



## केंद्रीय कर आयुक्त (अपील)



O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन, 7<sup>th</sup> Floor, Central Excise Building,  
सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,  
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(84)94 /Ahd-II/Appeals-II/2016-17/1648 to 1652

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-110-17-18

दिनांक (Date): 27.09.2017 जारी करने की तारीख (Date of issue): 12-10-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker, Commissioner (Appeals)

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. \_60 to 61/Refund/2016\_ Dated: 19.10.2016 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 Engineering Corporation

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।

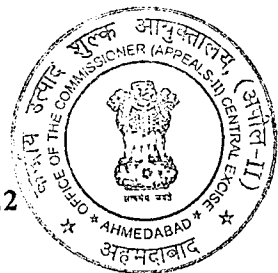
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by 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।

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 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 पीठिकां 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 मैटल 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 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 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।

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 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 मांग 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**

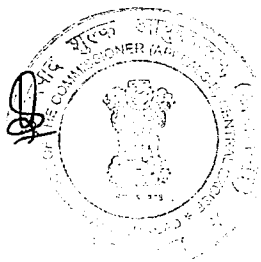
M/s. Steefo Engineering Corporation, Plot No. 495, Tajpur Road, Sarkhej – Bavla Highway, Changodar, Ahmedabad-382213 (hereinafter referred to as the 'appellant') have filed the present appeal against Order-in-Original NO. 60 to 61/Refund/2016 Dated 19.10.2016 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-II (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the appellant is engaged in the manufacture of goods falling under Chapter 84 of the First Schedule to Central Excise Tariff Act, 1985 and holding Central Excise Registration No. ABBPA8812GEM004. The appellant used to clear the goods manufactured by them for home consumption as well as for export in different countries. During the course of export, they were availing services of different service provider.

3. The appellant vide letter dated 05.08.2016, has filed two applications in Form-R for claiming of refund of service tax, amounting to Rs. 1,44,815/- and Rs. 68,073/- paid on specified services used for export of their finished goods for the period from 01.04.2014 to 04.10.2014 and 01.04.2015 to 31.07.2015 respectively, under Notification No. 41/2012-ST dated 29.06.2012 as amended by Notification No. 1/2016-ST dated 03.02.2016.

4. Further, the appellant had already filed a refund claim for the period from 06.03.2014 to 04.10.2014 on 05.03.2015. However, in view of the clarification given by the board on 'Place of Removal' vide Circular No. 999/6/2015-CX dated 28.02.2015, prevailing before issue of Notification No. 01/2016-ST dated 03.02.2016, they had withdrawn the claim vide their letter dated 31.03.2015 and availed the same by way of Cenvat Credit since services availed after place of removal for export were not eligible under erstwhile Circular. Now, the appellant have re-submitted the refund claim for the period 01.04.2014 to 04.10.2014 with request to consider the claim within stipulated time since the original claim was filed within stipulated time.

5. On scrutiny of the refund claims the Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-II found that the applications dated 05.08.2016 for the refund claims did not adhere to the provisions prescribed under the clause 157 of the Finance Bill, 2016 and clause 160 of the finance Act, 2016 and as their claim for the period from 06.03.2014 to 04.10.2014 was voluntarily withdrawn, which was not rejected any time and hence can not be considered as filed. Further, the applications/claims dated 05.08.2016 for refund of specified services used in exports were filed after the lapse of one year from the date of the export of the finished goods and the same are time-barred in view of the provisions under the Notification No. 41/2012-ST dated 29.06.2012, as amended, read with Section 11B of the Central Excise Act, 1944. Therefore, the adjudicating authority vide



the above mentioned impugned order rejected the refund claims of Rs. 1,44,815/- and Rs. 68,073/-.

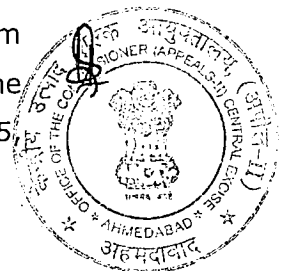
6. Being aggrieved with the impugned order, the appellant has filed the present appeal on 16.12.2016 followed with written submissions on the grounds which are interalia mentioned that -

- the adjudicating authority has erred in law and on facts in rejecting the refund claim without taking into consideration the fact that the limitation period of one year shall be applicable from the date of reversal of Cenvat Credit in books.
- the refund claim for the period from 06.03.2014 to 04.10.2014 had been filed on 05.03.2015 itself and the same had been withdrawn on 31.03.2015 in terms of Circular No. 999/6/2015-CX dated 28.02.2015 on instruction of Division office only. Therefore, the claim can not be denied for limitation period.
- Cenvat Credit for service tax paid on services used for export of goods, had been availed only after withdrawal of the claim. Subsequently, during the Audit, the Credit has already been reversed. Period of limitation should be counted from the date of reversal of service tax, therefore the claim can not be denied for limitation period.
- Notification No. 01/2016-ST dated 03.02.2016 has been issued seeking an amendment to original Notification No. 41/2012-ST dated 29.06.2012 so as to allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods for the export of the said goods, and Vide clause 157 of the Finance Bill, 2016 retrospective effect has been given to the said amendment from the date of issuance of original notification.
- As per observation of Audit Party, Credit of Rs. 1,45,509/- on Services availed after place of removal for Export, has already been reversed. Hence, Cenvat Credit has not been availed for the services in r/o which the refund claim has been submitted.

7. Personal hearing was conducted on 14.09.2017, wherein Shri Aatish A. Shah, Chartered Accountant, appeared before me on behalf of the appellant and reiterated the contents of appeal memo and also submitted written submission along with details of the refund claim (separately for each Shipping Bill) and a copy of D.O.F No. 334/8/2016-TRU dated 29.02.2016 in r/o 'Union Budget 2016-Changes relating to Service Tax- reg.'.

8. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and additional submissions made by the appellants at the time of personal hearing.

9. I find that the appellant has filed two applications for claiming of refund on 05.08.2016 for the period from 01.04.2014 to 04.10.2014 and 01.04.2015 to 31.07.2015. The application for claim of refund, which is for the period from 01.04.2014 to 04.10.2014, has been re-submitted with request to reinstate the same and the other one, which is for the period from 01.04.2015 to 31.07.2015.



had not been filed earlier. Further, the adjudicating authority in para 17 of the impugned order has stated that *the appellant* vide their letter dated 31.03.2015 withdrawn their refund application of dated 05.03.2015 and has taken back the claim along with documents from the department. The appellant has also accepted in grounds of appeal that the refund claim for the period from 06.03.2014 to 04.10.2014 had been filed on 05.03.2015 itself and the same had been withdrawn on 31.03.2015 in terms of Circular No. 999/6/2015-CX dated 28.02.2015. But, the appellant has argued that it was withdrawn on instruction of Division office only, which is not sustainable without any material evidence.

**10.** I would like to reproduce the clause 157 of the Finance Bill, 2016, which has been converted now to clause 160 of the finance Act, 2016:

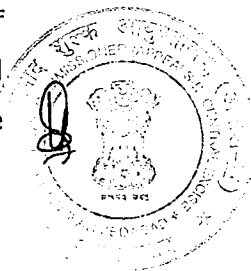
*"160. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 519(E), dated the 29th June, 2012 issued under section 93A of the Finance Act, 1994 granting rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Tenth Schedule, on and from and up to the corresponding dates specified in column (3) of the Schedule, and accordingly, any action taken or anything done or purported to have taken or done under the said notification as so amended, shall be deemed to be, and always to have been, for all purposes, as validly and effectively taken or done as if the said notification as amended by this sub-section had been in force at all material times.*

*(2) Rebate of all such service tax shall be granted which has been denied, but which would not have been so denied had the amendment made by sub-section (1) been in force at all material times.*

*(3) Notwithstanding anything contained in the Finance Act, 1994, an application for the claim of rebate of service tax under sub-section (2) shall be made within the period of one month from the date of commencement of the Finance Act, 2016."*

**11.** Further, Notification No. 41/2012-ST dated 29.06.2012 has been amended vide Notification No. 1/2016-ST dated 03.02.2016 so as to, inter alia, allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods.

**12.** Thus, from the above provisions, it is clear that Notification No. 1/2016-ST dated 03.02.2016 allowed refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods. As per the clause 157 of the Finance Act it is seen that the said amendment has been given retrospective effect from the date of application of the parent notification i.e. from 01.07.2012 and time period of one month was proposed to be allowed to the exporters whose claims of refund were earlier rejected/denied in absence of amendment carried out vide notification No. 01/2016-ST dated 03.02.2016.

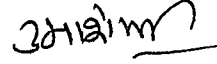


13. In view of the facts and discussion herein above, I find that the benefit of Notification No. 41/2012-ST dated 29.06.2012 as amended by Notification No. 1/2016-ST dated 03.02.2016 can not be extended to the appellant as their earlier refund application was not rejected/denied any time by the department. Further, the appellant filed the refund claims on 05.08.2016 under Notification number 41/2012-ST dated 29.06.2012 for the period from 01.04.2014 to 04.10.2014 and 01.04.2015 to 31.07.2015. As per para 3(g) of Notification number 41/2012-ST dated 29.06.2012, the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods. Thus, I find that the refund claims filed on 05.08.2016 are hit by time bar as per para 3(g) of Notification number 41/2012-ST, dated 29.06.2012 as amended by Notification No. 1/2016-ST dated 03.02.2016.

14. In view of the above, the appeal filed by the appellant is rejected.

15. अपीलकर्ता द्वारा दर्जकी गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

15. The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)

आयुक्त (अपील्स)

Attested



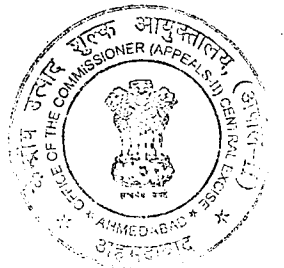
(Rajesh Nathan)  
Superintendent (Appeals)  
Central Tax, Ahmedabad

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**Copy to:**

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Commissioner, Central Tax, Ahmedabad North.
- (3) The Assistant Commissioner, Central Tax Division-III, Ahmedabad North.
- (4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad.  
(for uploading the OIA on website)
- (5) Guard file



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