IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No.

APPEAL Nos. ST/86647,86649/2018

(Arising out of Orders-in-Appeal No. V2(A) STII/160/2016 and No. V2(A) STII/73/2016 dated 26.2.2018 passed by Commissioner of Central Excise & CGST (Appeals), Belapur, Mumbai)

Selective Minerals & Color Inds. Pvt. Ltd. **Appellant**

Vs.

Commissioner of CGST, Mumbai West **Respondent**

Appearance:

Shri R.V. Shetty, Advocate, for appellant
Shri O.M. Shivalikar, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)

Date of Hearing: 16.8.2018
Date of Decision: 16.8.2018

ORDER No. A/**87104-87105/2018**

Heard both sides.

2. These two appeals are filed against respective orders-in-appeal passed by the Commissioner of Central Excise (Appeals), Belapur, Mumbai.

3. Briefly stated the facts of the case are that the appellant is a merchant exporter and filed refund claims for the period July 2012 to September 2012 and October 2012 to December 2012 for Rs.2,94,117/- on 10.5.2013 and for the period April 2012 to June 2012, October 2012 to December 2012 and April 2013 to June

2013 for Rs.4,66,213/- under Notification No.41/2012-ST dated 29.6.2012. The said refund claims were rejected by the adjudicating authority. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals) who, in turn, also rejected their appeal. Hence the present appeals.

4. Learned Advocate, Shri R.V. Shetty, for the appellant submits that they have submitted almost all documents relevant to the refund claims indicating export of the goods. However, certain certificates like Chartered Accountant's certificate certifying various services used in relation to export of goods, could not be submitted before the authorities below, resulting into rejection of the refunds. He submits that now they are in possession of all the relevant documents by which they could establish that the service tax paid on various services were in fact used in export of the goods. He prays that the matter may be remanded to the adjudicating authority for verification of these documents.

5. Learned AR for the Revenue referring to the impugned order has submitted that since the appellant could not submit relevant documents in support of their claims that the goods were exported and the services on which service tax paid have been used in the export, the claims were accordingly rejected. However, he has no

objection in remanding the matter to the adjudicating authority for verification of the documents now submitted by the appellant before this forum.

6. I find that the appellant could not substantiate their claim for refund of service tax paid on various services claimed to have been used in or in relation to export of goods before the authorities below, resulting in rejection of the refund claims. Learned Advocate for the appellant submitted compilation of documents before this forum, including those documents which are produced for the first time before this forum and hence not scrutinized by the adjudicating authority. In these circumstances, in the interest of justice, to verify these documents, the matter is remanded to the adjudicating authority. The adjudicating authority should decide the case after scrutiny/verification of these documents afresh; the appellant be given an opportunity of hearing. All issues are kept own.

7. Appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in court)

(Dr. D.M. Misra)
Member (Judicial)

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