

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(BSS)40/STC-III/2016/Appeal-I  
V2(MRS)50/STC-III/2016/Appeal-I  
V2(MRS)51/STC-III/2016/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-284 to 286-16-17  
दिनांक Date 28.03.2017 जारी करने की तारीख Date of Issue 21/4/17

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 AS PER ORDER, dated AS PER ORDER Issued by:  
Assistant 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 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, 1994 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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 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 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

This order covers three appeals filed by M/s GSPC LNG Limited, B-103, 1<sup>st</sup> Floor, IT Tower-2, Infocity, Near Indroda Circle, Gandhinagar – 383 009 (hereinafter referred to as 'the appellants') against (i) O.I.O. No. 43to45/Ref/ST/AC/2016-17 dated 30/05/2016; (ii) O.I.O. No. 80to81/Ref/ST/AC/2016-17 dated 19/07/2016 and (iii) O.I.O. No. 102/Ref/ST/AC/2016-17 dated 14/09/2016 (hereinafter referred to as the impugned orders) passed by the Assistant Commissioner, Service Tax Division, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority'). The appellant company was established by M/s Gujarat Petroleum Corporation Ltd. (a Government of Gujarat undertaking) in February, 2007 for development of 5 MMTPA LNG Regasification Terminal at Mundra, Kutch (Gujarat) and are holding Central Excise Registration No. AACCG9789PST001. They had filed an application dated 16/08/2013 with the Development Commissioner for approval as Special Economic Zone (SEZ) co-developer, for providing infrastructure facilities in the multiproduct SEZ at Mundra, Kutch, being developed by M/s Adani Port and SEZ Ltd., which was granted vide letter No. F.1/3/2013-SEZ dated 12/08/2014.

2. The appellants had filed refund claims from time to time for refund of Service Tax paid on input services received as a Developer (co-Developer) of the SEZ and used for authorized operation in the SEZ in terms of Notification No.12/2013-ST dated 01/07/2013. The details of the refund claims decided under the impugned orders are tabulated as follows:

Sl. No.	O.I.O No. & Date	Details of Refund			Total Refund in O.I.O. (Rs.)	Details of Refund rejected	
		Period	Date of filing	Amount (Rs.)		Amount (Rs.)	Grounds for rejection
1.	O.I.O. No.43 to 45/Ref/ST/AC/2016-17 dated 30/05/2016	1) July-14 to Sep.-14	30/6/15	2,70,97,616/-	4,66,68,546/-	1,11,05,522/-	i) Rs.10545994/- Management and Business consultancy service was approved on 15/10/15, prior to which rejected  ( Rs.3336045/- of this amount also pertained to period prior to SEZ approval.)  ii) Rs.3895573/- rejected as period prior to SEZ approval only.
		2) Oct.-14 to Dec.-14	06/7/15	1,83,17,291/-			
		3) Jan.-15 to Mar.-15	06/7/15	12,53,639/-			
2.	O.I.O. No. 80 to 81/Ref/ST/AC/2016-17 dated 19/07/2016	1) Apr.-15 to Jun.-15	30/3/16	4,83,364/-	8,19,699/-	27,072/-	Management and Business consultancy service was approved on 15/10/15, prior to which rejected
		2) Oct.-15 to Dec.-15	30/3/16	3,36,335/-			
3.	O.I.O. No. 102/Ref/ST/AC/2016-17 dated 14/09/2016	July-15 to Sep.-15	30/3/16	75,56,280/-	75,56,280/-	66,980/-	Management and Business consultancy service was approved on 15/10/15, prior to which rejected.

3. The main grounds of appeal filed by the appellants, inter alia, are as follows:
- 1) Notification No. 12/2013-S.T. cannot disentitle the immunity enjoyed by Section 7 & Section 26 of the SEZ Act, 2005 (SEZ Act) exempting taxable services provided to developer or unit to carry out authorized operation in SEZ. Further Section 51 of the SEZ Act clearly stipulates that the provisions of SEZ Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. The appellants rely on (i) Mahindra Engineering Services Ltd. vs CCE, Pune-I – 2015 (38) S.T.R. 841 (tri.-Mumbai); (ii) Intas Pharma Ltd. vs Commissioner of Service Tax, Ahmedbad – 2013 (32) STR 543 (Tri.-Ahmd.); (iii) Zydus Technologies Ltd. vs Commissioner of Service Tax, Ahmedabad – 2015 (39) STR 657 (Tri.-Ahmd.) and (iv) Tata Consultancy Services Ltd., vs CCE, Service Tax (LTU), Mumbai – 2013 (29) STR 393 (Tri.-Mumbai).
  - 2) It is undisputed that the service for which refund was claimed was used in carrying out authorized operations. The dispute pertains to refund of Service Tax paid on taxable services which are received by the appellants prior to the date of approval as co-developer of SEZ i.e. 12/08/2014. The application for approval was filed by the appellants on 16/08/2013 and the delay was caused by the Development Commissioner and the appellants had no role in the delay. In the case of Zydus Mayne Oncology Pvt. Ltd. vs CCE&C, Vapi – 2010 (252) ELT 280, it has been categorically held that the benefits under SEZ scheme would be available from the date of application made before the Development Commissioner. Recently, in the case of Trizetto India Pvt. Ltd. vs CCE, Pune-III – 2015 (5) TMI 453 – CESTAT MUMBAI, it has been held that delay in grant of approval cannot take away to right accrued to the SEZ. The appellants also rely on the decision of Hon'ble S.C. in the case of CCE vs M.P.V. & Engineering – 2003 (153) ELT 485 (Supreme Court) that it would be unreasonable to deprive a SSI of the benefit under the notification particularly when the notification does say that the certificate shall become effective from the date of its issuance. In the case of the appellants also, the Notification nowhere stipulates a condition as per which prior SEZ developer status was required for claiming exemption of Service Tax by way of refund and hence they were eligible for refund from 16/08/2013.
  - 3) The appellants had sought approval from Approval Committee for 'Management or Business Consultant Services' as specified service vide their letter dated 21/07/2015. The committee had granted the approval on 15/10/2015 but the approval letter nowhere mentioned that the approval was effective from 15/10/2015 only. Once it has been established that specified services were used for authorized operations in SEZ and even the approval committee had approved the same, the refund should not be denied merely on the ground that prior approval was not taken. The appellants place reliance on the decision of CESTA, Ahmedabad in the case of Zydus Tech. Ltd. vs Commr. of S.T., Ahmedabad – 2013 (30) STR 616 (Tri.-Ahmd.) affirmed by Hon'ble High Court of Gujarat. In the case of Tata Consultancy Services Ltd. vs CCE& S.T (LTU) – 2013 (29) STR 393 (Tri.-Mumbai), it has been held that once the approval committee had given the nexus and the justification, it was totally warranted on the part of the adjudicating authority and the appellate authority to go into this question and come to their own findings in the matter. It is pertinent to note that classification of services is no more relevant post introduction of the Negative List based Service Tax regime. It has been clarified in CBEC Circular No.165/16/2012-ST dated 20/11/2012 that the specific accounting codes are relevant for accounting purposes only. The Apex Court in the case of CCE, New Delhi vs Hari Chand Shri Gopal – 2010 (260) ELT 3 (SC), it has been held that the test for determining the applicability of substantial compliance doctrine is whether the requirements relate to the 'substance' or 'essence' of the statute.
  - 4) It is well-established principle of law that eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that

the appellant satisfied the same, the exemption notification should be construed liberally. In the case of CCE, Bombay-I and another vs Parle Exports (P) Ltd. – [1989 –(075)-STC-0105-SC], it has been held that while interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. Similar view has been upheld in M/s G.P. Ceramics Pvt. Ltd. vs Commissioner, Trade Tax, U.P. – [2009-(002)-SCC-0090-SC].

4. Personal hearing in the matter of all the three appeals was held on 15/03/2017. Shri Rutvij Modi, C.A, appeared on behalf of the appellant and reiterated the grounds of appeal. He submitted copy of earlier Order-in-Appeal No.AHM-EXCUS-003-APP-177-16-17 dated 25/11/2016 dated 13/12/2016. He also submitted the following citations:

- (i) Zydus Tech. Ltd.– 2013 (3) STR 616 (Tri.- Ahmd.) and
- (ii) Zydus Technologies Ltd. – 2014 (35) STR 515 (Guj.).

5. I have gone through the facts of the case and submissions made in the appeal memorandum. In the matter of all the three appeals, the adjudicating authority has sanctioned the refund claims under Notification No.12/2013-S.T. dated 01/07/2013 partially, indicating that there is no dispute relating to the tax paid status of the services involved and that such services were actually used for authorized operations in the SEZ. The appellants are in appeal challenging the partial rejection of the refund claims, which are rejected on the following grounds:

- I. The appellants were not eligible for refund of Service Tax under 'Management of Business Consultant services' pertaining to the period prior to 15/10/2015, the date when the said service was approved as a specified service by the Committee of approval.
- II. The appellants were not eligible for refund of Service Tax pertaining to the period prior to 12/08/2014 when the SEZ co-developer status was granted to the appellant by the Development Commissioner.

6. It has been contended by the appellant in the grounds of appeal that they had filed the application before the approval committee on 21/07/2015 for approval of 'Management Business Consultant Service' as specified service, which was granted on 15/10/2015. Similarly, the application for grant of the SEZ co-developer status was made by them on 16/08/2013 whereas the same was granted by the Development Commissioner on 12/08/2014. There is merit in the contention of the appellants that the date of filing of the applications is relevant and not the date of actual approval of the impugned service or the date of granting of SEZ status. This matter in the case of the appellants themselves, covering earlier period, stands decided in Order-in-Appeal No.AHM-EXCUS-003-APP-177-16-17 dated 25/11/2016 (O.I.A.) in the following terms:

“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:

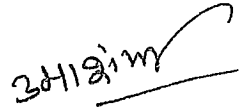
*"I find considerable force in the arguments advanced by learned advocate that the date of effect is to be from the date of application, in the cases like this. As pointed out by the learned advocate in the case of SSI Units, even when the unit is recognized as SSI and certificate is issued by the State 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. Further, 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 application has been made but before approval and therefore, refund has to be granted. Accordingly, appeal is allowed with consequential relief to the appellants."*

12. 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."

On going through the impugned orders it is clear that all the three orders were issued prior to the issuance of the aforementioned O.I.A. dated 25/11/2016. All the three orders have been passed by the adjudicating authority on the premise that the relevant date for sanctioning refund was the date of actual approval / sanction by the Committee of Approval / Development Commissioner. Therefore, it is only proper that refund applications covered in the impugned orders are reconsidered by the adjudicating authority, who happens to be the sanctioning authority for refunds in the instant case, after proper verification in terms of the date of application filed by the appellants before

the Approval Committee for approval of 'Management of Business Consultant services' as specified service and before the Development Commissioner for granting the status of co-developer of SEZ. Accordingly, I remand the refund applications back to the adjudicating authority to examine the matter afresh and pass a reasoned order after granting the appellants opportunity to present their case in accordance with the principles of natural justice.

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



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 28/03/2017

Attested



(K.P. Jacob)  
 Superintendent (Appeal-I)  
 Central Excise, Ahmedabad

BY R.P.A.D.

To,  
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 Near Indroda Circle,  
 Gandhinagar – 382 009.

Copy to:

1. The Chief Commissioner of Central Excise Zone, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III.
3. The Additional Commissioner (Systems) Central Excise, Ahmedabad - III
4. The A.C. / D.C., Service Tax Division - Gandhinagar, Ahmedabad-III
5. Guard file
6. P. A.

