
 <p>केंद्रीय कर आयुक्त (अपील)</p> <p>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX</p> <p>वस्तु एवं सेवा कर भवन</p> <p>सातवीं मंजिल पोलिटेक्निक के पास</p> <p>आम्बावाडी अहमदाबाद-380015</p> <p>079-26305065</p>	 <p>GSI Building-7th Floor</p> <p>Near Polytechnic</p> <p>Ambavadi, Ahmedabad-380015</p> <p>टेलिफ़ोन 079-26305136</p>
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क फाइल संख्या : File No : V2(82)1&2/AHD-III/2017-18 / 1091 to 1095

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-090-91-17-18

दिनांक Date : 30.08.2017 जारी करने की तारीख Date of Issue:

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
130/Ref/S.Tax/VHB/2016 दिनांक : 27.12.2016 से सृजित

Arising out of Order-in-Original: 130/Ref/S.Tax/VHB/2016, Date: 27.12.2016 & 131-134/Ref/S.Tax/VHB/2016, Date: 23.12.2016 Issued by: Assistant Commissioner, Central Excise, Div: Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Smruti Agencies

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 पूर्वोक्त 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।

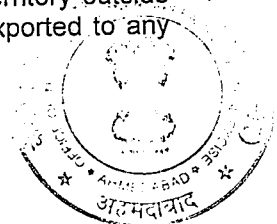
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 प्रक्रिया 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 मामलों 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.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट 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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक 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 रुपये या उससे कम हो तो रुपये 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 अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- एबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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, मेघानी नगर, अहमदाबाद-380016.

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 ई.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या उससे कम है वहां रूप 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहां रूप 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। 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. Registrar of a branch of any

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 आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

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 notwithstanding 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 रु.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 bear a court fee stamp of Rs.6.50 paise 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 is 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, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 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 अर्जी एवं अपील को लागू नहीं होंगे।

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 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."



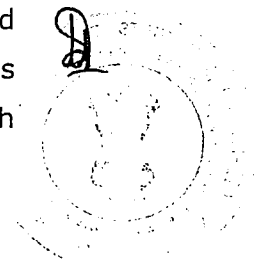
:: ORDER-IN- APPEAL ::

The Assistant Commissioner, Central Excise, Division-Gandhinagar, Ahmedabad (*hereinafter referred to as 'appellant'*) has filed the present appeal against following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed in the matter of refund claims filed by M/s. Smruti Agencies, Survey No. 40 & 41, Beihind Shital Way Bridge, Idar Road, Dhandha, Himatnagar, Dist.- Sabarkantha, Gujarat-383001(*hereinafter referred to as 'respondents'*);

Sr. No	O-I-O No.	OIO date	Amount of refund claimed (₹)	Date of filing the refund claim	Refund for the period	Rev. Order No.
1	130/Ref/S.Tax/VHB/2016	27.12.2016	187031	14.10.2016	Nov-15 to March-16	01/2017-18
2	131-134/Ref/S.Tax/VHB/2016	23.12.2016	675742	08.11.2016	Oct-13 to Sept-14	02/2017-18

2. The facts of the case, in brief, are that the Respondents are partnership firm, having Central Excise registration No. AAFFS5310QXM001 and Service Tax Registration No. AAFFS5310QST001 and had filed refund claims amounting to ₹ 187031 & ₹ 6,75,742/- on 14.10.2016 & 08.11.2016 respectively under Notification No.41/2012-ST dated 29.06.2012 in respect of Service Tax paid on the specified services used for export of goods. The Respondent exported Hand Tools falling under Chapter 82 of CETA, 1985 under the Notification No. 41/2012-S.T. dated 29.06.2012 vide various Shipping Bills and used taxable services Namely "Services commonly known as "CHA Services", Banking Services" Fumigation Services", Transportation of goods" etc for export of goods for the period Oct-2013 to Sept-2014 and Nov-15 to March-15. The adjudicating authority, sanctioned ₹ 1,86,821/- and ₹ 6,71,126/- vide the above said impugned orders 130/Ref/S.Tax/VHB/2016 and 131-134/Ref/S.Tax/VHB/2016 dated 27.12.2017 and 23.12.2017 respectively.

3. In respect to refund amount of ₹ 6,75,742/- , the said respondent had filed refund claims earlier were rejected in view of Board Circular No. 988/12/2014-CX dated 20.01.2014 by the Department. The respondent preferred an appeal before The Commissioner (Appeals), Ahmedabad and the Commissioner (Appeals) has set aside the impugned order and the cases were remanded back to the adjudicating authority to decide the matter afresh



in view of discussion made in the said order. The said case has been decided afresh vide O-I-O No. 131-134/Ref/S. Tax/VHB/2016 dated 23.12.2016.

4. The impugned orders were reviewed by the Commissioner of Central Excise, Ahmedabad-III, and issued review orders No. 01/2017-18 and 02/2017-18 respectively both dated 19.04.2017 for filing an appeal under section 35E of Central Excise Act, 1944 before Commissioner of Appeals, Central Excise, Ahmedabad on the ground that in the some cases, where the difference between the amount of rebate under the procedure specified in paragraph-2 and paragraph-3 is less than twenty percent of the rebate available under the procedure specified in paragraph-2 which resulted in non fulfillment of condition No. 1(c) of the Notification No. 41/2012-ST dated 29.06.2012. However JAC sanctioned refund claims under the Notification No. 41/2012-St dated 29.06.2012 by holding that the difference between the amount of rebate under the procedure specified in paragraph-2 and paragraph-3 of the said Notification stands satisfied. Refunds amount of ₹ 25,426/- and ₹ 1,62,045/- passed under above said OIOs are not admissible in terms of condition No. 1(c) of the Notification No. 41/2012 dated 29.06.2012. In light of the above mentioned review order, the appellant department filed the present appeal to pass an order for set aside the Orders-In-Original passed by the Assistant Commissioner, Central Excise, Division-Gandhinagar, Ahmedabad-III.

5. Personal hearing in the matter was granted and held on 17.08.2017. Mr. M. H. Rawal, Consultant on the behalf of respondent appeared before me and files cross objection and points out that as per condition No. 1(c) of the Notification No. 41/2012 dated 29.06.2012, AC has already calculated the refund and further requested to reject the appeals filed by the department and uphold the order passed by the Assistant Commissioner.

6. The respondent vide their cross objection dated 11.08.2017 explained the Notification No. 41/2012-St. dated 29.12.2012 and said that they had not claimed the refund as procedure set at paragraph-2 and therefore they are eligible for the entire refund of service tax paid on the service used in relation to the export of goods. There is no infirmity in sanctioning the refund by the Assistant Commissioner in the impugned order. They further submitted on the basis of the cases of Radha Kanhaiya Textile Processors-2016(336) E.L.T. 654(Tri.-Mumbai), Ford India Pvt Ltd-2011(272) E.L.T.353(Mad.) and Suksha International & Nutal Gems & Anr-1989(39) E. L. T. 503(S.C.) the procedural infractions should not come in the way of sanctioning the refund/rebate.

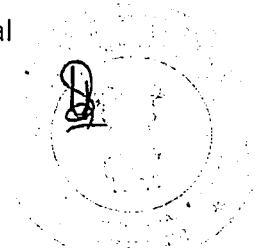


7. I have carefully gone through the facts of the case on records, impugned OIOs, grounds of appeal in the Appeal Memorandum and oral as well as written submissions made by the respondents at the time of personal hearing. On going through the impugned OIOs and Grounds of Appeal filed by the department, I find that the JAC has actually committed error in calculating the percentage difference in terms of condition No. 1(c) of the Notification No. 41/2012-ST dated 29.06.2012 as amended. The JAC sanctioned wrong rebate claim in some cases in which in terms of condition No. 1(c) of the Notification No. 41/2012-ST dated 29.06.2012 as amended not fulfilled.

8. As per para 1 (b) of the Notification No. 41/2012-S.T. dated 29.06.2012 as amended, the rebate shall be claimed either on the basis of rates specified in the Schedule of rates annexed to this notification (hereinafter referred to as the Schedule), as per the procedure specified in paragraph-2 or on the basis of documents, as per the procedure specified in paragraph-3. As per para 1(c) of the said notification, the rebate under the procedure specified in paragraph-3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph-2 and paragraph-3 is less than twenty per cent of the rebate available under the procedure specified in paragraph-2.

9. In the present case, the respondents have filed the claims under paragraph 3, in which if exporter filed a rebate claim on the service tax actually paid on any specified service on the basis of duly certified documents. But there is a condition that the rebate under the procedure specified in paragraph-3 **shall not be claimed** wherever the difference between the amount of rebate under the procedure specified in paragraph-2 and paragraph-3 is less than **twenty per cent** of the rebate available under the procedure specified in paragraph-2. However, as mentioned in paragraph 8 above, I find that the adjudicating authority has committed calculation error while granting the claim under paragraph-3. The appellant, in the grounds of appeal has contested the view of the adjudicating authority with the same angle. The respondents, in their counter, have claimed that they had filed the refund claims under paragraph-3; however, this should not restrict their right of get the claims under paragraph-2 if all the conditions under paragraph-2 are fulfilled.

10. In view of the above facts and discussions held in the above paragraph, I also agree with the argument of the respondents that procedural lapses cannot be criteria to reject refund claim if all conditions are fulfilled.



Thus I remanded the case back to the adjudicating authority to verify the calculation errors under the prescribed formula given in paragraph-3 of the Notification No. 41/2012-S.T. dated 29.06.2012 as amended. The adjudicating authority is also directed to scrutinise the claims in light of the conditions laid down in paragraph-2 of the said notification and ensure that the right of the claimant is not denied for procedural violations unless revenue is adversely affected.

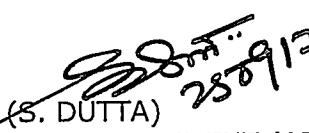
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeals filed by the appellant stand disposed off in above terms.



(UMA SHANKER)
COMMISSIONER (APPEAL)
CENTRAL TAX, AHMEDABAD.

ATTESTED


(S. DUTTA)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

To,

M/s. Smruti Agencies,
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Copy to:-

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



