::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,

सत्यमेव जयते

7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन, पोलिटेकनिक के पास, आम्बवाडी, अहमदाबाद : 380015

7th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad:380015

Old F.No: V2(84)34/EA-2/Ahd-II/14-15

रजिस्टर डाक ए .डी .द्वारा

New F.No: 513 to 517

क फाइल संख्या (File No.) : **V2(84) 4/EA-2/Ahd-II/2016-17**

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 0018 -16-17**

दिनांक (Date): **30.06.2016,** जारी करने की तारीख (Date of issue): 11/07/16

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker** , Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No. **65/Refund/2014 Dated: 14/10/2014** issued by: Deputy Commissioner ,Central Excise (Div-IV), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Steefo Industries

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए |

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो |

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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है |

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

Cont...2

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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 अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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 रेखाकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 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 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

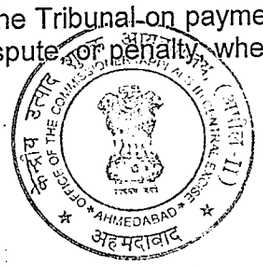
⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस सन्दर्भ 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।

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 subject appeal is filed by the department (hereinafter referred to as 'the appellant') Under Section 35(2) Of Central Excise Act1944, against OIO No. 65/REFUND/2014, dated 14.10.2014 (hereinafter referred to as 'the impugned order) By The Deputy Commissioner, Central Excise, Division-IVAhmedabad-II,(hereinafter referred to as 'the adjudicating authority') in favourofM/s.SteefoIndustries,SarkhejBavlaRoad,Moraiya,Changodar,Ahmedabad(hereinafter referred as 'the respondent') the respondent are engaged in the manufacture of metal rolling mill machinery and parts under chapter 84 of the Central Excise Tariff Act, 1985 [hereinafter referred as CETA-1985].

2. Briefly stated the fact of the case is, the respondent had filed refund claim on 12.07.2014 in respect of service tax paid on CHA Services, Insurance Services, Other Port Services, Banking Services, Terminal Handling Charges, and Goods Transport Services utilized in the export of excisable goods, amounting to Rs. 44,809/- under Notification No. 41/2012-ST, dated 29.06.2012. This pertains to the exports made for the period from 01.10.2013 to 31.03.2014. The adjudicating authority vide above order sanctioned refund claim of Rs. 43,856/- under the provisions of Section 11B of the Central Excise Act, 1944 and the Finance Act,1994 read with Noti. No. 41/2012-ST. dated 29.06.2012.

3. Being aggrieved with the impugned order the appellant preferred an appeal on the following grounds.

That Order is not legal and proper. Refund has been sanctioned under the provisions of Not. No.41/2012-ST, dated 29.06.2012 in respect of services such as CHA Services, Insurance on Business Services, Other Port Services, Banking Services, Terminal Handling Charges, and Transport Services utilized in the export of excisable goods. The said notification provides refund of service tax paid on specified services used in exports of goods beyond the place of removal. Service tax refund of services under notification 41/2012-ST dated 29.06.2012 is admissible only for "specified services" as defined under 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 (I) of rule (2) of the CENVAT Credit Rules, 2004.

In case of export on FOB basis place of delivery is the port of shipment. Therefore, the services availed up to that point would become service availed **up to the place of removal.** The Board has clarified vide Circular No. 988/12/2014-CX dated20.10.2014 as reproduced below:

"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" Further, Board vide Circular No. 999/6/2015-CX dated 28.02.2015 has clarified that:-"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**" Thus, the place of removal in the instant case is port of export and said services are used up to the port of export. Thus, the benefit of refund under the Notification No. 41/2012 dated 29.06.2012 shall not be applicable to these services as not been used beyond the place of removal.

4. Personal hearing was held on 20.01.2016, which was attended by Shri S.K. Bansal Autho. Representative of the Appellant. He reiterated the submissions filed by them earlier and requested to decide the case on merit. I have gone through all records placed before me in the form of the impugned order and written submissions of department as well as submissions made during personal hearing by the respondents. I find that the main issues to be decided is the refund sanctioned to the respondents vide said order is correct or otherwise. I find that, during the course of export, the respondent are availing input services of different service providers, which have been specified under Notification No. 41/2012-ST dated 29.06.2012 .The respondent has filed service tax refund on dated 12.07.14 for Rs. 44809/- being the amount of refund of the taxable services used for export of goods. The respondent had submitted the original refund documents in respect of the input services. I find that during the course of export, the respondent have utilized various services, and paid service tax for which they had filed refund claim for the period 01.10.2013 to 31.03.2014.

5. I find that, The range Superintendent, vide letter dated 11.08.2014, has reported that the respondent has paid service Tax on the Terminal Handling Charges (THC), Insurance services,, CHA Service, Goods Transport services, banking service charges and other port service charges for services related to export and are covered under the Notification No. 41/2012-Service Tax dated 29.06.2012. The refund claim has been verified and found that the respondents eligible for service tax refund claim, the adjudicating authority vide above order has sanctioned refund of Rs. 43,856/- under the provisions of Section 11B of the Central Excise Act, 1944 and the Finance Act, 1994 read with Noti. No. 41/2012-ST. dated 29.06.2012.

6. I have gone through refund claim Records, documents for the exports made during the said period in respect of payment of service tax made by them on the specified services. I proceed to decide correctness of the refund claim on the basis of records available with me. I find that, vide Notification No. 41/2012-Service Tax dated 29.06.2012 is effective from 01.07.2012 grants rebate of service tax paid(hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods, subject to following conditions:

[a] *The exemption shall be claimed by the exporter of the goods for the specified service received and used by the exporter for export of the said goods;*

[b] The exemption shall be provided by way of refund of service tax paid on the specified service used for export of the said goods;

(c) The exporter claiming the exemption has actually paid the service tax on the specified service as Notification No. 41/2012-Service Tax dated 29.06.2012 is effective from 01.07.2012;

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 (I) of rule (2) of the CENVAT Credit Rules, 2004.

In case of export on FOB basis place of delivery is the port of shipment. Therefore, the services availed up to that point would become service availed up to the place of removal. I also find that the Board vide Circular No. 999/6/2015-CX dated 28.02.2015 has clarified that:-" 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**"Thus, the place of removal in the instant case is port of export and said services are used up to the port of export. Thus, the benefit of refund under the Notification No. 41/2012 dated 29.06.2012 shall not be applicable to these services, as not been used beyond the place of removal.

7. I find that as per Notification No.41/2012-ST dated 29.06.2012 which is effective from 01.07.2012; the said credit is not admissible for refund of service tax to the respondent.

The said notification has been amended vide Notification No. 01/2016-ST dated 03.02.2016 and accordingly, in the 'Explanation' in Clause (A) for the sub-clause (i), the following sub-clause has been substituted.

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

The said amendment has retrospective effect from the date of application of the parent notification i.e. from 01.07.2012. Accordingly, I hold that the respondent is eligible for said service tax refund.

8. In view of the foregoing discussion and findings, I uphold the impugned order of adjudicating authority. Accordingly, I reject the appeal filed by the department. The appeal stands disposed of as above.

[Uma Shanker]
Commissioner (Appeals-II]
Central Excise,Ahmedabad

Attested
08-07-16
[K.K.Parmar)
Superintendent (Appeals-II)
Central excise, Ahmedabad.

By Regd. Post A. D

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Copy to :

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
3 TheAsstt.Commissioner,CentralExcise, Division-IV, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
6. PA file.