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

Appeal No. ST/873/2011-ST(SM)

[Arising out of Order-in-Appeal No. 434(DKV)ST/JPR-I/2010 dated 09.12.2010, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur].

M/s. Kajaria Cement Ltd. **....Applicants**

Vs.

C.C.E. Jaipur-I **....Respondent**

Appearance:

Shri Rohan Pahwa, Shri S.K. Pahwa & Shri Kuldeep Singh, Advocate for the Appellants
Shri M.R. Sharma, DR for the Respondent

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

Date of Hearing: 22.03.2017

FINAL ORDER NO. 52510/2017-ST(SM)

Per V. Padmanabhan:

After hearing both the sides duly represented by Shri. S.K. Pahwa, Advocate for the Applicants and Shri M.R. Sharma, DR for the Respondent, we find that the issue relates to refund of service tax paid on terminal handling charges, detention charges as also charges on transportation of empty containers used for export of the goods in terms of the notification number 41/07-ST dated 06.10.2007, we find that the issue stands decided by various decisions of the Tribunal in the following cases:

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)];***
7. ***Sunita Hydrocolloids Pvt Ltd. & Ors. Vide Final Order No. ST/A/52751-52753/2016-CU(DB) dated 28.06.2016;***
8. ***Satyam Enterprises (Unit –I), Jodhpur vide Final Order No. ST/A/52765/16-CU(DB) dated 03.06.2016;***
9. ***Shrinath Gum & Chemicals vide Final Order No. ST/A/51948/2016-CU(DB) dated 25.05.2016***
10. ***Jainson (India) Industries vide Final Order No. ST/A/52070/16-CU(DB) dated 01.06.2016.***

3. Ld. Advocate also submits that there are findings of the lower authorities that the invoices produced by them in respect of detention charges which are for storage and warehousing of the goods are not cleared and does not establish that the same are for the detention charges. He draws our attention to the said invoice and submits that the above findings of the lower authorities are factually incorrect.

4. In as much as the legal issue is decided in favour of the assessee, we set aside the impugned orders in both the cases and remand the matter to the original adjudicating authority for examination of the documents. As the refund claim is involved, we expect the adjudicating authority to do the needful as early as

possible and preferably within a period of three months from today. Both the appeals are disposed of in above manner.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

Bhanu