

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(34)114/Ahd-III/2015-16/Appeal-I 4428 to 4432  
ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-197-16-17  
दिनांक Date 23.12.2016 जारी करने की तारीख Date of Issue 12/1/17

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

ग                      आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल  
आदेश स '1/CE/REF/2014-15 दिनांक : 01.04.2014', सृजित

Arising out of Order-in-Original: 1/CE/REF/2014-15 Date: 01.04.2014  
Issued by: Deputy Commissioner, Central Excise, Div: Kalol, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Shraddha Associates (GUJ) Pvt. Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

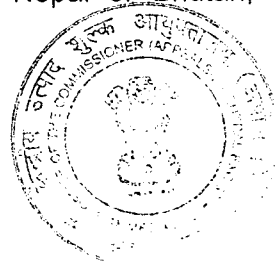
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

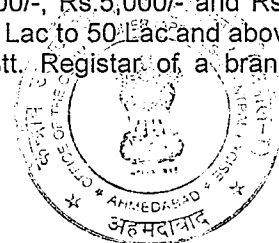
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 63 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 होगा।

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.

(6)(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।

(6)(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**

M/s. Shraddha Associates (Guj) Private Limited, Plot No. 141, Village Karoli, Thol Road, Khatraj, Tal. Kalol (for short 'appellant') has filed this appeal against OIO No. 1/CE/Ref/2014-15 dated 1.4.2014, passed by the Deputy Commissioner, Central Excise, Kalol Division, Ahmedabad-III Commissionerate (for short -"adjudicating authority").

2. Briefly stated, the facts are that the appellant filed refund claim on 28.11.2013 under section 11B of Central Excise Act, 1944, seeking refund of Rs. 1,15,72,700/- in respect of clearances made to M/s. ONGC under Central Excise notification No. 12/2012, Sr. No. 336 and Customs notification No. 12/2012, Sr. No. 356. The supplies were made under procedure of International Competitive Bidding[ICB]. A show cause notice dated 5.2.2014, was issued to the appellant asking him to show cause as to why the claim should not be rejected. This notice was adjudicated vide the impugned OIO wherein the adjudicating authority rejected the refund.

3. Feeling aggrieved, the appellant has filed this appeal, on the following grounds:

- that the appeal is filed within the permitted time limit of 60 days since they had not received the OIO earlier and it was received under cover of letter dated 1.2.2016;
- no person of reasonable prudence will enter into repeated correspondence to obtain OIO;
- the impugned order has proceeded on wrong basis to hold that no duty could be paid as per Section 5A(1A) of Central Excise Act, 1944 since the exemption is conditional; that the goods were cleared under notification No. 12/2012-CE against ICB and hence were conditionally exempt and not absolutely exempted goods;
- that the amount paid is not duty but a deposit and hence the provisions of section 11B would not apply; that it is a established law that if duty is not payable by law then the amounts paid are to be treated as deposits and for claiming such deposits, there is no time limit prescribed by law;
- DGFT vide letter dated 16.9.2013 had not rejected their claim but directed them to approach the excise authority; that the claim was submitted on 28.11.2013 - which had already been filed before DGFT on 31.8.2012 and hence it is not barred by limitation;
- that they wish to rely on the case of Priyanka Overseas Private Limited [1991(55) ELT 185] and Kuil Fireworks [1997(95) AIR SWC 3663 AIR 1997];
- that refund should not have been denied on the basis of DGFT circulars dated 15.3.2013 and 18.4.2013;
- that they wish to rely on the case of Choice Laboratories [SCA No. 9585/2011], AIA Engineering [2011(21) STR 367] and 9 more cases;
- the adjudicating authority has erred in holding that there is no provision for refund of terminal excise duty under para 8.3(c) of FTP wherein it is clearly provided that exemption from terminal excise duty where supplies are made against ICB;
- Hon'ble Delhi High Court has in the case of Aman Medical Products [2010 (250) ELT 30] held that a refund claim can also be filed where there is 'no lis' to assessment; that as there is no contest or lis and hence no adversarial assessment order;
- that though the invoices issued by the appellant shows amount of duty and cess, M/s. ONGC while making payments did not pay the amount of excise duty to the appellant.

4. Personal hearing was held on 20.12.2016. Shri P.P.Jadeja and Shri G.B.Patel, both consultants and Shri V.Dave and Shri Harsh Dave, Sr. Executives, appeared on behalf of the appellant and reiterated the grounds of appeal.



5. I have gone through the facts of the case, the appellant's grounds of appeal, and submissions made during the course of personal hearing. The primary issue to be decided in this appeal is whether the appellant is eligible for refund or otherwise.

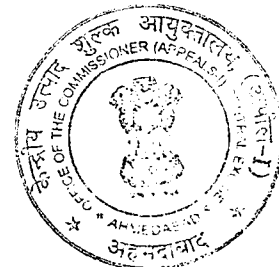
6. The show cause notice was issued to the appellant on the grounds that as per Section 5A(1A) of the Central Excise Act, 1944, the appellant was not supposed to pay duty; that the refund was filed on 28.11.2013 which is beyond one year within which a refund is to be filed and that since the appellant had not challenged the self assessment, the question of refunding duty did not arise. The adjudicating authority while deciding the issue held as follows:

- the invoices reveal that the appellant was aware that the clearances were exempted and hence the claim that the duty was erroneously paid is not correct;
- that DGFT vide their letter dated 7.3.2013 and 16.9.2013 clarified that supply under ICB is exempted from payment of TED in terms of para 8.3(c) of FTP read with excise notification, ibid, and hence the question of refund did not arise;
- claim filed with the adjudicating authority on 28.11.2013 was beyond one year and therefore time barred;
- that since the assessment was not reviewed or modified in an appeal the order stands and so long as the order of assessment stands, the duty would be payable as per the order of assessment;
- the duty amount has been charged from the customers; there is no evidence on record to prove that the amount has not been recovered from the customer; that the claim is hit by unjust enrichment.

7. Before moving into the merits of the matter, I find that the appeal has been filed 674 days after the date of communication of the impugned OIO. The appellants averment in this regard is that he had not received the impugned OIO and that it was only received under cover of letter no. IV/16-1/MP/2016 dated 1.2.2016. However, on going through the letter dated 1.2.2016, enclosed with the appeal papers, I find that the Additional Commissioner, Central Excise, Ahmedabad-III, has provided documentary proof that the impugned order dated 1.4.2014, was received by the appellant on 12.4.2014. The appellant has not provided any reason/counter to this documentary proof from the Post Master (HSG-1), Kalol of the impugned order having been delivered on 12.4.2014 to the appellant.

8. I find that the aforementioned appeal have been filed beyond the stipulated 60 days time limit specified under section 35(1) of the Customs Act, 1962. Relevant extracts of Section 35 of Central Excise Act, 1944, is reproduced below for ease of reference:

*SECTION 35. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a [Principal Commissioner of Central Excise or Commissioner of Central Excise], may appeal to the [Commissioner of Central Excise (Appeals)] [hereafter in this Chapter referred to as the [Commissioner (Appeals)]] [within sixty days] from the date of the communication to him of such decision or order :*



*[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]*

9. I find that the aforementioned appeal has been filed beyond the prescribed time limit of sixty days. The delay in filing said appeals is more than thirty days after the prescribed time limit of sixty days. As such I am not empowered to condone the delay in this appeal, as it was filed after 90 days from the date of communication of the impugned order.

10. On examining the issue on merits, I find that DGFT rejected their refund claim in view of policy circular No. 16(RE-2012/2009-14) dated 15.3.2013. It was then that the appellant approached the department by filing the refund claim to avail refund of duty paid towards clearance made towards ICB. To understand the issue in depth, I would like to reproduce para 3 of DGFT policy circular No. 16(RE-2012/2009-14) dated 15.3.2013, which states as follows:

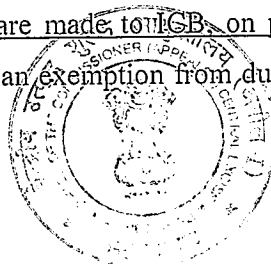
*"It has come to the notice of this Directorate that some RAs of DGFT and the Offices of Development Commissioners of SEZ are providing refund of TED even in those cases where supplies of goods, under deemed exports, is ab-initio exempted.*

2. *There are three categories of supplies where supply of goods, under deemed exports, are ab- initio exempted from payment of excise duties. These are as follows:*

- (i) *Supply of goods under Invalidation letter issued against Advance Authorisation [Para 8.3© of FTP];*
- (ii) *Supply of goods under ICB [Para 8.3(c) of FTP]; and*
- (iii) *Supply of goods to EOUs [Para 6.11(c) (ii) of FTP]*

3. *Prudent financial management and adherence to discipline of budget would be compromised if refund is provided, in cases, where exemption is mandated. In fact, in such cases the relevant taxes should not have been collected to begin with. And if, there has been an error/oversight committed, then the agency collecting the tax would refund it, rather than seeking reimbursement from another agency. Accordingly, it is clarified that in respect of supplies, as stated at Para 2 above, no refund of TED should be provided by RAs of DGFT/Office of Development Commissioners, because such supplies are ab-initio exempted from payment of excise duty."*

The scheme of refund of Terminal excise duty in respect of clearances against ICB was earlier allowed by the DGFT. Subsequently, DGFT in its wisdom, stopped it and the aforementioned policy circular came to be issued. The appellant, under the erstwhile scheme was availing the benefit by clearing goods under payment of duty and thereafter claiming duty by way of refund. When the DGFT clarified on the scheme of refund, which their office was granting and stopped it, the appellant approached the department, for the refund. However, nothing has been produced to show that CBEC has issued any notification granting refund in cases where clearances are made, to ICB, on payment of duty. As far as CBEC is concerned, I find that there is an exemption from duty in place,



*D*

which is clear and final. The appellant could either avail the benefit of the exemption or pay duty on his own volition. The appellant chose the latter. The appellant, thereafter, has tried to side track the exemption notification, by firstly paying duty and thereafter claiming refund of the same. By no stretch of imagination can one say that this is what was intended by the Government vide notification No. 12/2012 dated 17.3.2012. In-fact DGFT, is emphatically clear that the department can only be approached in case there is error/oversight committed leading to payment of taxes. The payment of duty on clearance against ICB cannot be termed as collected by error/oversight and that it was a matter of practice. This raises a larger question: *Can benefit of a notification be availed, by way of refund?* The clear cut answer is No. Exemptions are to be availed as is provided for in the notification and not by circumventing it. Therefore, the appellant's contention, that as duty was paid, the department should refund it is a futile argument, since the duty was paid on his own free will despite the exemption. By no stretch of imagination can this payment of duty, be termed as deposit, so as to attract the provisions of Section 11B of the Central Excise Act, 1944.

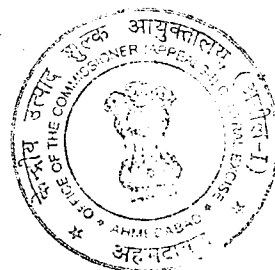
10.1. The Hon'ble High Court of Bombay, in Writ Petition No. 2927/2015 in the case of M/s. Sandoz Private Limited v/s UOI, [reported at 2016(341) ELT 22(Bom)] while considering a similar matter in respect of refund of TED filed by an EOU, has held as follows:

41. *Once there was a clear stipulation in the policy itself, then, all that the circular does is to clarify this obvious position. If there was no obligation to pay duty, then, there is no question of claiming a refund in the manner done. If this is what has been held and appears to be the essential finding, then, that is not in any manner contrary to the mandate of the provisions and particularly of section 5 of the FTDR Act. This is not a case where anything is being stated and for the first time so as to term it as an amendment to the policy and, therefore, would apply prospectively. Insofar as the subject issue is concerned, all that the respondents have done is to clarify that para 8.3(c) and para 6.2(b) and 6.11(c)(ii) of the FTP read harmoniously and together imply that no refund on supplies under para 8.3 is admissible. When there is an exemption, then, this refund claim was rightly disallowed. We do not think that any individual decision and in the case of a distinct assessee would, therefore, be of assistance to the present petitioners.*

42. *Though in the past such claims have been granted does not mean that the practice or the past orders should govern the issue necessarily. When the petitioners themselves were aware of a policy circular and sought to urge that it would not be governing the controversy and for the period for which refund is claimed, then, it is clear that they were required to overcome the said stipulations and the circular itself. That having found rightly to be clarifying the obvious position, we have no hesitation in concluding that the refund applications were properly and correctly disallowed.*

[emphasis supplied]

11. In the above decision, Hon'ble High Court of Mumbai, has clearly decided that past practice should not govern the issue. In this backdrop, I reject the aforementioned appeal on the grounds of limitation as provided under Section 35 of Central Excise Act, 1944, as well as on merits. The appeal is disposed of accordingly.



12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
 12. The appeal filed by the appellant stands disposed of in above terms.

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 29/12/2016

Attested

*Vinod Lukose*  
 (Vinod Lukose)  
 Superintendent (Appeal-I)  
 Central Excise, Ahmedabad.  
 By RPAD.

To,

M/s. Shraddha Associates (Guj) Private Limited,  
 Plot No. 141, Village Karoli,  
 Thol Road, Khatraj, Tal. Kalol,  
 Gandhinagar, Gujarat.

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 Commissioner, Central Excise, Kalol Division, Ahmedabad-III.
5. Guard file.
6. P.A

