रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील-I) का कार्यालय केन्द्रीय उत्पाद शुल्क :
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद– 380015.

क फाइल संख्या : File No : **V2(THC)57/STC-III/2016/Appeal-I** 1820 to 1824

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-103-16-17**
दिनाँक Date **12.09.2016** जारी करने की तारीख Date of Issue 19/9/16

श्री अभय कुमार श्रीवास्तव, आयुक्त (अपील-I) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by **Shri Abhai Kumar Srivastav** Commissioner (Appeals-I) Central Excise Ahmedabad

ग _____ आयुक्त केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original No **350/REF/AC/2015** dated : **28.12.2015**
Issued by: Assistant Commissioner, Central Excise, Din: Mehsana, A'bad-III.

ध अपीलकर्ता / प्रतिवादी का नाम एवं पता Name & Address of The **Appellants**/Respondents

M/s. Gokul Agri International Ltd.

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:–
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:–
Appeal to Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम,1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:–
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद–380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad – 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9(1)के अंतर्गत निर्धारित फार्म एस.टी– 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरूद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS) CENTRAL EXCISE AHMEDABAD अहमदाबाद

(iii) वित्तीय अधिनियम,1994 की धारा 86 की उप–धारा (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 & (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 6.50/– पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjuration authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत निर्धारित रकम

(ii) सेनवैट जमा की ली गई गलत राशि

(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(4)(i) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) CENTRAL EXCISE OFFICE OF THE COMMISSIONER (APPEALS-I) AHMEDABAD अहमदाबाद

ORDER IN APPEAL

This appeal has been filed by M/s. Gokul Refoils & Solvent Ltd. (Now M/s. Gokul Agri International Ltd.), Sidhpur (for brevity-"the appellant") against order-in-original No. 350/Ref/AC/2015 dated 28.12.2015 (hereinafter referred to "the impugned order') passed by the Assistant Commissioner, Central Excise, Mehsana (hereinafter referred to as "the adjudicating authority")

2. Briefly stated, the appellant has filed a refund claim of Rs.2,95,615/- under notification No. 41/2012-ST dated 29.6.2012, seeking refund of service tax paid on the taxable services, which were received and used for export of goods manufactured by them. The said notification grants rebate of service tax paid on specified services, received and used by exporter of goods, by way of refunding the service tax so paid, subject to certain conditions. The taxable services involved are: [a] Terminal Handling Charges services (THC); [b] Custom House agent services; [c] Storage and Warehouse services; [d] Technical Inspection and Certificate Service; and [e] Testing and Analysis services. The adjudicating authority, vide the impugned order has rejected the refund primarily on the ground that the appellant being a manufacturer-exporter, the 'place of removal' was the "port of export" for them; and that since these services were rendered upto the 'place of removal', refund ought not to have been allowed in view of Sr. No. 1(a) of notification No. 41/2012-ST dated 29.6.2012, which states that the taxable services should have been used beyond the 'place of removal', in order to qualify for rebate of service tax paid.

3. Being aggrieved, the appellant has filed the instant appeal, *inter alia,* stating that the services utilized by them were related to export of goods only; that out of the total claim of Rs.2,95,615/-, an amount of Rs.54,327/- has been withdrawn as they have already claimed the said amount before the concerned customs authority; that, the appeal is filed for the refund claim of Rs.2,41,288/-

4. Personal hearing in the matter was held on 26.08.2016. Shri R. Subramanya, Advocate and Shri Sharad Agrawal, Manager (Taxation) with the appellant, appeared on behalf of the appellant and reiterated submission advanced in the Grounds of appeal. They also cited Tenth Schedule of Finance Act, 2016 in favour of their contention.

5. I have carefully gone through the facts of the case on record and the submissions made by the appellant. The instant appeal is required to be considered in view of notification No.41/2012-ST dated 29.06.2012, as amended by notification No.01/2016-ST dated 03.02.2016 and definition of 'place of removal'. Therefore, it is necessary to reproduce the relevant excerpts of the said notification and definition of place of removal.

6. The relevant excerpts of the notification No. 41/2012-ST are as follows:

Provided that –
(a) the rebate shall be granted by way of refund of service tax paid on the specified services.

Explanation. - For the purposes of this notification,-
(A) "specified services" means -
(i) in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;

(ii) in the case of goods other than (i) above, taxable services used for the export of said goods;

but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (l) of rule (2) of the CENVAT Credit Rules, 2004;

(B) "place of removal" shall have the meaning assigned to it in section 4 of the Central Excise Act, 1944 (1 of 1944); "

7. As regards 'place of removal', the definition in Rule 2 of the CENVAT Credit Rules, 2004, states as follows:

2. In the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), in rule 2, after clause (q), the following clause shall be inserted, namely –

'(qa) "place of removal" means-
(i) a factory or any other place or premises of production or manufacture of the excisable goods;
(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory,
from where such goods are removed;'

The CBEC, vide its Circular No. 999/6/2015-Cx dated 28.2.2015 has issued clarification, subsequent to Circular No. 988/2/2014-Cx dated 20.10.2014, that:

6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly.

8. A combined reading of the notification No. 41/2012-ST dated 29.6.2012, along with the clarifications issued by the Board on the term 'place of removal' and the insertion of its definition into the CENVAT Credit Rules, 2004, clearly leads to a conclusion that the rebate under notification *ibid*, is to be granted by way of refund of service tax paid on the 'specified services', which are received by an exporter of goods and used for export of goods. The 'specified services' in the case of excisable goods are those taxable services that have been used **beyond** the 'place of removal', for the export of the said goods and which are not mentioned in sub-clauses (A), (B), (BA) and (C) of clause (l) of rule (2) of the CENVAT Credit Rules, 2004. Of course, these refunds are subject to other conditions mentioned in this notification. In light of above, the Assistant Commissioner has held that the impugned services, the refunds of which have been claimed, were not rendered beyond the place of removal and therefore the refund was not eligible to the appellant.

9. Vide Section 160 of the Finance Act, 2016, read with the tenth schedule, clauses (A) and (B) of Explanation contained in notification No. 41/2012-ST dated 29.6.2012, were retrospectively amended for the period 01.07.2012 to 02.02.2016. Section 160 *ibid* is reproduced below:

160. *(1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 519(E), dated the 29th June, 2012 issued under section 93A of the Finance Act, 1994 granting rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Tenth Schedule, on and from and up to the corresponding dates specified in column (3) of the Schedule, and accordingly any action taken or anything done or purported to have taken or done under the said notification as so amended, shall be deemed to be, and always to have been, for all purposes, as valid and*

effectively taken or done as if the said notification as amended by this sub-section had been in force at all material times. 2) Rebate of all such service tax shall be granted which has been denied, but which would not have been so denied had the amendment made by sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in the Finance Act, 1994, an application for the claim of rebate of service tax under sub-section (2) shall be made within the period of one month from the date of commencement of the Finance Act, 2016.

THE TENTH SCHEDULE
(See Section 160)

Notification No	*Amendment*	*Period of effect of amendment*
G.S.R.519 (E), dated 29th June 2012 [No.41/2012-Service Tax, dated 29th June, 2012]	*In the said notification, in the explanation* *a) in clause (A), for sub-clause (i), the following sub-clause shall be substituted and shall be deemed to have been substituted, namely:—* *(i)in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export;";* *(b) clause (B) shall be omitted.*	*1st day of July 2012 to 2nd day February, 2016.* *(both days inclusive)*

10. The effect of the aforementioned retrospective amendment brought into vide Finance Act, 2016 in notification No. 41/2012-ST dated 29.6.2012, is that 'specified services' would now mean taxable services that have been used beyond the factory gate or any other premises or place of production for the period of retrospective e amendment, i.e. from 01.07.2012 to 02.02.2016. The disputes based on the contention that every service upto the port [which in the case of manufacturer-exporter was the 'place of removal'] would not be a 'specified services' and therefore would not be eligible for refund under notification. No. 41/2015-ST dated 29.6.2012, stands resolved. Now, the effect of the aforementioned retrospective amendment is that any taxable service used beyond the factory gate or place or premises of production of manufacturing, etc. would thus be 'specified services' as per notification supra, and would thus be eligible for refund, provided other conditions of the notification are met. In view of above discussed legal position, the impugned order holding that the services under consideration were rendered upto the place of removal, port being the place of removal – becomes extraneous.

11. In the instant case, the appellant has requested to sanction refund amount to the extent of Rs.2,41,288/- as they have already claimed refund amounting to Rs.54,327/- before the customs authority. The Adjudicating authority has also hold the said amount of Rs.54,327/- as ineligible in the impugned order. In the circumstances, out of total amount of Rs,2,95,615/-, the admissible refund amount is Rs.2,41,288/-.

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) CENTRAL EXCISE OFFICE OF THE COMMISSIONER (APPEALS-I) AHMEDABAD अहमदाबाद

12. In view of retrospective amendment in the notification *ibid*, the impugned order becomes non-est. Hence, the impugned order is set aside and the case is remanded to the adjudicating authority to decide the matter afresh, in view of the foregoing discussion.

Date: 12 /09/2016

(Abhai Kumar Srivastav)
Commissioner (Appeal-I),
Central Excise, Ahmedabad

Attested

(Mohanan V.V)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

To
M/s. Gokul Refoils & Solvents Ltd.
(Now M/s. Gokul Agri International Ltd.)
State Highway No. 41,
Sujanpur Patia,
Sidhpur-384 151

Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III
3. The Additional Commissioner (System), Central Excise, Ahmedabad-III
4. The Deputy/ Assistant Commissioner, Central Excise, Mehsana Division.
5. Guard file.
6. P.A