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(SAS)29/STC-III/2016/Appeal-I** / 635-639

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-251-16-17**
दिनाँक Date **23.02.2017** 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 _____ _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original No **13/Ref/ST/DC/2016-17** dated **29.04.2016** Issued by: Deputy Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

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

M/s. Tax Tech India Private Limited

इस अपील आदेश से असंतुष्ट कोंई 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.

(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 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 Tax Tech India Pvt Ltd., North Star Building, KH-10, Sargasan Cross Road, S.G.Highway, Sargasan, Gandhinagar (hereinafter referred to as "the appellant") against Order-in-Original No.13/Ref/ST/DC/2016 dated 29.04.2016 (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. The appellant had filed a refund claim of Rs.9,74,064/- for the period pertaining to July 2013 to September 2013 on 30.12.2014, under Rule 5 of Cenvat Credit Rules, 2004 (for short- CER) read with notification No.27/2012-CE (NT) dated 18.06.2012 in respect of Input service credit used for providing output service which have been exported. The said refund claim was rejected, vide the impugned order as time barred under the provisions of Section 11 B of Central Excise Act, 1944 (CEA). Being aggrieved, the appellant has filed the present claim on the grounds that the time limit prescribed under Section 11 B of CEA is not applicable to the refund claim filed under Rule 5 of CER.

3. A personal hearing in the matter was held on 24.01.2017. Shri Dipen Sukhadia, Advocate appeared for the same and reiterated the grounds of appeal. He submitted additional submissions which states that:

- The application with all documents, except BRC was submitted on 30.06.2014, but was not accepted due to non receipt of BRC; that after receipt of BRC, the appellant has filed the claim on 30.12.2014. The appellant has submitted an affidavit dated 25.02.2016 to the effect of non acceptance of the claim.
- In view of judicial decision pronounced by Hon'ble High of Gujarat in the case of M/s Swagat Synthetics, time period prescribed under Section 11 B is not applicable to refund under Rule 5; that CESTAT, Mumbai in the case of CCE V/s SG Analytics (P) Ltd has been held that refund under Rule 5 can be filed within one year from the last date of the quarter in which foreign inward remittance were received; that in the instant case one remittance was received on 11.02.2014 and accordingly refund can be filed on or before 31.03.2015; that BRC was received on 21.11.2014.

4. I have carefully gone through the appeal memorandum and the submissions made by the appellant. The limited point to be decided in the matter is relating to time limit for filing refund claim under Rule 5 of CCR read with notification No.27/2012-CE (NT) dated 18.06.2012.

5. At the outset, I observe that the adjudicating authority has rejected the refund claim in question as time barred under the provisions of Section 11 B of CEA, by stating that the refund in question was required to be filed by them within one year from the date of export. On the other hand, the appellant contended that limitation under Section 11 B of CEA is applicable to refund of duty paid and their case is relating to refund of unutilized cenvat credit of input service utilized for export of finished goods, hence the

provisions of the Act *ibid* not applicable; even if it is applicable, the limit of one year is from the last date of the quarter in which the remittance was received, as held by the Hon'ble Tribunal in the case referred *supra*.

6. I observe that the period involved in the instant case is from July 2013 to September 2013. As per provisions of Rule 5 of CCR(as amended from 17.03.2012) the manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of Cenvat credit as determined by the formula prescribed subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification. The refund claim is required to be filed as condition and limitation prescribed under notification No.27/2012-CE (NT) dated 18.06.2012.

7. Since the issue relating to the instant case is with regard to time limit for filing refund claim, the conditions and limitation set out in the Appendix to the said notifications is as under:

2.0 Safeguards, conditions and limitation

(a) the manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter:

provided that a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter.
(b) .....

3. 0 Procedure for filing refund claim
(a) .....
(b) The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, 1944.

As per conditions of the notifications, the manufacturer or output service provider shall not submit more than one claim of refund for every quarter and further prescribes that such refund is required to be filed with the jurisdictional officer in the prescribed form along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed, before the expiry of the period specified in section 11B of Central Excise Act, 1944. Provisions of Section 11 B of CEA stipulates that the refunds claim is to be filed within one year from the relevant date; that as per Explanation B(a)(1) of Section 11B, the relevant date for filing of such claim means :-

"(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) If the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or"

(b) .....

8. Thus, under the above referred provisions of Section 11 B, if an assessee exports excisable goods, refund on excise duty paid on such goods or duty paid on the excisable materials used in the manufacture of such goods, as the case may be, is allowable within a period of one year from the date of export, if the said goods are exported by sea or air. As per provisions of Rule 5 of CCR(as amended from 17.03.2012), the manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of Cenvat credit as determined by the formula prescribed subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification. Since the provisions of Section 11 B is made applicable to Service, vide Section 83 of the Finance Act, 1994, refund of service tax paid on input service credit used for providing output service which have been exported is eligible for the appellant, subjection to the condition and limitation as prescribed under the relevant notification. During the relevant period under dispute, notification No.27/2012-CE (NT) dated 18.06.2012 governs for the refund of such service tax paid.

9. The notification No.27/2012-CE (NT) issued under Rule 5 *ibid* stipulates that the refund claim shall be filed before the expiry of the period specified in Section 11B of CEA. The condition of the said notification is that one single claim for each quarter is required to be filed. I observe that the Export Rules, 2005 has been superseded with "Place of Provisions of Service Rules, 2012 w.e.f 01.07.2012 (vide notification No.28/2012 dated 20.06.2012). Though the erstwhile Export Rules refers as 'relevant date' to be considered from the date of payment received by the service provider, subject to condition or limitation specified in the notification, the superseded Rule 'Place of Provisions of Service Rules, 2012 does not specifies anything regarding 'relevant date'. Since the Place of Provisions of Service Rules, 2012s does not specify any conditions for treating export service, as stipulated in the erstwhile Export Rules, it appears that the relevant date for computing one year shall be as per condition prescribed in the relevant notification; that since the notification allows an assessee to file refund claim once in a quarter, such refund claims only can file after the completion of that quarter. In the circumstances, the relevant date only comes from the last date of the quarter in which the refund claim relates. In the instant case, the refund claim pertains to the quarter of July 2013 to September 2013 and filed on 30.12.2014. In the circumstances, the claim hits by limitation of time bar.

10. The appellant submitted that they had approached the department for filing the claim with all documents except remittance certificate, on 30.06.2014, but the authority has refused to accept the claim without remittance certificate. The appellant has furnished a copy of affidavit dated 25.02.2016 in this regard. The above argument is not tenable and acceptable, looking into the facts and circumstances of the case. I observe that the

appellant has filed the said affidavit after a long period i.e one year after filing of the claim which is an afterthought argument only.

11. The appellant has relied on a decision of Hon'ble Tribunal, Mumbai in the case of CCE-1V/s S G Analytics (P) Ltd [2016 (45) STR 131], wherein, it has been held that the relevant date shall be the last date of quarter in which the FIRCs were received. With great respect to the said decision of the Hon'ble Tribunal, I put back my considered view that the since the notification No.27/2012-CE *supra* allows the appellant to file refund claim once in a quarter, relevant date for filing claim in respect of export of goods or service is within one year from the last date of such quarter for the refund claim pertains. In this regard, reliance of Hon'ble Supreme Court of India's decision is placed here. In the case of Dharmendra Textile Processors [2008 (231) ELT 3], the Apex Court has held that "It is a well-settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Similar is the position for conditions stipulated in advertisements." Further, in another case viz. Parameshwaran Subramani [2009 (242) ELT 162], it has been held that intention of legislation has to be interpreted by the plain reading of the language of the provision and that Court cannot re-write the legislation by adding words to a statute or read words into it which are not existing therein.

12. In view of above discussion, I reject the appeal filed by the appellant and uphold the impugned order. The appeal filed by the appellant stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स - I)
Date: 23/02/2017

Attested

(Mohanan V.V)
Superintendent (Appeals-I)
Central Excise, Ahmedabad
By R.P.A.D.

To
M/s Tax Tech India Pvt Ltd.,
North Star Building, KH-10, Sargasan Cross Road,
S.G.Highway, Sargasan, Gandhinagar

Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, ST Division- Gandhinagar, Ahmedabad-III
5. Guard file.
6. P.A file.