



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय उत्पाद शुल्क भवन, 7th 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

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क फाइल संख्या (File No.): V2(STC)60 to 63/North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 319 to 322-17-18

दिनांक (Date): 05/02/2018 जारी करने की तारीख (Date of issue): 21-2-2018

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

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

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-VI), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No GST-06/Refund/08 to 11/AC/KMM/Sparsh/2017-18

Dated: 11/06/2017

issued by: Assistant Commissioner Central Excise (Div-VI), Ahmedabad North

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

M/s Sparsh Technologies

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।

Signature



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 :-

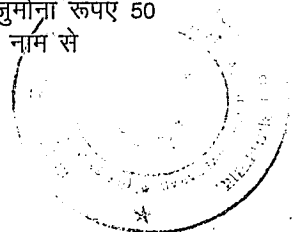
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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) को 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 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 वहां 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 वहां 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 पढ़ी 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 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."



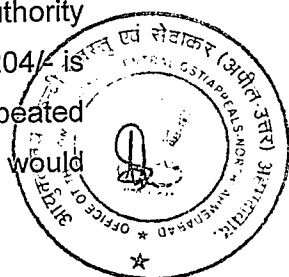
ORDER-IN-APPEAL

M/s Sparsh Technologies, M.R. Patel House 1st Floor, Behind Rajpath Club, Opposite: Golf Academy, Bodakdev, Ahmedabad (hereinafter referred to as 'the appellant') has filed **four appeals** that are considered together in the instant order. In the matter of all these four appeals, the refund claims filed by the appellant under Notification No.27/2012-CE(NT) dated 18/06/2012 in respect of Service Tax paid on inputs services used in output services exported without payment of service Tax were rejected by the Assistant Commissioner, Central Excise, Division-VI, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority') on the ground that the required certificates /documents were not furnished by the appellant. The details of the four impugned orders against which the appellant has preferred appeals are as follows:

Sl.No.	O.I.O. No. and Date	Refund claim amount rejected
1.	O.I.O.No.GST-06/Refund/09/AC/KMM/Sparsh/2017-18 Dated 06/11/2017	₹1,81,957/-
2.	O.I.O.No.GST-06/Refund/10/AC/KMM/Sparsh/2017-18 Dated 08/11/2017	₹3,47,839/-
3.	O.I.O.No.GST-06/Refund/08/AC/KMM/Sparsh/2017-18 Dated 03/11/2017	₹1,79,075/-
4.	O.I.O.No.GST-06/Refund/11/AC/KMM/Sparsh/2017-18 Dated 09/11/2017	₹19,518/-

2. The appellant has preferred four appeals against the above impugned orders mainly on the following grounds:

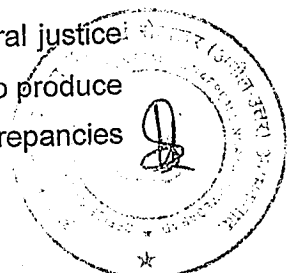
- 1) The adjudicating authority has contended in the OIO that a discrepancy memo has been issued to the appellant *vide* office letter F.No.SD-02/REF/55/17-18 dated 31/08/2017 however the appellant had not received any discrepancy memo from the concerned authority hence in absence of opportunity of being heard appellant was unable to respond to discrepancies noticed by the authority and passing of order without providing opportunity of being heard shall be treated as unfair to the appellant and a refund claim cannot be denied without giving an opportunity. Thus the adjudicating authority had failed to follow the principles of natural justice. The appellant had filed Form ST-3 for the period October-2016 to March-2017 on 20/04/2017 showing the entire CENVAT credit availed in the ST-3 returns. In the impugned order in para 5.1 (a) it has been contended that it has not submitted foreign inward remittance certificates w.r.t. invoice no. ST-150, ST-145, ST-127. The appellant had not submitted the requisite FIRC's due to procedural delay in issuance of the said FIRC's hence appellant was unable to submit required FIRC's within time. In para 5.1(c), 5.1(d) and 5.1(e) it is argued that CENVAT Credit ledgers are not submitted however in para 3 of the O.I.O. it is confirmed that appellant had submitted the same. The adjudicating authority has contended under para 5.1(f) that value of CENVAT credit of Rs.9,15,204/- is repeated in all the three refund of CENVAT credit of Rs.9,15,204/- is repeated in all the three refund claim pertaining to F.Y. 2016-2017. The appellant would



like to submit that it has filed all quarterly refund claims pertaining to F.Y. 2016-17 on 01/06/2017, hence as per form A value of CENVAT credit available on the date of filing of refund claim would be Rs.9,15,204/-, which shall be same for all the quarter due to reason that refund claims are filed on the same date. The CENVAT credit ledger establishes the correctness of the value disclosed by the appellant. Further, the appellant had issued invoices for provision of service under 'Information Technology service' of Rs.1,84,42,885/- and total value of foreign exchange realization in the said period is of Rs.2,25,70,346/- In para 7.1 (c) of the impugned order, export turnover determined by the appellant has been rejected on the ground of non submission of FIRC's and to the extent FIRC's not received, Rs.64,28,626/- has been reduced from the value of turnover. The appellant is submitting all the documents. As per CBEC Notification No.27/2012(N.T.), assessee claiming a refund is required to debit the amount of CENVAT credit claimed as refund in CENVAT credit ledger on the date of filing of refund claim. The appellant submits that the said value of CENVAT credit is very well debited from CENVAT credit Ledger and it is being also shown in ST-3 filed for the period of April-2017 to Hune-2017, whereby assessee has debited total value of Rs.7,03,609/- claimed in all the quarters pertaining to F.Y. 2016-17. C.B.E.C. has issued a master Circular No. 1053/02/2017-CX dated 10/03/2017 providing guidance, clarity and uniformity on issuance of Show Cause Notice and adjudication process. As no SCN was issued in the instant matter, the appellant did not get any chance to file any written submission nor did the appellant have any chance to represent his case before the adjudicating authority. The appellant has relied upon the judgment of Indore Bottling Company vs CCE, New Delhi – 2012 (25) STR 295 (Tri.-Del.) as per which personal hearing should be granted to comply with natural justice.

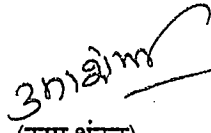
3. Personal hearing in the matter of all the four appeals was held on 02/02/2018. C.A. Bhagyashree Bhatt appeared for the appellant and reiterated the grounds of appeal. The learned C.A. submitted copy of FIRC and submitted that no SCN was received nor any letter was received and there was no proof of dispatch or receipt that was submitted by the department.

4. On going through the impugned orders as well as the grounds of appeal, it is clear that the refund claims have been rejected for want of certain documents which amounts to non following of conditions in Notification No.27/2012-CE dated 18/06/2012. In paragraph 5.1 of the all the four impugned orders it has been stated that with regards to the discrepancies that the same were communicated to the appellant. However, the appellant has claimed that it had not received any such communication from the department. Further, the appellant has also pleaded that as it had not received any show cause notice or opportunity for personal hearing, the principles of natural justice were not followed in its case. The appellant has also expressed its readiness to produce the relevant documents / Certificates / CENVAT ledgers etc to clear the discrepancies



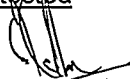
raised in the impugned orders. Accordingly, the appeals are allowed by way of remand with directions to the appellant to submit all the documents / evidences for the consideration of the adjudicating authority who will pass a reasoned order after appreciating the evidences produced by the appellant following the principles of natural justice.

5. चारों अपीलोंका निपटारा उपरोक्त तरीकेसे किया जाता हैं।
All the Four appeals stand disposed of in the above terms.


(उमा शंकर)
आयुक्त (अपील्स-१)

Date: 05 / 02 / 2018

Attested


(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.

To
M/s Sparsh Technologies,
M.R. Patel House 1st Floor,
Behind Rajpath Club Opposite: Golf Academy,
Bodakdev,
Ahmedabad.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T. & Central Excise, Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T. (System), Ahmedabad (North).
4. The Deputy Commissioner, C.G.S.T., Division: VI, Ahmedabad (North).
- ✓ 5. Guard File.
6. P.A.