

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)32/STC-III/2016/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-278-16-17

दिनांक Date 27.03.2017 जारी करने की तारीख Date of Issue 31/3/17

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 14/Ref/ST/DC/2016-17 dated 29.04.2016 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. PCB Planet(Ind) 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 :-

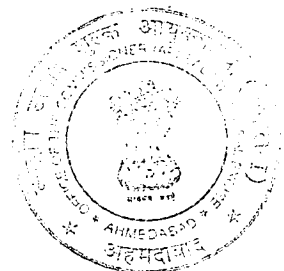
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी
होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए
5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 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 होंगे।

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

M/s PCB Planet (India) Ltd B9, GIDC, Electronic Estate, Sector-25, Gandhinagar, Gujarat (hereinafter referred to as "the appellant") against Orders-in-Original No.14/Ref/ST/DC/2016-17 dated 29.04.2016 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Service Tax Division, Gandhinagar, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case is that the appellant had filed a refund claim amounting to Rs.7,96,971/- under Rule 5 of Cenvat Credit Rules, 2004 (CCR) read with notification No.05/2006-CE (NT) dated 14.03.2016 in respect of unutilized Cenvat Credit of duty paid input service credit before the jurisdictional Central Excise office. The said claim was rejected by the adjudicating authority mainly on the ground of time barred under the provisions of Section 11 B of the Central Excise Act, 1944 (CEA).

3. Being aggrieved, the appellant has filed the present appeal on the grounds that:

- there is no relevant date prescribed under Section 11 B of CEA for claiming refund in cases like the present matter and therefore not required to be filed before expiry of one year;
- the relevant date if any, for the purpose of Section 11 B for refund of Cenvat credit in case of export of service will be one year from the date of receipt of remittance for the services rendered to the recipient of service outside India;
- the appellant has submitted all relevant documents in support of their refund claim, however, the adjudicating authority has not considered the same;
- benefit of export could not be denied for any technical reasons or venial infractions; that substantive right of any benefits on exported goods cannot be denied if there is a substantial compliance of provisions of law.

4. A personal hearing in the matter was held on 28.02.2017. Smt. Shilpa P Dave, Advocate appeared for the same on behalf of the appellant and reiterated the grounds of appeal. She further submitted various citations in support of appellant's arguments.

5. I have carefully gone through the facts of the case, submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The core issue to be decided in the instant case is relating to admissibility of refund claim filed under Rule 5 of CCR read with notification No.5/2006-CE(NT) dated 14.03.2006 and the relevant period of one year limitation applicable to such cases.

6. At the outset, I observe that the appellant had filed the said refund claim amounting to Rs.7,96,971/- in respect of accumulated/unutilized input service credit pertains to the period from 2008-09 to 2011-12 under Rule 5 *ibid* in terms of Notification No.05/2006-CE (NT) dated 14.03.2006.

7. Rule 5 of CCR has been amended with effect from 17.03.2012 and the Notification No.05/2006-CE (NT) dated 14.03.2006 issued under the said rule has also been superseded by



notification No.27/2012-CE (NT) dated 18.06.2012. Further, I observe that the other legal statute applicable to the present issue is provisions of Export Service Rules, 2005 which was also superseded with "Place of Provisions of Service Rules, 2012 w.e.f 01.07.2012. Since the period involved in the instant case is from 2008-09 to 2011-12, I observe that provisions of erstwhile Rule 5 read with notification No.05/2006-CE (NT) dated 14.03.2006 and provisions of Export Service Rules, 2005 are applicable in the instance case.

8. The contention of the adjudicating authority is that the appellant has not filed the refund claim in question within the period of prescribed time limit of one year, in terms of Rule 5 of CER read with notification No.05/2006-CE (NT) dated 14.03.2006 under the provisions of Section 11 B of CEA; that since the refund claim is pertaining to their export of service, relevant date for determining period of limitation is the date of export of service or date when the invoices were issued. Hence the claim hits by limitation of time bar under the provisions of Section 11 B of CEA. The appellant has contended that the period of limitation prescribed under Section 11 B of CEA is not applicable to the refund claim filed under Rule 5 of CER and if it is applicable, the same is required to be ascertained from the date of payment of export service/remittance. The appellant has further relied on decisions in the case of :-

[i] Clearpoint Learning System (I) Pvt Ltd [2015 (37) STR 149-Tri.Mumbai],
 [ii] Bechtel India Pvt Ltd [2014 (34) STR 437-Tri.Del]
 [iii] Ratio Pharma India Pvt Ltd [2015 (39) STR 31-Tri. LB] -wherein it has been held that the relevant date, if any for the purpose of Section 11B for refund of Cenvat Credit in case of export of service will be one year from the date of receipt of remittance for the services rendered to the recipient of service outside India.

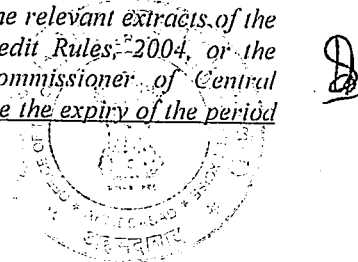
9. Rule 5 of CCR stipulates that when any inputs are used in the final products which are cleared for export, the Cenvat credit of input or input service so used shall be allowed to be utilized by the manufacture towards payment of duty of excise of any final product cleared for home consumption or for export of payment of duty and for any reason the such credit is not possible to utilize, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification. The notification No.05/2006-CE (NT) dated 14.03.2006 issued under the said Rule stipulates conditions and limitation for filing the refund claim.

10. 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 notification is under:

Notification No.5/2006-CE (NT) dated 14.03.2006

1.
2. The claims for such refund are submitted not more than once for any quarter in a calendar year.
3. ..

6. The application in Form A, along with the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, CENVAT Credit Rules, 2004, or the Service Tax Rules, 1994, in original are filed with the Deputy Commissioner of Central Excise/Assistant Commissioner of Central Excise, as the case may be, before the expiry of the period specified in Section 11B of the Central Excise Act, 1944.



As per conditions of the notification, the manufacturer or output service provider shall not submit more than one claim of refund for every quarter. The notification, however, 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.

11. 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)

However, in case of service exported out of India, there is no definition for 'relevant date' under the provisions of Section 11 B. Further, I observe that, the provisions of Rule 3(2) and Rule 5 of Export Service Rules, 2005 are relevant to this case which reads as under:

3. Export of Taxable Service

(2) The provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the following conditions are satisfied, namely:-

*(a) [* * *]*

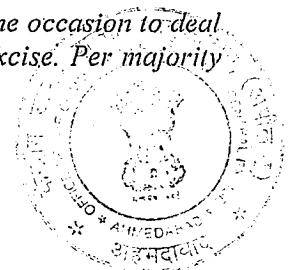
(b) payment for such service is received by the service provider in convertible foreign exchange.

5. Rebate of service tax.: *Where any taxable service is exported, the Central Government may, by notification, grant rebate of service tax paid on such taxable service or service tax or duty paid on input services or inputs, as the case may be, used in providing such taxable service and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.*

12. Further, I observe that in case of Indian Oil Corporation Ltd [2016 (342) ELT48 -Guj], the Hon'ble High Court of Gujarat has held that limitation of one year is applicable for claiming refund any duty of excise. Paara 13 and 14 reads as under:

13. We are unable to uphold the contention that such period of limitation was only procedural requirement and therefore could be extended upon showing sufficient cause for not filing the claim earlier. To begin with, the provisions of Section 11B itself are sufficiently clear. Sub-section (1) of Section 11B, as already noted, provides that any person claiming refund of any duty of excise may make an application for refund of such duty before the expiry of one year from the relevant date. Remedy to claim refund of duty which is otherwise in law refundable therefore, comes with a period of limitation of one year. There is no indication in the said provision that such period could be extended by the competent authority on sufficient cause being shown.

14. Secondly, we find that the Apex Court in the case of Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 = 1997 (89) E.L.T. 247 (S.C.) had the occasion to deal with the question of delayed claim of refund of customs and central excise. Per majority

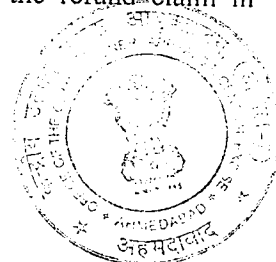


view, it was held that where refund claim is on the ground of the provisions of the Central Excise and Customs Act whereunder duty is levied is held to be unconstitutional, only in such cases suit or writ petition would be maintainable. Other than such cases, all refund claims must be filed and adjudicated under the Central Excise and Customs Act, as the case may be. Combined with the said decision, if we also take into account the observations of the Apex Court in the case of Kirloskar Pneumatic Company (supra), it would become clear that the petitioner had to file refund claim as provided under Section 11B of the Act and even this Court would not be in a position to ignore the substantive provisions and the time limit prescribed therein.

12. Since the notification issued under Rule 5 prescribes limitation of period as specified in Section 11 B of CEA, the refund claims in question are required to be filed within the ambit of Section 11 B of CEA and in the instant case, in view of above discussion, within one year from the date of payment received towards export service. Therefore, the relevant date to be considered from the date of payment received by the service provider, subject to condition or limitation specified in the notification.

13. The appellant argued that no time limit is applicable in respect of refund claim under Rule 5 of CCR with the support of judgment pronounced in the year 1997 and 1999 by the Hon'ble Supreme Court. I observe that the Hon'ble High Court of Gujarat has considered all such decision and decided the issue, therefore, those cases as cited are not applicable to the present case. The appellant further relied on decision Hon'ble Tribunal, Mumbai in the case of M/s Clearpoint Learning System (I) Pvt Ltd [2015 (37) STR 149-Tri.Mumbai]; [ii] Bechtel India Pvt Ltd [2014 (34) STR 437-Tri.Del]; and [iii] Ratio Pharma India Pvt Ltd [2015 (39) STR 31-Tri. LB], wherein it has been held that the relevant date, if any for the purpose of Section 11B for refund of Cenvat Credit in case of export of service will be one year from the date of receipt of remittance for the services rendered to the recipient of service outside India. In view of discussion at above para, I observe that these judgments are squarely applicable to the instant case.

15. In the instant case, I observe that the appellant has filed the refund claim of April 2008 to March 2012 on 29.05.2013. In view of above referred statute read with relevant notification applicable to the present case and by following the decisions cited *supra*, for filing the refund claim the date of one year as provided under Section 11 B of CEA is to be ascertained from the date of payment of export service received. However, I observe that neither the adjudicating authority nor the appellant has discussed such date of payment of export service received in respect of the said claim. Therefore, I am of the considered view that this matter requires re-examination to ascertain the date of payment received by the appellant in respect of the claim in question and accordingly consider the eligibility of the claim. If it is found in order within the limit of Section 11 B as discussed above, the appellant is eligible for the refund claim in question.



15. In view of above discussion, I remand the case to the adjudicating authority to decide afresh. The appellant is at liberty to file all the relevant documents before the adjudicating authority. Needless to say that necessary opportunity of natural justice may be followed before deciding the case.

16. The appeal stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 27/03/2017

Attested

27/3/17
(Mohan V.V.)
Superintendent (Appeals-I)
Central Excise, Ahmedabad

By R.P.A.D.

To
M/s PCB Planet (India) Ltd.,
B9, GIDC, Electronic Estate, Sector-25,
Gandhinagar, Gujarat



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.

