::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

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.) : **V2(30)44 /Ahd-II/Appeals-II/ 2015-16 &** 3413 to 3418
V2(30)4/EA-2./Ahd-II/Appeals-II/ 2015-16
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 063-064-16-17**
दिनांक (Date): **29.11.2016,** जारी करने की तारीख (Date of issue): 06/12/16
श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by **Shri Uma Shanker** , Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद- II, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No. **05/Ref/2015-16** **Dated: 02-06-2015** & 13/Refund/2014 dated 26/08/15
issued by: AssistantCentral Excise (Div-III), Ahmedabad-II

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

M/s Aculife Healthcare Pvt. 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 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 अंतत 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 |

a.file

केंद्रीय उत्पाद शुल्क आयुक्तालय (अपील-II) THE COMMISSIONER (APPEALS-III) 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/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 जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील–II) अहमदाबाद
OFFICE OF THE COMMISSIONER (APPEALS) II CENTRAL EXCISE AHMEDABAD

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."

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-II) OFFICE OF THE COMMISSIONER (APPEAL S) II) CENTRAL EXCISE ... AHMEDABAD ... अहमदाबाद

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. 13/REF/2014, dated 26.02.2015 (hereinafter referred to as 'the impugned order) Passed by The Asstt.Commissioner,Central Excise, Division-III,Ahmedabad-II,(hereinafter referred to as 'the adjudicating authority') in favour of M/s Nirma Limited, Village-Sachana, Taluka-Viramgam, DistrictAhmedabad-382150. (Hereinafter referred as 'the respondent') the respondent are engaged in the manufacture of excisable goods falling under Chapter 30 of the Central Excise Tariff Act1985 [hereinafter referred as CETA-1985]. An appeal is also filed by the respondent against OIO no.05/ref/2015 dated 02-06-15.

2. Briefly stated the fact of the case are, the respondent had filed refundclaim under Notification No.41/2012-ST, dated 29.06.2012,which pertains to payment of Service Tax on the specified services of CHA Services, Goods Transport Services[export goods to the port] Terminal handling Service, Port Services etc. for the period from april-14to june-14. The adjudicating authority vide OIO no.13/REF/2014 sanctioned refund claim under Section 11B of the Central Excise Act, 1944 read with Noti. No. 41/2012-ST. In party appeal, the adjudicating authority vide OIO no. 05/ref/2015 has rejected refund claim of Rs.1221509/-for the period July-14to Sept-14.

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

a. Refund has been sanctioned under the provisions of Not. No.41/2012-ST, dated 29.06.2012 in respect of services utilized used 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.b. 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 dated20.10.2014.

c. 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, ...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.

d. The respondent party also contended that, in the Budget of 2016-17 the Department of revenue, Government of India has amended the provision under Notification No.41/2012-STby Notification No.1/2016-ST dated 03.02.2016 with retrospective effect. Therefore, respondent party is eligible for said service tax refund.

4. Personal hearing was held on 13.09.2016, which was attended by Shri M.A. Patel Autho. Representative of the respondent party. He reiterated the grounds of appeal filed by them earlier. He made additional submission and copy of amended Noti. No. 01/2016. 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. Submissions made letter dtd.30-6-16 by the respondent .I find that the main issue to be decided is the refund sanctioned to the responcent vide said order passed by the adjudicating authority is correct or otherwise. I find that, during the course of export, the respondent were availing input services, specified under Notification No. 41/2012-ST dated 29.06.2012 .The respondent has filed service tax refund claim under the Notification No. 41/2012-ST dated 29.06.2012 being the amount of refund of the taxable services used for export of goods. I find that, the refund claim has been verified and the adjudicating authority vide above order sanctioned refund claim of Rs.889569/-

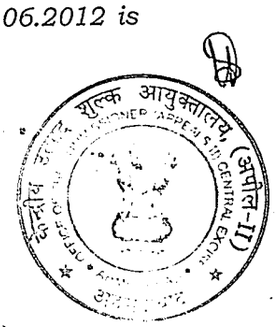
5. I have gone through refund claim Records; I proceed to decide correctness of the refund claim on the basis of records available with me. I find that, vide Notification No.41/2012-STdated29.06.2012 is effective from 01.07.2012grants rebate of service tax paid on the taxable services which are received 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.

6. 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 the said services are used up to the port of export. Thus, the benefit of refund under the Notification No. 41/2012 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 paid by 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 party is eligible for said service tax refunds.

8. In view of the foregoing discussion and findings, I uphold the impugned order and reject the appeal filed by the department. The party appeal is also allowed.

9. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

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

(उमा शंकर)
आयुक्त (अपील्स - II)

Attested

[K.K.Parmar)
Superintendent (Appeals-II)
Central excise, Ahmedabad.

F.NO.V2[30]4/EA-2/Ahd-II/appeal-II/15-16
F.NO.V2[30]44/Ahd-II/Appeal-II/15-16

By Regd. Post A. D

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

2. M/s .Aculife healthcare P. Ltd.
   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.