CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

<u>BENCH-DB</u>

COURT –III

<u>Service Tax Appeal No.ST/942 /2010-ST [DB]</u>
<u>ST/CO/16/2011</u>

[Arising out of Order-in-Appeal No. IND-I/093/2010 dated 31.03.2010 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Indore]

<u>Service Tax Appeal No.ST/ 944/2010-ST [DB]</u>
<u>ST/CO/15/2011</u>

[Arising out of Order-in-Appeal No. IND-I/086/2010 dated 30.03.2010 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Indore]

C.C.E. & S.T.,Indore …Appellant

Vs.

Narayan Trading Co. … Respondent

<u>Service Tax Appeal No.ST/1556/2010-ST [DB]</u>

[Arising out of Order-in-Appeal No. IND-I/86/2010 dated 30.03.2010 passed by the Commissioner (Appeals-I), Customs, Central Excise and Service Tax, Indore]

<u>Service Tax Appeal No.ST/1557/2010-ST [DB]</u>

[Arising out of Order-in-Appeal No. IND-I/93/2010 dated 31.03.2010 passed by the Commissioner (Appeals-I), Customs, Central Excise and Service Tax, Indore]

Narayan Trading Co. …Appellant

Vs.

C.C.E. & S.T.,Indore … Respondent

Present for the Appellant : Mr.Gokul Sharma, Authorised Rep.
Present for the Respondent: Mr.Ranjan Khanna, D.R.

Coram: HON’BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON’BLE MR. V.PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 28.11.2016

FINAL ORDER NO. 56458-56461/2016

PER: V.PADMANABHAN

These appeals are against Order-in-Appeal No. 93/2010 dated 31.03.2010 and IND-I/86/2010 DATED 30.03.2010 passed by the Commissioner (Appeals), Indore. M/s. Narayan Trading Company (assessee) is a merchant exporter, who undertook export of various goods and claimed refund of the service tax paid on specified services utilized in relation to export of goods. The refunds were claimed under the provisions of Notification No.41/2007-ST dated 06.10.2007. The Original Authority rejected part of the refund claims. Commissioner (Appeals) vide the impugned order allowed the refund of service tax paid on cargo handling services but rejected the claims for port charges, terminal handling charges as well as Stevedoring charges. The assessee has challenged the portion of refund claims rejected, whereas the Revenue has challenged the sanction of refund claim of cargo handling services.

2. Heard Shri.Gokul Sharma, Authorised Representative for the appellant and Shri.Ranjan Khanna for the Revenue.

3. We note that cargo handling charges as well as the port charges, THC charges and Stevedoor charges have been incurred for services availed within the port area in connection with the export of goods. Notification No.41/2007 specifies various services for which refund may be sanctioned for service tax paid. The Notification includes port services but has not specifically included various other services, which are subject matter of present dispute.

The Tribunal has consistently held in various decisions that services availed within the port area, even if describing differently, would merit consideration within the terminology "Port Services". Accordingly, such refund claims are being allowed under Notification No. 41/07. In this connection, the following case laws may be referred to:

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)]

4. By following the decisions of the Tribunal in the above cases, we hold that refund will be allowable on not only cargo handling charges but also on port charges, THC charges and stevedoring charges. In view of the above, the appeal filed by the assessees are allowed and the appeal filed by the Revenue are dismissed.

[Dictated and pronounced in the open Court)

(V.PADMANABHAN) **MEMBER (TECHNICAL)**	**(S.K. MOHANTY)** **MEMBER (JUDICIAL)**

Anita