions specified in the Notification No. 41/2007. He has further observed that in respect of analysis and testing charges and fumigation services, these are subject to the condition that the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring such services. He has also recorded that such evidence has not been produced by the appellant.

6. In the light of the above, and the recent decisions of the Tribunal, I remand the matter to the Original Adjudicating Authority to re-decide the matter of eligibility of refund for the various services used for export of goods. The appellants may also be allowed to satisfy any short comings in their documentations. The appellant may be permitted to file additional evidence, if considered

necessary, as per law. Since the issue is pending since 2009, the denvo decision may be made within a period of 2 Months from the date of receipt of this order.

V. Padmanabhan
(Member Technical)

RS