 सत्यमेव जयते	केंद्रीयकर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
वस्तु एवं सेवा कर भवन	GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015		
सातवींमजिले पॉलिटेक्निक के पास आम्बावाडी अहमदाबाद-380015			
079-26305065			टेलीफैक्स : 079-26305136

क फाइल संख्या : File No : **V2/4/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-44-18-19**

दिनांक Date : **25-07-18** जारी करने की तारीख Date of Issue: **10/8/2018**

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 :
27/Ref/CGST/AC/HMT/2017-18 दिनांक : **25-01-2018** से सृजित

Arising out of Order-in-Original: **27/Ref/CGST/AC/HMT/2017-18**, Date: **25-01-2018**
Issued by: **Assistant Commissioner, CGST, Div: Himmatnagar, Gandhinagar**
Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Gujarat Ambuja Exports

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।

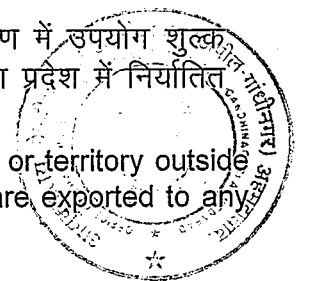
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

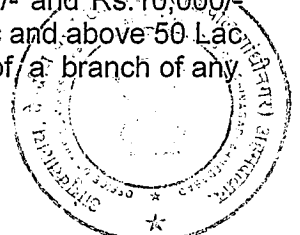
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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, मेघाणी 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 इए-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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ 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 वहाँ रूपए 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 पढी 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 अनुसूची-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 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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,

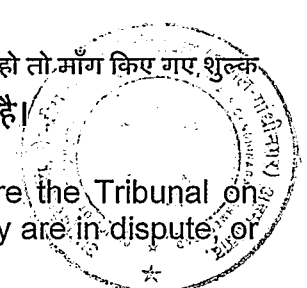
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

This order arises out of an appeal filed by M/s. Gujarat Ambuja Exports Ltd.,(CYD), 1, Vrindavan Road, P.O. Dalpur, Taluka Prantij, Distt. Sabarkantha-383120 (in short 'appellant') against Order-In-Original No. 27/Ref/CGST/AC/HMT/2017-18 dated 25.01.2018 (in short 'impugned letter') passed by the Assistant Commissioner, Central GST, Division Himmatnagar (in short 'adjudicating authority').

2. Briefly stated that the appellant filed rebate claim of service tax paid on specified services for the goods exported during the period Feb-2017 to June-2017 in terms of Notifn. No.41/2012-ST dated 29.06.2012 for Rs.2,90,103/- on 21.11.2017. The adjudicating authority sanctioned Rs.1,31,085/- and rejected Rs.1,59,018/-(Rs. 63,526/- not in accordance with provisions contained in Para 2 and 3 of said notifn. + Rs.95,492/- already claimed on same shipping bills for the goods exported during Oct-2016 to Jan-2017 which also included Rs.32,080/- time-barred) vide impugned order.

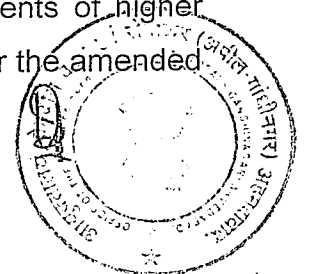
3. Aggrieved with the impugned order, the appellant filed the present appeal wherein, *inter alia*, submitted that :

- (a) The adjudicating authority has grossly mistaken in considering the percentage specified in para 3 of Notifn. No. 41/2012-ST dtd.29.06.2012 as amended. He has considered 0.14% instead of 0.07% as mentioned in the notification Hence, the difference between the rebate eligible under para 2 and 3 is less than 20%.
- (b) As regards claim of Rs.95,492/-, they have never claimed any rebate of service tax for the period Oct-2016 to Jan-2017 under para 2 of said Notifn i.e. fixed percentage of FOB value.
- (c) Rs.32,080/- is not hit by limitation since Bill of Lading date is 30.11.2016.

4. Personal hearing in the matter was not fixed since the appellant did not opted to be heard in person in terms of Sr.no.6A of Form ST-4 (appeal memorandum).

5. I have carefully gone through the appeal memorandum and evidences available on records. I find that the main issue to be decided is whether the impugned order is just, legal and proper or otherwise. Accordingly, I proceed to decide the case on merits.

6. As regards 3(a), I find that the appellant had filed the subject rebate claim of actual service tax paid on specified services availed on exported goods in terms of Para 3 of Notifn. No.41/2012-ST dated 29.06.2012 as amended. I find that the adjudicating authority has considered the rate specified in the schedule annexed to the said Notifn i.e. @ 0.14% of FOB value for arriving at eligibility criteria prescribed in it. I find that the rate specified in the said schedule is amended to 0.07% for the said exported goods vide Notifn. No.01/2016-ST dated 03.02.2016. Hence, it is the duty of the adjudicating officer to arrive at eligible amount considering the amended rate existed at the material time even if the appellant has failed to claim it since substantial benefit available to the appellant cannot be denied as held in series of judgments of higher appellate forum. I find that the adjudicating authority has failed to consider the amended



rate i.e. 0.07% to fulfill the criteria prescribed in the said Notifn for arriving at eligible amount. Hence, the matter to this extent is remanded to the adjudicating authority to re-examine and settle the claim considering amended rate.

6(a). As regards 3(b), I find that the extent and manner for claiming rebate of service tax paid on specified services is prescribed in the Notifn ibid. I find that Para 1(b) gives option to the claimant to claim rebate either on the basis of rate specified in the Schedule of rates annexed to the Notifn as per procedure specified in Para 2 or on the basis of documents as per procedure specified in Para 3. The adjudicating authority has rejected Rs.95,492/- (which also includes Rs.32,080/- time-barred) since the appellant has already claimed rebate on the same shipping bills for the rebate claim filed for the period Oct-2016 to Jan-2017. In this regard, I find that the amount claimed against the shipping bills mentioned in Table-III of the impugned order is different than that claimed for the period Oct-2016 to Jan-2017. It implies that the specified services for which rebate is already claimed is different than that claimed in the present claim. I find that the adjudicating authority has failed to give reasoned findings on this aspect vis-à-vis the appellant has only pleaded that they have not claimed rebate in terms of Para 2 on the said shipping bills. In this regard, I find that if the specified services availed are different than those claimed in earlier claim, the appellant is entitle to claim rebate irrespective of the fact that shipping bills are same or otherwise. Hence, I remand the matter to the adjudicating authority to examine this aspect and give reasoned findings to that extent.

6(b). As regards 3(c), I find that 'Let Export Order' in respect of shipping bill nos.2325162/19.11.2016, 2325192/19.11.2016, 2326380/19.11.2016, 2333706/21.11.2016 and 2333647/21.11.2016 is given on 21.11.2016 but the goods covered in these shipping bills are 'Shipped on Board on 29.11.2016' as per Bill of Lading No.958591754 dtd.30.11.2016. I find that the term 'relevant date' is defined in Section 11B(5)(B) of the Central Excise Act, 1944 which is reproduced below for the sake of ease:

" relevant date " means,-

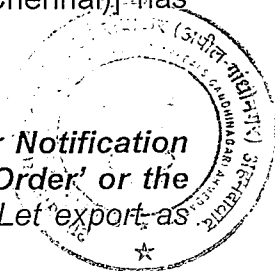
(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods,-

- (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or***
- (ii)....."***

Further, in this regard, I find that the Hon'ble CESTAT, Chennai in case of Ashok Granite Ltd. Vs. CCE&ST, Salem [reported in 2016(46) STR-875(Tri. Chennai)] has held as under:

"Refund/Rebate of Service Tax - Limitation - Export of goods under Notification No. 41/2012-S.T. - Relevant date is whether the date of 'Let Export Order' or the date of shipment - OIO rejecting claims as time-barred taking date of Let export as

§



relevant date on basis of provision of Para 3(g) of impugned Notification - HELD : As per Section 11B of Central Excise Act, 1944, date of shipment of goods from India to be relevant date - If limitation period sought to be imposed, same must be introduced by legislation, given expropriatory consequences of such limitation period - There is a body of law that essential legislative policy aspects (period of limitation being one such aspect) cannot be formulated or prescribed by subordinate legislation - Parent enactment must clearly impose such obligations - Subordinate legislation cannot prevail or be made in such cases - Imposition of limitation period without statutory amendment, through notification, therefore, not to prevail - Assessee correctly and legally entitled for refund claim - Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. [para 4]

Interpretation of statute - Refund of Service Tax - Limitation - Relevant date - Notification No. 41/2012-S.T. prescribing date of 'Let Export Order' as relevant date, being a subordinate legislation cannot prevail over Section 11B of Central Excise Act, 1944 stipulating the date of export as relevant date - Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. [para 4]"

So, it is ample clear from the said Bill of Lading that though the 'Let Export Order' was given on 21.11.2016, the goods for export was loaded on the vessel on 29.11.2016. The appellant has filed the refund claim on 22.11.2017 i.e. well within one year from the date of export. Hence, the plea of the appellant is quite tenable for this rejected amount and is eligible for rebate to that extent.

7. In view of the above discussion and findings, the matter is remanded to the adjudicating authority to decide a fresh within 30 days of communication of this order after following the principle of natural justice.

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

3/11/2018

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Dt. 25.07.2018

Attested:



(B.A. Patel)

Supdt.(Appeals)

CGST, Ahmedabad.

BY SPEED POST TO:

M/s Gujarat Ambuja Exports Ltd.,(CYD),
1, Vrindavan Road, P.O. Dalpur, Taluka Prantij,
Distt. Sabarkantha-383120.

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Gandhinagar (RRA Section).
- (3) The Asstt. Commissioner, CGST, Division Himmatnagar.
- (4) The Asstt. Commissioner(System), CGST, Gandhinagar.
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.

