

	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन, सतवी मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
☎ 079-26305065		☎ 079-26305136

रजिस्टर डाक ए .डी .द्वारा

21/03/18
21/07

क फाइल संख्या (File No.): V2(STC)85 /North/Appeals/ 2017-18
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 385-17-18
 दिनांक (Date): 22-Mar-2018 जारी करने की तारीख (Date of issue): 3/4/2018
 श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
 Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
 मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No GST-06/Refund/17/AC/KMM/Zaptech/2017-18
 Dated: 23/11/2017
 issued by: Assistant Commissioner Central Excise (Div-I), Ahmedabad North

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

M/s Zaptech Solutions Private 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:

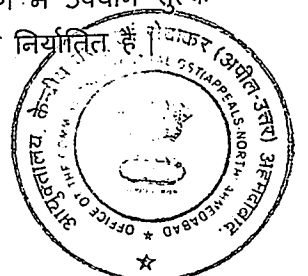
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए ।

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 हैं



- (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 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 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 :-

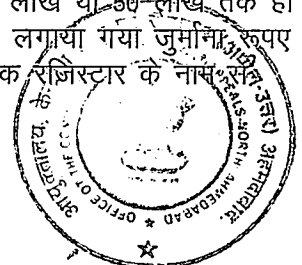
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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) 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 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 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 अनुसूचि-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।

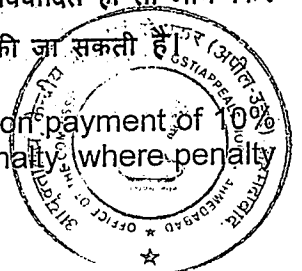
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

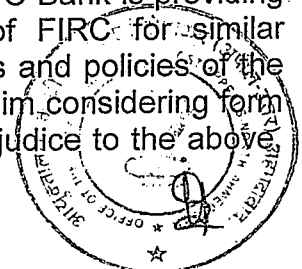


ORDER-IN-APPEAL

M/s Zaptech Solutions Pvt. Ltd., 14, Sigma-I Corporate House, Behind Rajpath Club, Bodakdev, Ahmedabad – 380 054 (hereinafter referred to as 'the appellant') had filed a refund claim of **Rs.2,49,198/-** on 07/07/2017 for the period of July-2016 to September-2016 under Notification No.27/2012-CE (NT) dated 18/06/2012 in respect of Service Tax paid on specified services used for export of service / goods. The refund claim was rejected *vide* **Order-in-original No. GST- 06/ Refund17 / AC / KMM / Zaptech / 2017-18** dated 24/11/2017 (hereinafter referred to as 'the impugned order') passed by Assistant Commissioner, C.G.S.T., Division-VI, Ahmedabad North (hereinafter referred to as 'the adjudicating authority'), on the ground that as the appellant had not submitted relevant Service Tax return for the month in which it had filed refund claim, it could not be ascertained as to whether the claimant had debited an amount of Rs.2,49,198/- or otherwise as no other document was submitted from which the debit entry could be ascertained.

2. The main contention of the appellant in the grounds of appeal are as follows:

- 1) The learned adjudicating authority had passed the order without issuing any show cause notice and hence the first and foremost inequitable mistake / error is that the impugned order has been passed without providing opportunity to the appellant of being heard.
- 2) The learned adjudicating authority had rejected the entire refund claim on grounds of limitation without appreciating the fact that the appellant had already visited the Service Tax department for submitting the refund within time limit prescribed under Notification No.14/2016 – C.E. (NT) whereupon the respective officer had denied to accept service tax refund on the ground that from 22/06/2017 there was no authority to accept service tax refund as the powers were transferred to CGST *vide* notification No.01/2017-Central dated 19/06/2017. The appellant requests that the delay of 7days may be condoned in the filing of refund claim. Without prejudice to the above, the adjudicating authority failed to appreciate that as per Notification No.14/2016 – C.E. (NT), only foreign convertible receipts dated 01/07/2017 & 07/07/2017 amounting to Rs.74,4797/- can be considered to be time barred and hence refund of Rs.13,262/- only can be considered as time barred.
- 3) The learned adjudicating authority had grossly ignored the appellant letter reply along with necessary documents / details against query memo raised on 03/11/2017 wherein the appellant had already submitted all the documents required by the adjudicating authority which included the invoices as required by him. The learned adjudicating authority had accepted the fact that appellant had exported the services and had received the foreign currency but had conveniently rejected the claim of refund only on the ground of non-submission of FIRC and ignoring the fact that refund of CENVAT credit for the 1st quarter had already been granted by the accepting payment advice as valid proof of inward certificate. As per Circular No. SPL-04/2016 dated 21/04/2015 of Foreign Exchange Dealers Association of India – FEDAI, no FIRC is required to be issued in the case under consideration and payment advice can suffice. The appellant is receiving the proceeds in two banks, where HDFC Bank is providing FIRC but Citi Bank is providing Bank Advise instead of FIRC for similar transaction. The appellant cannot be victimized for the terms and policies of the Banks. The adjudicating authority had rejected the refund claim considering form over substance instead of substance over form. Without prejudice to the above



even if the Corporation Bank payment is not accepted as FIRC, even then the appellant is eligible for refund amounting to Rs.1,11,796/-, as HDFC Bank is already providing FIRC as required by the adjudicating authority.

3. Personal hearing in the appeal was held on 12/02/2018 that was attended by Shri Sandip Gupta, C.A. The learned C.A. reiterated the grounds of appeal. He also stated that time-bar will affect only certain invoices dated 1/7/2017 and 7/7/2017. He submitted two Bank statements and a brief summary of the case as well as four export invoices.

4. I have carefully gone through the facts of the case on records and grounds of appeal filed by the appellant. No show cause was issued in the present case while rejecting the refund claim. Therefore, there is merit in the claim of the appellant that it did not get an opportunity to present its defence before the adjudicating authority by way of a written reply or during the course of personal hearing. The adjudicating authority has held in paragraph 5.1 of the impugned order that the refund claim filed on 07/07/2017 towards inward remittance of Rs.7,44,797/- cannot be considered as export turnover of the service in terms of clause (d) of sub-rule (1) of rule 5 and the refund claim was time barred as the same was not filed within time limit stipulated under Notification No.27/2012-CE (NT) dated 18/06/2012. In the grounds of appeal, the appellant has claimed that it had approached the department within the stipulated time limit but the claim of Service Tax refund was not accepted by the department for lack of clarity on jurisdiction under the new Central G.S.T. regime that had replaced the lapsed Service Tax regime w.e.f 22/06/2017. Further, the appellant has pointed out in the grounds of appeal that even if the delay of seven days is not condoned, the time barred refund claim would only be Rs.13,262/- out of the total claim of Rs.2,49,198/- whereas the claim for remaining amount of Rs.2,35,936/- would fall within the time stipulated under Notification No.27/2012-CE (NT) dated 18/06/2012. This plea had never come up before the adjudicating authority and hence the same is required to be examined and confirmed, following the principles of natural justice. Further, as regards the ground of deficiency of documents submitted by the appellant for rejection of the refund claim in the impugned order, the appellant's plea that in reply to the deficiency memo, it had produced the requisite proof of remittances received by it needs to be verified by the adjudicating authority. The appellant claims that in certain case FIRC were issued by certain Banks whereas in other cases the Banks were issuing Bank Advice and such documents in place of FIRC. The appellant has also contended that even if the insistence for FIRC is accepted, HDFC Bank had issued FIRC in respect of refund claim amounting to Rs.1,11,796/- but the claim was rejected along with the remaining claim amount for which Bank advice was available instead of FIRC. This matter is also required to be examined and confirmed at the level of the adjudicating authority. Therefore, the matter is remanded back to the adjudicating authority for fresh decision on all the aspects following the principles of natural justice. The appellant is directed to



place all the contentions and evidences in support of its claim before the adjudicating authority when the case is posted for personal hearing.

6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in the above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 22 / 03 / 2018

Attested

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

By R.P.A.D.

To
M/s Zaptech Solutions Private Limited,
14, Sigma-I Corporate House,
Behind Rajpath Club, Bodakdev
Ahmedabad – 380 013.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: VII, Ahmedabad (North).
5. Guard File.
6. P.A.

