रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील-I) का कार्यालय केन्द्रीय उत्पाद शुल्क :
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद– 380015.

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क फाइल संख्या : File No : V2(CHA)58/ST-4/STC-III/2015/Appeal-I/1016 to 1020

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-074-16-17
दिनाँक Date 28.07.2016 जारी करने की तारीख Date of Issue 09/8/16

श्री अभय कुमार श्रीवास्तव, आयुक्त (अपील-I ) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by Shri Abhai Kumar Srivastav 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 140/Ref/2014-15 dated : 27.03.2015 Issued by: Assistant Commissioner, Central Excise, Din: Kadi, A'bad-III.

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

**M/s. Bombaywalla Puranpoli Pvt. 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, 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 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.

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS-I) CENTRAL EXCISE AHMEDABAD अहमदाबाद

(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 संदर्भ में, 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."

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS-I) CENTRAL EXCISE AHMEDABAD अहमदाबाद

## ORDER IN APPEAL

Deputy Commissioner, Central Excise, Kadi Division, Ahmedabad-III has filed the instant appeal against order-in-original No. 140/Ref/14-15 dated 27.03.2015, granting refund to M/s Bombaywalla Puranpoli Private Ltd (BPPL). The details of refund sanctioned vide the said Order-in-Original are as under:

| Sr. No. | Period involved | Amount of refund granted (Rs.) | Review order No. & date, passed by Commissioner of Central Excise, Ahmedabad-III | Appeal Nos. |
|---|---|---|---|---|
| 1 | 01.04.2014 to 20.06.2014 | 65,762/- | 61/2015-16 dated 27.08.2015 | 58/STC-III/15-16 |

2. Briefly stated, BPPL filed refund claim under notification No. 41/2012-ST dated 29.6.2012, seeking refund of service tax paid on the taxable services, which were received and used for export of goods manufactured by them. The said notification grants rebate of service tax paid on specified services, received and used by exporter of goods, by way of refunding the service tax so paid, subject to certain conditions.

3. The Assistant Commissioner, Central Excise, Kadi Division, Ahmedabad-III Commissionerate, vide the aforementioned Order-in-Original, sanctioned the said refund claim holding, *inter alia*, that these services were received beyond the 'place of removal'; that the difference between rebate under the procedure specified in paragraph 2 and paragraph 3 is not less than twenty per cent of the rebate available under the procedure specified in paragraph 2, of the notification *ibid.*

4. Commissioner, Central Excise, Ahmedabad-III, feeling aggrieved, reviewed the aforementioned Order-in-Original and directed the Deputy Commissioner, Central Excise Kadi Division to file this appeal against the Order-in-Original, supra, challenging the legality of the refunds primarily on the ground that BPPL being a manufacturer-exporter, the 'place of removal' was the "port of export" for them; and that since these services were rendered upto the 'place of removal', refund ought not to have been allowed in view of Sr. No. 1(a) of notification No. 41/2012-ST dated 29.6.2012, which states that the taxable services should have been used beyond the 'place of removal', in order to qualify for rebate of service tax paid.

5. Personal hearing in the matter was granted on 14.7.2016. Shri S. J. Vyas, Advocate, vide his letter dated 14.07.2016, informed on behalf of BPPL that they do not require personal hearing in the matter . He further stated that in view of retrospective changes in notification No. 01/2016-ST dated 03.0.2.2016 the appeal filed by the department would not survive. I have carefully gone through the facts of the case on record, the submissions made in the appeal memorandum and submissions made by M/s BPPL vide their letter dated 14.07.2016.

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS-I) CENTRAL EXCISE * AHMEDABAD * अहमदाबाद

6. The relevant excerpts of the notification No. 41/2012-ST are as follows:

*"Provided that –*
*(a) the rebate shall be granted by way of refund of service tax paid on the specified services.*

*Explanation. - For the purposes of this notification,-*
*(A) "specified services" means -*
*(i) in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;*
*(ii) in the case of goods other than (i) above, taxable services used for the export of said goods;*

*but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (l) of rule (2) of the CENVAT Credit Rules, 2004;*
*(B) "place of removal" shall have the meaning assigned to it in section 4 of the Central Excise Act, 1944 (1 of 1944); "*

7. Vide notification No. 21/2014-CE (NT) dated 11.7.2014, the definition of 'place of removal' was inserted in Rule 2 of the CENVAT Credit Rules, 2004. The relevant excerpts are as follows:

*2. In the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), in rule 2, after clause (q), the following clause shall be inserted, namely –*

*'(qa) "place of removal" means-*
*(i) a factory or any other place or premises of production or manufacture of the excisable goods;*
*(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;*
*(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory,*
*from where such goods are removed;'*

8. CBEC, vide its Circular No. 988/2/2014-Cx dated 20.10.2014, clarified the phrase 'place of removal'. The relevant extracts are enumerated below:

*(5) It may be noted that there are very well laid rules regarding the time when property in goods is transferred from the buyer to the seller in the Sale of Goods Act , 1930 which has been referred at paragraph 17 of the Associated Strips Case (supra ) reproduced below for ease of reference -*

*"17. Now we are to consider the facts of the present case as to find out when did the transfer of possession of the goods to the buyer occur or when did the property in the goods pass from the seller to the buyer. Is it at the factory gate as claimed by the appellant or is it at the place of the buyer as alleged by the Revenue? In this connection it is necessary to refer to certain provisions of the Sale of Goods Act, 1930. Section 19 of the Sale of Goods Act provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Intention of the parties is to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. Unless a different intention appears; the rules contained in Sections 20 to 24 are provisions for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 23 provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and may be given either before or after the appropriation is made. Sub-section (2) of Section 23 further provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purposes of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."*

*(6) It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value , payment of insurance or who bears the risk*

*are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.*

9. Subsequently, CBEC vide its Circular No. 999/6/2015-Cx dated 28.2.2015, further clarified that 'place of removal' in case of a manufacturer-exporter would be the Port/ICD/CFS. The relevant extracts are reproduced below:

*6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly.*

10. A combined reading of the notification No. 41/2012-ST dated 29.6.2012, along with the clarifications issued by the Board on the term 'place of removal' and the insertion of its definition into the CENVAT Credit Rules, 2004, clearly leads to a conclusion that the rebate under notification *ibid*, is to be granted by way of refund of service tax paid on the 'specified services', which are received by an exporter of goods and used for export of goods. The 'specified services' in the case of excisable goods are those taxable services that have been used **beyond** the 'place of removal', for the export of the said goods and which are not mentioned in sub-clauses (A), (B), (BA) and (C) of clause (l) of rule (2) of the CENVAT Credit Rules, 2004. Of course, these refunds are subject to other conditions mentioned in this notification.

11. Although in the aforementioned refund orders, the refund sanctioning authority, i.e. Assistant Commissioner has clearly held that the impugned services, the refund of which have been claimed, were rendered beyond the 'place of removal'; yet the review order on the other hand going by the two clarifications issued by the Board on 'place of removal' [mentioned in paras 8 and 9 above] has contended that the services were not 'specified services' as they were not rendered beyond the place of removal, and therefore the refunds sanctioned in instant case was erroneous.

12. Subsequently, vide Section 160 of the Finance Act, 2016, read with the tenth schedule, clauses (A) and (B) of Explanation contained in notification No. 41/2012-ST dated 29.6.2012, were retrospectively amended for the period 01.07.2012 to 02.02.2016. Section 160 *ibid* is reproduced below:

160. *(1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 519(E), dated the 29th June, 2012 issued under section 93A of the Finance Act, 1994 granting rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Tenth Schedule, on and from and up to the corresponding dates specified in column (3) of the Schedule, and accordingly, any action taken or anything done or purported to have taken or done under the said notification as so amended, shall be deemed to be, and always to have been, for all purposes, as validly and effectively taken or done as if the said notification as amended by this sub-section had been in force at all material times. 2) Rebate of all such service tax shall be granted which has been denied, but which would not have been so denied had the amendment made by sub-section (1) been in force at all material times.*

*(3) Notwithstanding anything contained in the Finance Act, 1994, an application for the claim of rebate of service tax under sub-section (2) shall be made within the period of one month from the date of commencement of the Finance Act, 2016.*

**THE TENTH SCHEDULE**
**(See section 160)**

| *Notification No.* | *Amendment* | *Period of effect of amendment* |
|---|---|---|
| *(1)* | *(2)* | *(3)* |
| *G.S.R. 519(E), dated the 29th June, 2012[No.41/2012-Service Tax, dated the 29th June, 2012]* | *In the said notification, in the Explanation,-*<br>*(a) in clause (A), for sub-clause (i), the following sub-clause shall be substituted and shall be deemed to have been substituted, namely:—*<br>*"(i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export;";*<br>*(b) clause (B) shall be omitted.* | *1st day of July, 2012 to 2nd day of February, 2016 (both days inclusive)* |

13. The effect of the aforementioned retrospective amendment brought into vide Finance Act, 2016 in notification. No. 41/2012-ST dated 29.6.2012 – is that the amended portion of the notification under consideration would appear as follows :

*(A) "specified services" means –*

*(i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production of manufacture of the said goods, for their exports;"*

*(ii) in the case of goods other than (i) above, taxable services used for the export of said goods;*

*but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (l) of rule (2) of the CENVAT Credit Rules, 2004;*

*(B) -----stands omitted.*

14. The impact of the aforementioned retrospective amendment is that 'specified services' would now mean taxable services that have been used beyond the factory gate or any other premises or place of production for the period of retrospective e amendment, i.e from 01.07.2012 to 02.02.2016. The disputes based on the contention that every service upto the port [which in the case of manufacturer-exporter was the 'place of removal'] would not be a 'specified services' and therefore would not be eligible for refund under notification. No. 41/2015-ST dated 29.6.2012, stands resolved. Now, the effect of the aforementioned retrospective amendment is that any taxable service used beyond the factory gate or place or premises of production of manufacturing, etc. would thus be 'specified services' as per notification supra, and would thus be eligible for refund, provided other conditions of the notification are met.

15. With this change in the legal situation brought into effect by the retrospective amendment, the grounds mentioned in the departmental appeal that the services under consideration were rendered upto the place of removal, port being the place of removal – become extraneous. There is no doubt that these services were rendered beyond the factory or any other

place or premises of production of manufacture of the said goods, and therefore the departmental appeals fail.

16. In view of the above findings, I reject the departmental appeal mentioned in the table at paragraph 1 in this order in appeal. The appeal stands disposed of accordingly.

Date: 28 /07/2016

Abhai 28.07.16
(Abhai Kumar Srivastav)
Commissioner(Appeal-I)
Central Excise
Ahmedabad

Attested

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

**BY R.P.A.D.**

To
M/s Bombaywalla Purapoli Private Ltd.,
S No.797, Merda Adraj Village,
Ta-Kadi, Dist. Mehsana
Gujarat

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS-I) CENTRAL EXCISE AHMEDABAD अहमदाबाद

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 Assistant Commissioner, Central Excise, Kadi Division.
5. Guard file.
6. P.A.