CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 22.08. 2017

S. T. Appeal No. 01 / 2011-SM
(Arising out of order-in-appeal No. 352-355(CB)ST/JPR-II/2010 dt. 04.10.2010 passed by the Commissioner (Appeals) Central Excise, Raipur).

M/s Lucid Collids Ltd. Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance:

None for the appellant
Sh. K. Poddar, AR for the respondent

Coram:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Final Order No. 56306/ 2017

Per: **Ashok Jindal**:

The appellant is in appeal against the impugned order wherein refund claim filed by the appellant under Notification No. 41/2007-ST dated 06.10.2007 was denied on the services namely Fumigation charges, Bill of Lading charges and Terminal Handling charges on the ground that appellant has not produced the evidence and the remaining services are not covered. It was also alleged that appellant has not provided proper invoices.

2. None appeared on behalf of the appellant but the appellant have filed written submission in support of their appeal. The same has been taken on record.

3. Heard the ld. AR for the Revenue.

4. I find that on Bill of Lading charges and Terminal Handling charges, the refund claim has been denied as these services are not specified services for claim of

refund as per Notification No. 41/2007-ST. Admittedly, these services have been received by the appellant at port for export of good. Therefore, this qualify as port service, as already been held by the Tribunal in the case of ***Shree Ram Gum and Chemicals vs. CCE, Jaipur-II -2016-TIOL-1717-CESTAT-DEL***. Therefore, I hold that appellant is entitled for refund.

5. With regard to Fumigation charges, I find that the allegation is that written agreement has not been produced by the appellant but the appellant contended that the export of goods which is an edible product and it is mandatorily required to clear the product in container which is in hygienic condition. As per CBEC Circular No. 106/9/2008-ST dated 11.12.2008 which states that refund on testing services may be allowed without any copy of agreement with the buyer of goods if such testing and analysis is statutorily stipulated by domestic rules and regulations for export of the goods, In this case, the service in question is mandatorily requires that container should have been in hygienic condition. Therefore, the fumigation charges are covered for claim refund as per Notification No. 41/2007-ST. Therefore, I hold that appellant is entitled for refund claim.

6. With regard to the debit notes, I find that the debit note contains all the details of the services provided and the amount paid on such service, the appellant has paid service tax thereon. Merely it is not mentioned as invoices, the refund claim cannot be denied. Therefore, I hold that the refund claim is admissible on this service also.

7. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief.

(Dictated and pronounced in the open Court).

(Ashok Jindal)
Member (Judicial)

Pant