रजिस्टर्ड डाक ए.डी. द्वारा

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

10701074

क फाइल संख्या : File No : **V2(15)13 /Ahd-III/2015-16/Appeal-I**

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-080-16-17**

दिनाँक Date : **29.07.2016** जारी करने की तारीख Date of Issue 2/8/16

श्री अभय कुमार श्रीवास्तव आयुक्त (अपील-I) द्वारा पारित

Passed by **Shri Abhai Kumar Srivastav** Commissioner(Appeals-I)Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original: **132/Ref/14-15** Date: **25.03.2015**
Issued by: Assistant Commissioner, Central Excise, Din: Kadi, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent.

M/s. Gujarat Ambuja Exports 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 पूवोक्त 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, 4th 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 मामलें 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.

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

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

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, मेघाणी 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 न्यायाधिकरणें की गई अपील के विरूद्व 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 वहां 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 वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जायेगी 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. Registar of a branch of any

Continue Page 3

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 ओदश 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 हैं।

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 not withstanding the fact that the one appeal to the Appellant 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 beer a court fee stamp of Rs.6.50 paisa 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 in 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, 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 निश्धित 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।

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 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।

(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 Gujarat Ambuja Exports Ltd., Kadi-Thor Road, Tal. Kadi, Mehsana, (hereinafter referred to as the appellant) has preferred this appeal against OIO No. 132/Ref/14-15 dated 25.3.2015 passed by the Assistant Commissioner, Central Excise, Kadi Division, Ahmedabad-III Commissionerate.

2. Briefly stated, the facts are that the appellant filed refund claims seeking refund under Rule 5 of the CENVAT Credit Rules, 2004 read with: [a] notification No. 5/2006-CE(NT) dated 14.3.2006, seeking refund of accumulated CENVAT credit used in the manufacture of exempted goods; and [b] notification No. 41/2007-ST dated 6.10.2007, seeking refund of service tax paid on specified services in respect of exports.

3. These refund claims were rejected vide seven OIOs all dated 31.3.2008. On these orders being assailed before the Commissioner(A), he vide his OIA No. 91-97/2008 dated 5.9.2008, upheld the rejection in respect of refund claims filed under notification No. 41/2007-ST. However, he set aside the rejection in respect of refund claims filed under notification No. 5/2006-CE(NT) dtd. 14.3.2006. As the assessee did not challenge the confirmation of the rejection of refund claims, filed under notification No. 41/2007-ST by the Commissioner(Appeals), the same stood settled. The department however, filed an appeal against the OIA before the Hon'ble Tribunal. As the above OIA granted consequential relief, the refund sanctioning authority, vide his seven OIOs, all dated 3.6.2009, sanctioned a portion of the refund filed under notification No. 5/2006-CE(NT) dated 14.3.2006 and rejected the refund in respect of certain services questioning the CENVAT credit availment in the first place, on the grounds that these services were performed beyond the place of removal and therefore, would not qualify as "input services". Aggrieved, the appellant approached Commissioner(A), who vide his OIA No. 329-335/2009 dated 14.9.2009, held that the services alleged to have been performed beyond the place of removal, would in-fact invariably form part of input service and therefore, were eligible for refund.

4. Aggrieved, the department filed an appeal before the Hon'ble Tribunal against the OIA dtd 14.9.2009. The refund sanctioning authority, however, vide his OIO dated 17.3.2010, allowed the refunds as per the direction of the Commissioner(A) dated 14.9.2009.

5. In the meantime, the Hon'ble Tribunal vide its order dated 16.12.2010 [reported at 2014(311) ELT (Tri-Abad)] decided both the departmental appeals, mentioned in paras supra. The Tribunal remanded the refund claim in respect of the period prior to the date of notification No. 5/2006-CE(NT), for consideration; held that the stand of the Revenue that if the finished goods are exempted, credit itself cannot be taken initially and no refund claim is admissible, is not sustainable; and further held that refund can be sanctioned when the goods are not exported under bond.

6. Assistant Commissioner, Central Excise, Kadi Division, vide his OIO No. 132/Ref/14-15 dated 25.3.2015, decided the issue afresh, following the directions of Tribunal dated 16.12.2010 [supra], wherein he held as follows :

[a] one refund claim out of the seven, amounting to Rs. 75,78,840/-, filed on 23.6.2006, relates to the period 1.4.2005 to 31.3.2006;

[b] the earlier notification No. 11/2002-CE(NT) granted refund under rule 5 only in respect of **inputs** used in or in relation to the manufacture of final products which are cleared under bond;

[c] the amendments through notification no. 4/2006-CE(NT) dated 14.3.2006, and 5/2006-CE(NT) dated 14.3.2006 would be applicable to refunds pertaining to the period, after introduction of the notification i.e. 14.3.2006; and

[e] that the refund of Rs. 55,88,489/- sanctioned earlier vide OIO Nos. 8/ST/Ref/Kadi/09-10 dated 30.6.2009 and 12/ST/Ref/09-10 dated 17.3.2010 is erroneous and therefore, rejected.

7. Being aggrieved with the impugned original order dated 25.3.2015, the appellant has filed the present appeal primarily contending that their dispute is covered by the order of the Tribunal dated 18.1.2008 in the case of M/s. WNS Global Services P Ltd [2008 (10) STR 273 (Tri-Mum)], which has also been affirmed by the Bombay High Court [2011(22) STR 609 (Bom)]. Their prayer further states that the OIO dated 25.3.2015, be set aside and the refund rejected, be allowed.

8. Personal hearing was held on 12.7.2016 when Ms. Madhu Jain, Advocate, appeared on behalf of the appellant. She reiterated the submissions made in the appeal memorandum. I have carefully gone through the facts of the case on record, the submissions made in the appeal memorandum and the oral averments made during the course of personal hearing.

9. The facts, restricted to the refund claim of Rs. 75,78,840/- filed on 23.6.2006, involving the period April 2005 to March 2006, which is in dispute in the present proceeding, being lengthy since it has journeyed through the original authority, first appellate authority and the Hon'ble Tribunal, is mentioned in chronological order in Annexure A to this appellate order.

10. In OIA No. 329-335/2009 dated 14.9.2009, the Commissioner(A) while relying on the order of the Hon'ble Tribunal in the case of WNS Global Services P Ltd [2008 (10) STR 273 (Tri-Mum)] held that refund applications cannot be rejected on the ground that the same pertains to the period prior to the date of Notification No. 5/2006 i.e. 14.3.2006. Department, in its appeal before the Hon'ble Tribunal contended that the Commissioner(Appeals) had erred in relying on the case law of M/s. WNS Global as the order had not attained finality and an appeal against the said order, was pending before the High Court of Bombay. The Hon'ble Tribunal, while deciding the departmental appeal vide its order dated 16.12.2010, supra, held that the view taken by the coordinate bench – that where refund claim filed satisfies all requirements of Rule 5 and the notifications issued there-under, refund cannot be rejected. However, the Tribunal remanded back the matter relating to refund filed prior to 14.3.2006, to the original adjudicating authority, for consideration.

11. As the entire dispute revolves around to dates, it would be prudent to go through various amendments, to understand the issue at hand.

11.1 Rule 5 of the CENVAT Credit Rules, 2005 as it stood prior to 14.3.2006, permitted only a **manufacturer** to take refund of accumulated credit **in respect of input or input service** used in the final products cleared for export under bond or LUT or in the intermediate products cleared for export or used in providing output service which is exported.

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

11.2 Notification No. 11/2002-CE(NT) which laid down the procedure for seeking refund of accumulated CENVAT Credit under rule 5 of the CENVAT Credit Rules, 2004, however, restricted grant of refund to a manufacturer with a rider that the refund of accumulated credit was to be restricted to only **inputs**, despite the fact that Rule 5 of the CENVAT Credit Rules, 2004, envisaged refund of accumulated credit in respect of both, inputs and input service.

11.3 Rule 5 of the CENVAT Credit Rules, 2004, was amended vide notification No. 4/2006-CE(NT) dated 14.3.2006, subsequent to which **both** the manufacturer or the provider of output services, could seek refund, as mentioned in para supra.

11.4 Further, notification No. 5/2006-CE(NT) dated 14.3.2006, was issued amending the earlier Not. 11/2002-CE(NT) dated 1.3.2002, consequent to which, refund of CENVAT credit was allowed in respect of ,-

(a) input or input service used in the manufacture of final product which is cleared for export under bond or letter of undertaking;
(b) input or input service used in providing output service which has been exported without payment of service tax,

11.5 The present dispute arose since refund was filed under notification No. 5/2006-CE(NT) dtd 14.3.2006, in respect of accumulated credit, covering the period April 2005 to March 2006 when,-

[a] notification No. 11/2002-CE(NT) dated 1.3.2002, was in vogue; and
[b] notification No. 11/2002-CE(NT) allowed refund of only **inputs** while in the present case the refund sought is of accumulated credit of input services used in the final products cleared for export.

12. Going back to the facts, the appellant in this case is registered both as a manufacturer and a service provider. The refund sought is in respect of credit taken on services utilized in the export of final products. The only dispute now remaining is *whether refund under rule 5 of the CCR'04 read with notification No. 5/2006-CE(NT) dtd 14.3.2006 can be availed in respect of accumulated credit of input services pertaining to the period from April 2005 to March 2006*. There is no dispute, that the refund was filed on 23.6.2006.

13. The Tribunal in the case of WNS Global Services (P) Ltd [2008(10) STR 273 (Tri-Mum)], decided a matter, wherein a service provider had filed refund under notification No. 5/2006-CE(NT) dated 14.3.2006, in respect of accumulated credit for a period prior to 14.3.2006.. The Hon'ble Tribunal held as follows [relevant extracts] :

9. We are however in agreement with the last plea taken by the appellants that the refund claim filed by them on 26-4-2006 onwards will be governed by the rules as it stood on those dates. The substituted Rule 5, nowhere suggests or says, that it will apply for exports made after 14-3-2006. Hence any claim filed on or after 14-3-2006 which satisfies other requirements of the rules and notification issued there under, cannot be turned down on a ground which is not a condition or requirement of the rule or notification. A statute cannot be treated retrospective merely because it relates to the past action. A statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transaction already past alone is called a retrospective legislation. The position that a prospective benefit under a statutory provision is measured by or depends on antecedent facts does not make the provision retrospective. As pointed by the ld. Counsel for the appellant, this has also been stated in the Principle of Statutory Interpretation by G.P. Singh at Pages 462-468 of the 9th Edition that statutes conferring prospective benefit on antecedent facts does not necessarily make the provisions retrospective. Reference in this regard has been made to the Supreme Court decision in the case of Boucher Pierre Andre v. Superintendent, Central Jail, Tihar, New Delhi, AIR 1975 SC 164 = (1975) 1 SCC 192 wherein Para 2 the Supreme Court held that benefit to set off pre-conviction detention period against the term of

imprisonment conferred by Section 428 of the Criminal Procedure Code, 1974 'where an accused person, has, on conviction been sentenced to imprisonment for a term' is also available where the sentence was imposed before the commencement of the Code to reduce the unserved portion of the sentence and that in so construing the section it was not given any retrospective effect for it did not affect the sentence already undergone but affected only that part of the sentence which remained to be served in future.

10. *Reference was also invited to the Supreme Court decision in the case of Mysore Rolling - 1987 (28) E.L.T. 50 (S.C.) where prior to 6-8-1977, Rule 9 which corresponds to Sec. 11 of Central Excises and Salt Act, providing for a period of one year for raising demands but when the rules were amended, from 6-8-1977 and the period of five years was substituted for the period of one year, it was held that after the amendment demands can be raised for the five years period even if that five years pertains to the period prior to 6-8-1977, and therefore, amendment was not held to be prospective in the circumstances of the case when demand was raised within the amended section on the basis of the past antecedents. We, therefore, hold that in the present circumstances, where the refund claims were filed after the amendment, and satisfies every requirement of Rule 5 and the notification issued thereunder, the refund, cannot be rejected as there was no condition in the notification or rules that such refund would apply only in respect of the exports made after 14-3-2006. Once the refunds are under the amended rules and the notification issued thereunder, as already held, the same cannot be denied merely because they relate to the exports made prior to the date of amendment.*

[emphasis supplied]

14. The Bombay High Court, affirmed the aforementioned order in the departmental appeal, wherein in para 9, it held as follows [2011(22) STR 609 (Bom)]

9. *The above finding of the CESTAT cannot be faulted because substituted Rule 5 of the Cenvat Credit Rules, 2004 does not make any distinction between exports made prior to 14-3-2006 or after 14-3-2006. In other words, as per the substituted Rule 5 refund of unutilized cenvat credit in respect of exports effected in the past is available to the manufacturer as well as provider of output service. Proviso to Rule 5 as it stood prior to the amendment on 14-3-2006 clearly provides that refund of unutilized credit is available to the manufacturer as also by the provider of output service subject to the conditions set out therein. As noted earlier the appellant fulfills all other conditions. Thus, reading the Rule 5 as it stood prior to its amendment, as a whole, it is evident that refund of unutilized credit is allowable not only to manufacturers but also available to providers of output service.*

15. Though the aforementioned case pertains to a service provider, the undisputed facts remain that it was only from 14.3.2006 that [a] service providers were included in Rule 5 of the CENVAT Credit Rules, 2004 [through notification No. 4/2006 dtd 14.3.2006] and [b] the procedure [laid out in notification No. 5/2006-CE(NT) dtd 14.3.2006] enabled a manufacturer to avail accumulated CENVAT credit in respect of input services used in manufacture of final product which is cleared for export.

16. The Tribunal in the case of M/s. WNS Global Services (P) Ltd [supra] held that the amendments made in Rule 5 of the CENVAT Credit Rules, 2004 and the notification providing the procedure for refund [alleged by the respondent as omission] cannot be considered as a obvious mistake in printing/drafting; that the provisions cannot be considered as clarificatory in nature – and therefore, **concluded that the amendments would not have retrospective effect**. Subsequently, however, the Tribunal allowed the appeals on the ground that where refund claims were filed after amendment & satisfies every requirement of Rule 5 and the notification issued there-under, the refund cannot be rejected as there was no condition in the notification or rules that such refund would apply only in respect of exports made after 14.3.2006, relying on the case law of Boucher Pierre Anbdre v Supdt., Central Jail, Tihar, New Delhi [AIR 1975 SC 164] and Mysore Rolling [1987 (28) ELT 50(SC)].

17. It is observed that though the appellant had cited the order dated 16.12.2010 of the Hon'ble High Court of Bombay [2011(22)STR-609 (Bom)] before the Assistant Commissioner during the course of hearing, it was not discussed/considered in the impugned order. This could have been done. Vide letter no. V/HLC/ST-II/WNS/12/2010 dated 15.6.2016, Additional Commissioner(L), Service

Tax, Mumbai-VII has informed that the order of the Hon'ble Bombay High Court dated 10.2.2011 has been accepted by the Chief Commissioner, Central Excise, Mumbai Zone I.

18. Para 22 of the impugned order-in-original, gives detail of the amount that was sanctioned vide OIO Nos. 8/ST/Ref/kadi/09-10 dated 30.6.2009 and 12/ST/Ref/09-10 dated 17.3.2010, wherein a certain portion of the refund sought, was rejected based on the formula given in para 5 of the Appendix to the notification No. 5/2006-CE(NT) dated 14.3.2006. OIO No. 8/ST/Ref/kadi/09-10 dated 30.6.2009, in para 23, depicts the calculation relating to the formula. It is, however, observed that the formula figuring in para 5 of the said appendix has been applied differently in OIO /ST/Ref/kadi/09-10 dated 30.6.2009 and OIO No. 12/ST/Ref/09-10 dated 17.3.2010. Hence, it is felt that a re-calculation needs to be done, in detail in the Order itself, rather than relying on the OIOs, which do not exist as a consequence of the remand dated 16.12.2010 by the Tribunal [reported at 2014 (311) ELT 718(Tri-Ahmd.)].

19. In view of the foregoing, I set aside the OIO No. 132/Ref/14-15 dated 25.3.2015 and remand the matter to the original adjudicating authority to: [a] consider the order of the Hon'ble High Court of Mumbai dated 10.2.2011 in the case of M/s. WNS Global Service (P) Ltd and pass an order on merits taking due cognizance of the Tribunal dated 16.12.2010; and [b] re-calculate the entire amount afresh as per the discussion in the para above. The appeal stands disposed of accordingly.

Date: 29.7.2016

Abhai 29.7.16

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

Attested

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

BY R.P.A.D.

M/s Gujarat Ambuja Exports Ltd.,
Kadi-Thor Road,
Tal. Kadi,
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(Systems), Ahmedabad-III.
4. The Assistant Commissioner, Central Excise, Kadi Division.
5. Guard file.
6. P.A.

ANNEXURE A

1.	SCN No. V.15/18-4/Ref/Kadi/2006 dated 27.12.2006 issued to M/s. Gujarat Ambuja Exports Ltd [GAEL] in respect or rejection of refund of Rs. 75,78,840/-.
2	Refund claim rejected vide OIO No. 1/ST/Ref/Kadi/07-08 dated 31.3.2008.
3	GAEL's appeal before Commissioner(A) decided vide OIA No. 91-97/2008 dated 5.9.2008.
4	OIO No. 8/ST/Ref/Kadi/09-10 dated 3.6.2009, wherein the refund sanctioning authority sanctions refund of Rs. 27,07,368/-.
5	GAEL's appeal before Commissioner(A) decided vide OIA No. 329-335/2009 dated 14.9.2009.
6	OIO No. 12/ST/Ref/2009-2010 dated 17.3.2010 wherein refund of Rs. 1,17,40,709/- is sanctioned to GAEL of which Rs. 32,81,091/- pertains to refund of Rs. 75,78,840/- earlier rejected vide OIO dated 31.3.2008.
7	CESTAT, West Zone Bench vide its order no. A/21-34/2011-WZB/AHD dated 16.12.2010 decides the departmental appeal against OIAs dated 5.9.2008 & 14.9.2009.
8	OIO No. 132/Ref/14-15 dated 25.3.2015 rejects refund of Rs. 55,88,459/-.