IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 20.12.2017

Appeal No. ST/993 & 1092/2011-SM

(Arising out of Order-in-Appeal No. IND/122/2011 dated 10.3.2011 & IND/CEX/000/APP/175/11 dated 19.4.2011 passed by the Commissioner (Appeals), Central Excise & Customs, Indore)

M/s Dewas Soya Ltd.	Appellant
Vs.	
CCE, Indore	Respondent

Appearance

On merits	-	for the appellant
Shri K. Poddar, D.R.	-	for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 58737-58738/2017

Per S.K. Mohanty :

These appeals are directed against the impugned orders dated 10.3.2011 and 19.4.2011 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore.

2. Refund claim filed by the appellant under Notification No. 41/2007 dated 6.10.2007 in respect of port service and under Notification No. 17/2009 dated 17.7.2009 in respect of transportation service and courier service were rejected by the ld. Commissioner (Appeals) on the ground that the condition of the notifications have not been complied with by the appellant.

3. None appeared for the appellant and request letter received for deciding the appeal based on the available records. Heard the ld. DR for the Revenue.

4. The authorities below have denied the refund benefit in respect of service tax paid on the port service on the ground that the service provider was not authorized by the port trust for providing the service. The fact is not under dispute that port service was availed by the appellant within the port of export, facilitating the exportation of the goods. Thus, irrespective of the classification of service, since the same is utilized within the port for export of goods, the refund benefit in terms of Notification No. 41/2007-ST dated 6.10.2007, should be available to the appellant.

5. With regard to the refund claim filed under Notification No. 17/2009-ST dated 17.7.2009, I find that the appellant had not transported the goods from the factory (i.e. place of removal) to the Inland Container Depot (ICD). Condition No. (ii) appended to the said notification provides that services provided to an exporter in relation to transport of export goods directly from the place of removal to Inland Container Depot from where the goods were exported should merit consideration for refund. Such condition, in

this case, has not been fulfilled by the appellant. Thus, the refund claim in respect of transportation service should not be available.

6. With regard to courier service, I find that the appellant had not placed any submissions on record before the Commissioner (Appeals) in support of its defence that service tax paid on such service should be available as refund to it. In view of the fact that the appellant has not made any specific averments with regard to such service, I am of the view that there is no infirmity in the impugned order in rejecting the refund application on such service.

7. In view of above, the appeals are disposed of in following terms:

(a) Refund allowed on port service;

(b) Refund rejected on transportation service and courier service.

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

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