

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(MRS)61/STC-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-177-16-17

दिनांक Date 25.11.2016 जारी करने की तारीख Date of Issue

श्री उमाशंकर, आयुक्त (अपील-I) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by Shri Uma Shankar Commissioner (Appeals-I) Central Excise
Ahmedabad

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

Arising out of Order-in-Original No 165 to 168/Ref/ST/DC/2015-16 dated :30.12.2015
Issued by: Deputy Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

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

M/s. GSPC LNG Limited

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 :-

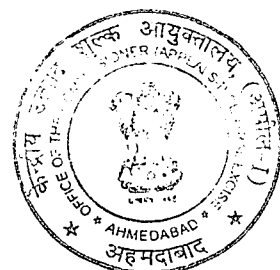
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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 विरुद्ध 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 वहाँ 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 वहाँ 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.



(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 शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 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, 1994 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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 रूप 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 होगा।

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,

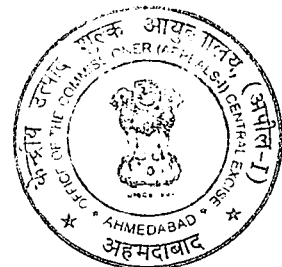
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 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।

(4)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

This appeal has been filed by M/s GSPC LNG Limited, B-103, 1st floor, IT Tower-2, Infocity, Nr. Indroda, Gandhinagar (hereinafter referred to as "the appellant") against the Order-in-Original No.165 to 168/Ref/ST/DC/2015-16 dated 30.12.2015 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner of Central Excise, Service Tax Division, Gandhinagar, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the appellant has filed an application dated 16.08.2013 for approval as Special Economic Zone (SEZ) co-developer with the Development Commissioner, for providing infrastructure facilities in the multiproduct SEZ at Mundra; that the appellant was granted SEZ co-developer status on 12.08.2014. They had filed a refund claim for Rs.12,02,99,333/- before the adjudicating authority, claiming refund of service tax paid on input services said to be received as Developer of the SEZ and said to be used for authorized operations in SEZ, in terms of notification No.12/2013-ST dated 01.07.2013, for the period pertaining to August 2013 to March 2014 and April 2014 to June 2014 on 27.02.2015 and 30.03.2015 respectively. The said claim was rejected by the adjudicating authority, after issuing show cause notice dated 22.05.2015, on the grounds that (i) the appellant was received status of Co-Developer of SEZ from SEZ authority on 12.08.2014 onwards and the refund claim filed by them was pertained to the period prior to the date of approval; (ii) that they have not filed the refund claim for the period from August 2013 to February 2014 within one year as stipulated in the notification No.12/2013-ST; and (iii) some of the services for which the refund claim filed by them have been approved by BOA on April 2014 and October 2015.

3. Being aggrieved, the appellant has filed the present appeal, inter alia, stated that:-

- The benefit of exemption under notification 12/2013-ST dated 01.07.2013 cannot be denied to the appellant on the grounds of time barred; that the delay was due to non receipt of registration from Development Commissioner though they have applied for registration on 16.08.2013.
- The Hon'ble Tribunal (Ahmedabad) in the case of M/s Sydus Mayne Oncology Pvt Ltd [2010 (262) ELT 280], CESTAT Mumbai in the case of M/s Trizetto India Pvt Ltd [2015 (5) TMI 453] has categorically held that delay in grant of approval cannot take away the right accrued to SEZ unit for exemption from service tax in respect of services; that the benefits under SEZ scheme would be available from the date of application made before the Development Commissioner.
- The notification ibid nowhere stipulates any condition that SEZ status is required for claiming service tax exemption by way of refund; that the appellant would be eligible for the refund claims w.e.f August 2013.
- The notification ibid stipulates that the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made or such extended period as the Deputy/Assistant Commissioner shall permit; that the delay in filing was due to the substantive delay was made in granting the status of SEZ Co-developer; that the appellant has filed an application requesting to grant extension of time limit for filing the said claim but the adjudicating authority has not considered the same.
- The impugned order cannot go beyond the point raised in the show cause notice. The point that some of the services for which the refund claim filed by them have been



approved by BOA on April 2014 and October 2015 has not raised in the show cause notice, but come up only in the impugned order.

- The appellant relied on various case laws in support of their arguments.

4. A personal hearing in the matter was held on 22.11.2016. Shri Hardik Shah, Chartered Accountant appeared for the same and reiterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts of the case on records and submissions made by the appellant. The limited issue to be decided in the instant case is as to whether the appellant is eligible for the refund of service tax paid on input services said to be received as Developer of the SEZ and said to be used for authorized operations in SEZ, in terms of notification No.12/2013-ST dated 01.07.2013. The details of refund claim filed by the is as under:

S No	Period of refund claim	Date of filing	Amount of refund (Rs)
1	August 2013 to September 2013	27.02.2015	10,73,334/-
2	October 2013 to December 2013	27.02.2015	1,17,35,713/-
3	January 2014 to March 2014	27.02.2015	79,12,167/-
4	April 2014 to June 2014	30.03.2015	9,95,78,119/-

6. At the outset, I observe that the notification No.12/2013-ST dated 01.07.2013 exempts the services on which service tax is leviable under section 66B of the Finance Act, 1994, received by a unit located in a Special Economic Zone or Developer of SEZ and used for the authorized operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon and the exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorized operations. As per the said notification, the exemption shall be given to the concerned unit by following certain manner and conditions. The important and relevant manner and conditions are as follows:-

(I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

(II)

(III) The refund of service tax on (i) the specified services that are not exclusively used for authorised operation, or (ii) the specified services on which ab-initio exemption is admissible but not claimed, shall be allowed subject to the following procedure and conditions, namely:

(a)

e) the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

(f)

7. On close perusal of the above referred notification, I observe that for getting exemption by way of refund of service tax on the specified services, an approval in respect of the list of services are required to be obtained from the Development Commissioner by the SEZ Unit or the Developer and the refund claim in question should be filed within one year from the end of the month in which actual payment of service tax made by the SEZ unit or the Developer in the instant case, I observe that there is, however, no dispute by either side that the approval from the concerned authority was obtained by the appellant on 12.08.2014 and the refund claims



question was filed by them on 27.02.2015 and 30.03.2015 for the period pertains to August 2013 to March 2014 and April 2014 to June 2014 respectively.

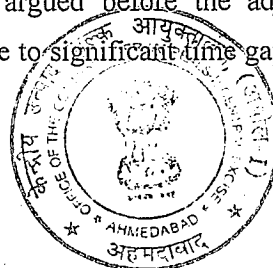
8. I observe that the adjudicating authority has rejected the refund claims in question by not following the conditions prescribed in the said notification. The adjudicating authority has rejected the claim on the grounds that:-

- (i) they have not filed the refund claim for the period from August 2013 to February 2014 within one year, as stipulated in the said notification;
- (ii) the appellant was received status of Co-Developer of SEZ from SEZ authority on 12.08.2014 onwards and the refund claim filed by them was pertained to the period prior to the date of approval; and
- (iii) some of the services for which the refund claim filed by them have been approved by BOA October 2015 i.e after the period of refund claims.

The contention of the appellant is that they had applied for the status of SEZ unit or the co-developer on 16.08.2013 and approved only on 12.08.2014; that the delay was taken on the part of the concerned authority to grant such status for which the appellant cannot be defaulted. They also contended that the issue involved in the instant case has been settled by virtue of various decisions of Tribunal, wherein, it has held that delay in grant of approval cannot take away the right accrued to SEZ unit for exemption from service tax in respect of services; that the benefits under SEZ scheme would be available from the date of application made before the Development Commissioner.

9. As regards (i) above, I observe that the adjudicating authority has rejected the request of the appellant for condoning the delay in filing refund application for the period from August 2013 to February 2014, as they have not submitted any justifiable reasons for extension of time limit. The notification *ibid* prescribes that the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit. In the instant case, the appellant has filed the refund claim for the month of August 2013 to February 2014 on 27.02.2015 and as per condition of the said notification, the refund claim for the above said months should have been filed within August 2014 to February 2015 i.e within one year from the end of the month in which actual payment of service tax was made. For example, if the appellant has paid the service tax for the service utilized for the month of August 2013 on 31.08.2013, the refund on such service should have been filed on or before 30.08.2014. In the circumstances, the refund claim filed for the month from August 2013 to January 2014 hits by limitation of time bar and the refund claim filed for the month of February 2014 is well within the time limit.

9.1 I further observe that the appellant had applied for condonation of delay in filing of refund claim before the authority on 26.02.2015 and also argued before the adjudicating authority with a reason that the delay in filing the claim was due to significant time gap between



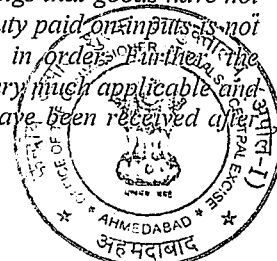
the filing the application and date of approval. They also relied on various case laws before the adjudicating authority in support of their argument. I observe that the adjudicating authority has not given any detail findings in this regard and also not considered the case laws cited by the appellant but rejected simply on the grounds that the appellant has not submitted any valid reason. Since the notification *ibid* allows the Assistant/Deputy Commissioner to permit extension of time limit for filing such refund claim and the request made by the appellant is reasonable, I feel that the matter is required to be remanded to the adjudicating authority for fresh consideration with regard to the time bar issue in view above discussion.

10. As regards refund claims pertains to the period from March 2014 to June 2014, mentioned at (ii) and (iii) above, I observed that the appellant has filed the claim of service tax within the time limit of one year prescribed under the said notification. The adjudicating authority has rejected the claim on the grounds that the refund claim filed by them pertains to the period prior to the date of approval by the Development Commissioner and some of the services have been approved by the Development Commissioner after the date of filing of refund claim. In this regards, the appellant argued that they had applied for the status of SEZ unit or the co-developer to the Development Commissioner on 16.08.2013 and the delay was taken on the part of the concerned authority to grant such status for which the appellant cannot be defaulted from availing exemption under the said notification. They also cited case laws in support of their argument. I find merit consideration in their argument. It has been held by the Hon'ble Tribunal in the cases cited supra that if the services have been received after application has been made but before approval, refund has to be granted. The Hon'ble CESTAT Mumbai in the case of M/s Trizetto India Pvt Ltd [2015 (5) TMI 453] held that:-

"...There is no dispute that the input services on which refund has been claimed has been used in the export of service. There is also no dispute that the appellant applied for approval to the competent authority well before they undertook the transaction of the export. Merely because there was delay in grant of approval, that cannot take away the right accrued to the appellant for exemption from service tax in respect of the input service. The ratio of the decision in the case of Global Wool Alliance Pvt Ltd (supra) squarely applicable to the facts of the present case."

In the case of M/s Zydus Mayne Oncology Pvt Ltd, the Hon'ble Tribunal (Ahmedabad) [2010 (262) ELT 280] held as under:

"I find considerable force in the arguments advanced by learned advocate that the date of effect is to be from the date of application, in the cases like this. As pointed out by the learned advocate in the case of SSI Units, even when the unit is recognized as SSI and certificate is issued by the State Governments sometime after lapse of more than six months, benefit is extended from the date of application made by the unit. In any case, if the unit is not recognized as an SSI unit or not approved as SSI Unit, the department has remedy of recovering the additional duty and in this case, by not granting the refund. The objectives of setting SEZ unit is to promote exports and the Government gives refund on the duty paid on inputs in respect of goods notified not only in respect of SEZ unit but also in respect of domestic units. SEZ unit can obtain goods without payment of duty but in the absence of status as SEZ approved unit they could not have got the same and hence they have obtained goods on payment of duty. Therefore, even if the refund is not strictly admissible on the ground that procedure was not followed, it is required to examine whether appellants were eligible in the normal course for the refund if the goods have been exported. The refund claim has been blindly rejected only after examining with respect to SEZ Act and procedure prescribed by the Government. In the absence of any findings that goods have not been exported and in cases where goods have been exported, refund of duty paid on inputs is not admissible or was not admissible, the rejection of refund claim is not in order. In the decision of the Hon'ble Supreme Court cited by the learned advocate is very much applicable and therefore, on this ground itself appeal has to be allowed, since goods have been received after the date of application."



application has been made but before approval and therefore, refund has to be granted. Accordingly, appeal is allowed with consequential relief to the appellants."

11. In view of above, I am of the opinion that the appellant is eligible for availing the exemption by way of filing refund vide the notification *ibid*, if the services have been received after the application was made for approval to Development Commissioner. I observe, however, that the impugned order does not speak whether the appellant had received such services after 12.08.2013 i.e date of application made or otherwise. Looking into the circumstances, I feel that verification of such details is necessary to ascertain its eligibility. Therefore, this issue also needs to be remanded to the adjudicating authority. The original authority is directed to pass well reasoned and speaking order considering all the citation which may be submitted by the party within 30 days.

12. In view of above discussion, I remand the case to the adjudicating authority for fresh decision in view of above discussion.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

14. The appeal filed by the appellant stand disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

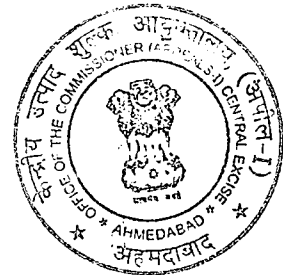
Date: 25/11/2016

Attested

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

BY R.P.A.D.

M/s GSPC LNG Limited,
B-103, 1st floor, IT Tower-2,
Infocity, Nr. Indroda, Gandhinagar



Copy to:-

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

