



सत्यमेव जयते

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

शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise
पोलिटेकनिक के पास, Building,
आम्बवाडी, अहमदाबाद : 380015 Near Polytechnic,
Ambavadi,
Ahmedabad:380015



रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(30) 42/Ahd-II/Appeals-II/ 2015-16 / 2014 to 2018
स्थगन आवेदन संख्या(Stay App. No.):
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 045 -16-17
दिनांक (Date): 27.09.2016, जारी करने की तारीख (Date of issue): 29/09/16
श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by Shri Uma Shanker ; Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद- II, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No.05/Ref/2015 Dated: 08-06-2015
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 Nirma Limited

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 पूर्वोक्त 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 ।

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- (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 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 हों।

- (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-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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी 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 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 रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और 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 और 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 जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।



रेखांकित 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. 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 Appellate 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील 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 M/s. Nirma Limited, Village-Sachana, Taluka-Viramgam, Dist-Ahmedabad[hereinafter referred to as 'the appellant'] against OIO No. 05/REF/2015, dated 08.6.2015 (hereinafter referred to as 'the impugned order) Passed By The Deputy Commissioner, Central Excise Division-III,Ahmedabad-II,(hereinafter referred to as 'the adjudicating authority') they are engaged in the manufacture of excisable goods falling under the Central Excise Tariff Act,1985 [hereinafter referred as CETA-1985].

2. Briefly stated the fact of the case is, the respondent had filed Service tax refund claim amounting toRs.37647/-on12-10-14under Notification No. 41/2012-ST, dated 29.06.2012, which pertains to payment of Service Tax on the specified services such as CHA Services, Goods Transport Services by rail, Terminal handling Service, Port Services etc. for the period from aug-13 to March-2014.The adjudicating authority vide above order has rejected the refund claim, on the grounds that, under the provisions of Not. No.41/2012-ST, refund is allowed for service tax paid on specified services used in exports of goods beyond the place of removal.

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

As regards the issue about invoices raised in the name of Appellant's another manufacturing location, due to inadvertence mistake the invoices were raised in the name of Appellant's another unit situated at Bhavnagar. The service tax has been deposited by the service provider, and with a view to avoid corrections in the original invoices, a certificate was obtained from the service provider i.e. Velji P sons to the effect that services have been used by the Appellant.

As regards the issue about central excise registration does not contained the Salt which is exported and rejection of claim,it is submitted that, In case manufacture exporter who is registered with the Central Excise shall have to file the refund claim with the AC/DC having jurisdiction over the factory in form A-1.The only condition under clause 3 is that the manufacturer-exporter should be registered with Central Excise. In the present case the Appellant is already registered with the central excise authorities.

As regards the issue about denial of refund claim on the grounds that place of removal is the port of export and the services received by appellant in respect of exported goods are not used beyond the port of export and so benefit of refund under said Notification is not admissible. In this regard ,in



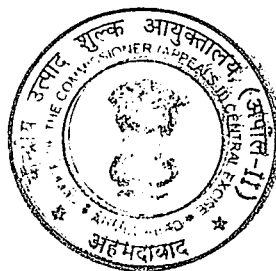
the Budget of 2016-17 the Department of revenue, Government of India has amended the provision under Notification No.41/2012-ST by Notification No.1/2016-ST dated 03.02.2016 with retrospective effect.

That in Appellant's own case allowed the Appeal vide OIA No.AHM-EXCUS-002-APP-0017-16-17 dated 30.06.2016. Therefore, since the facts of the present case are same, it is requested to allow the present appeal.

4. Personal hearing was held on 19.08.2016, which was attended by Shri M.A. Patel Autho. Representative of the Appellant. He reiterated the grounds of appeal.he made additional written Submission on dtd.19-08-16 .I have gone through all records placed before me in the form of the impugned order and written submissions made during personal hearing by the appellant. I find that the main issue which needs to be decided is the refund rejected vide said order is correct or otherwise. I find that, during the course of export, the appellant are availing input services, which have been specified under Notification No.41/2012-ST dated 29.06.2012.The appellant has filed service tax refund claim on dated 12.10.14 under the said Notification being the amount of refund of the taxable services used for export of goods. The appellant had submitted the original refund documents in respect of the said services. I find that, the refund claim has been verified and the adjudicating authority vide above order has rejected said refund claim.

5. 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 have to decide eligibility of refund claim on the basis of records available with me. I find that, the issue about invoices raised in the name of Appellant's another manufacturing location, it it is an admitted fact that the services were availed by the Appellant, but due to inadvertence mistake the invoices were raised in the name of Appellant's another unit situated at Bhavnagar. The service tax has been deposited by the service provider, and with a view to avoid corrections in the original invoices, a certificate was obtained from the service provider i.e. Velji P.& sons to the effect that services have been used by the Appellant, On perusal of the Annexure attached with the certificate, it could be seen that the invoice number is mentioned therein. Therefore, this could not be a valid ground to reject the refund claim. in view of the circummanstances and genuiness of the plea it is directed that, the divisional officers should write to the central excise division of the other unit about the utilization of cenvat at this end. I think this will sufficiently safeguard revenues interest as well as the appellant's interest.

6. As regards the issue about central excise registration of the Appellant does not contained the Salt which is exported and rejection of claim, I find that, In case manufacture exporter who is registered with the Central Excise shall have to file the refund claim with the AC/DC having jurisdiction over the



factory in form A-1. The only condition under clause 3 is that the manufacturer-exporter should be registered with Central Excise. In the present case the Appellant is already registered with the central excise authorities, therefore this cannot be a justifiable ground to deny the refund claim.

7. 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 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.

8. I find that, 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 also clarified vide Circular No. 988/12/2014-CX dated 20.10.2014.

Further, I find that, the 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 the said services are used up to the port of export. Thus, the benefit of refund shall not be applicable to these services as not been used beyond the place of removal.

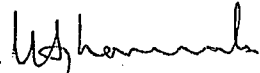
9. I find that as per Notification No.41/2012-ST dated 29.06.2012 which is effective from 01.07.2012; the said credit is not admissible for refund of service tax paid by the appellant.

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 appellant is eligible for said service tax refund.

10. In view of the foregoing discussion and findings, I reject the impugned order and allow the appeal filed by the appellant. The appeal stands disposed of as above.


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

Attested


29-05-16
[K.K.Parmar]

Superintendent (Appeals-II)
Central excise, Ahmedabad.

By Regd. Post A.D.

M/s. Nirma Limited,
Village-Sachana,
Taluka-Viramgam,
Dist-Ahmedabad-382150

Copy to :

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
3. The Asstt. Commissioner, Central Excise, Divi-III, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
5. PA file.



