

**2012 (25) S.T.R. 180 (Tri. - Ahmd.)**  
IN THE CESTAT, WEST ZONAL BENCH, AHMEDABAD  
**Shri B.S.V. Murthy, Member (T)**  
**COMMISSIONER OF S.T., AHMEDABAD**  
*Versus*  
**RIDDHI SIDDHI GLUCO BIOLS LTD.**

*Final Order No. A/1580/2011-WZB/AHD, dated 26-8-2011 in Appeal No.  
ST/97/2010*

**CASE CITED**

Ramdev Food Products Pvt. Ltd. v. Commissioner — 2011 (23) S.T.R. 475  
(Tribunal) — *Followed* .....

REPRESENTED BY : Shri R. Srova, JDR, for the Appellant.

Shri Paritosh Gupta, Advocate, for the Respondent.

**[Order].** - Revenue is in appeal against the decision, wherein the refund claim filed by the respondent in respect of Service Tax paid on Terminal Handling charges and Bill of Lading charges under Notification No. 41/2007-S.T. has been allowed.

2. The appeal has been made on the ground that on going through one of the invoices on the basis of which the Service Tax paid has been availed, it was found that the service provider has been registered as Service Tax provider under Business Auxiliary Service, which is not one of the services listed for the purpose of sanction of refund claim under notification. Further, Revenue has also found fault with the order in view of the fact that in the **case** of *Ramdev Food Products Pvt. Ltd.*, Commissioner (Appeals) had upheld the Order-in-Original, rejecting the refund claim in respect of Terminal Handling charges and Bill of Lading charges.

3. Ld. Counsel for the respondent submits that in the **case** of *Ramdev Food Products Pvt. Ltd.*, on an appeal filed by them, the Tribunal took a view that the refund of terminal handling charges and bill of lading charges cannot be rejected on the ground that the services were rendered without authorisation by the port. As regards other grounds that invoice showed the Service Tax has been paid on Business Auxiliary Service, he submits that this was not the allegation in the Show Cause Notice and a totally new ground has been taken by the Revenue. Further, both the adjudicating authority and Commissioner (Appeals) have not found that invoices did not reflect the service as Port service.

4. On going through the Show Cause Notice, I find that the Show Cause Notice clearly says that "During the verification of refund claim, it is found that the assessee has not submitted any proof regarding the authorization of the port in the **case** of port service provider. Hence, the refund claim relating to port service is not admissible to the assessee." By taking the ground that the Service Tax was paid under Business Auxiliary Service head and therefore the credit is not admissible, Revenue is bring out a totally new ground which was not mentioned in the Show Cause Notice and therefore the respondent did not get an opportunity to contest the ground. At this stage, it will not be appropriate to consider this ground. In view of the decision taken by this Tribunal in the **case** of *Ramdev Food Products Pvt. Ltd* vide Order Nos. A/745-746/WZB/AHD/2011, dated 22-3-2011 [2011 (23) S.T.R. 475 (Tri. - Ahmd.)], that port services

rendered even without authorization of port, Service Tax credit will be available, respondents are eligible for the Service "tax credit and the decision of the Commissioner (Appeals) has to be upheld.

**5.** In view of the above, the appeal filed by the Revenue has no merits and accordingly is rejected.

(Dictated & Pronounced in Court)

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