



आयुक्त का कार्यालय, (अपीलस)  
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय  
Central GST, Appeal Commissionerate- Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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क फाइल संख्या : File No : V2(ST)150/North/Appeals/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-002-APP-158-18-19

दिनांक Date : 11/01/2019 जारी करने की तारीख Date of Issue:

26/3/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग \_\_\_\_\_ आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनांक : से सृजित

Arising out of Order-in-Original: MP/48/Ref/18-19, Date: 27/08/2018 Issued by:  
Assistant Commissioner, CGST, Div: II, Ahmedabad North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Arvind Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए राक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.



घ 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 विल्ट 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- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 संबध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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।





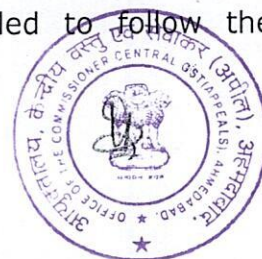
regards non-fulfillment of condition No.(d) of notification No.3/2008-ST dated 19.02.2008, the submitted declaration. Further, the question of ARE-1 has no relevance once proof of export has been submitted.

4. Personal hearing in the matter was held on 13.12.2018. Shri S.J.Vyas appeared for the same and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case and submission made by the appellant in the appeal memorandum. At the outset, I observe that the refund claim, involving total amount of Rs.15,76,783/- filed in the year 2008, was decided by the adjudicating authority as per direction of Hon'ble Tribunal vide its order dated 01.03.2017 *supra*. I find that the Hon'ble Tribunal has remanded the case as per following direction.

*"5. Heard both sides and perused the records. The short issue involved in the present case is whether the appellants are entitled to refund of service tax paid on the goods exported during the relevant period under Notification No.41/2007-ST dated 29.10.2007 as amended. I find that the Ld Commissioner (Appeals) at para 8 of the impugned order has observed that since the appellant had availed drawback of service tax paid and thus falls under the exclusion clause (e) of Notification 41/2007-St dated 29.10.2007 as amended, hence, not eligible to the refund. Prima facie, I find that the communication/evidences placed by the Ld Advocate for the Appellant on record indicates that the specified services did not find place in the All Industry Drawback Rates issued by the Ministry from time to time. These documents/evidences, were not placed before the authorities below, hence it could not be examined and ascertained whether drawback was claimed or otherwise. In the circumstances, in the interest of justice, I am of the view that the matter needs to be remitted to the Adjudicating authority to examine relevant communication/evidences and ascertain the fact whether the appellant had availed drawback on the specified services on which refund of service tax is claimed. Needless to mention all issues are kept open."*

6. On going through the records, I find that the refund claims filed by the appellant is pertaining to the refund of service tax paid on Port service and simultaneous availing of drawback under Notification No.41/2007-ST dated 29.10.2007. Initially, the claims were rejected by the jurisdictional Assistant Commissioner on the grounds that the appellant has not submitted any proof regarding the authorization of the port in case of port service provide; invoices submitted pertains to BAS/BSS for port service and such services are not specified service under notification No.41/2007-ST. It was also held by the jurisdictional Assistant Commissioner that the appellant had also claimed All Industry Rate of duty drawback under Notification No.68/2007-Cus (NT) dated 16.06.2007 with service tax component on the export consignment covered under the said refund claims. Vide impugned order, the adjudicating authority has decided the refund claim as inadmissible by stating that though the Hon'ble CESTAT has directed the appellant to submit the documents/evidences, they failed to follow the said direction.



7. I find that the refund claim under Notification 41/2007-ST allows the appellant on service tax paid on the specified services used for export of the said goods, subject to conditions and procedures prescribed therein. One of the conditions prescribed in the said notification for availing the exemption by way of refund is that the goods have been exported without availing drawback of service tax paid on the specified services under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

8. As stated above, one of the reason for rejecting the refund claims by the then jurisdictional Assistant Commissioner is that the appellant had also availed the benefit of drawback. In the instant case, I find that the adjudicating authority has not passed a speaking order in this context but generally stated that the appellant had not furnished any documents/evidences. The Hon'ble CESTAT, prima facie, find that the communication/evidences placed by the Ld Advocate for the Appellant on record indicates that the specified services did not find place in the All Industry Drawback Rates issued by the Ministry from time to time. The appellant has furnished copy of Order-In-Appeal No.1/09.11.2009 issued by Director (Drawback) New Delhi which states that the all the services mentioned by them in their application are covered under Notification No.41/2007 as amended and such services are not in the nature of input services but are linked to export; that Drawback, therefore, could not have been given on such services. The said order clearly indicates that the appellant is not eligible to avail drawback on the specified services for which the refund of service tax claimed. In the impugned order, the adjudicating authority has made reference of the said order-in-appeal, however, no finding in this regard was given.

9. The other reason for rejecting the claim by the adjudicating authority is that the appellant has not furnished documents/evidences viz. original invoices, copies of ARE-1s, BRCs. He further stated that while remanding the case, the Hon'ble Tribunal has kept open all issues. Therefore, for deciding the issue, all documents relating to export are necessary. I find that as per notification No.41/2007-ST, the refund claim shall be accompanied by documents evidencing, (i) export of the said goods; (ii) payment of service tax on the specified services for which claim for refund of service tax paid is filed; and (iii) wherever applicable, a copy of the written agreement entered into by the exporter with the buyer of the said goods. As per condition (g) of the said notification, the Assistant Commissioner shall, after satisfying himself that the said services have been actually used for export of said goods, refund the service tax paid on the specified services used for export of said goods and condition (h) stipulates that where any refund of service tax paid on specified services used for export of said goods has been paid to an exporter but the sale proceeds in respect of the said goods have not been realized by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such service tax refunded shall be recoverable under the provisions of the

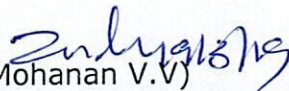


said Finance Act and the rules made there under, as if it is a recovery of service tax erroneously refunded.

10. In view of condition prescribed under the said notification, the appellant is required to furnish necessary documents along with the refund claim so as to establish the export of goods, payment of service tax and realization foreign exchange etc. I find that after considering all these facts, the Hon'ble CESTAT has remanded the case to the adjudicating authority to decide on the basis required document and also directed the appellant to submit the same before the lower authority. However, the appellant has failed to furnish such documents to the satisfaction of the adjudicating authority even after the Hon'ble CESTAT have kept this issue open before the adjudicating authority. Looking into the facts of the case, it is the responsibility of the appellant to furnish the required documents so as to establish the export of goods and eligibility of refund on service tax paid. In the circumstances, a further opportunity is given to the appellant to furnish the documents as stipulated under the notification No.41/2007-ST so as to enable the adjudicating authority to decide the case and the adjudicating may decide the case afresh, after considering all facts and documents/evidence furnished by the appellant. For that, the matter needs to be remitted to the adjudicating authority.

11. In view of above discussion at para 8 to 10 above, I remand the case to the adjudicating authority. The appeal stand disposed of accordingly.

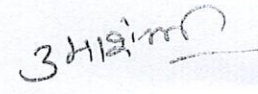
Attested

  
(Mohanan V.V)  
Superintendent (Appeal),  
Central Tax, Ahmedabad.

By RPAD.

To,  
M/s Arvind Ltd.,  
Naroda Road, Ahmedabad  
Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad North.
3. The Assistant Commissioner, System, CGST, Ahmedabad North
4. The Assistant Commissioner, CGST, Dn.II, Ahmedabad North
5. Guard File.
6. P.A.

  
(उमा शंकर)  
प्रधान आयुक्त (अपील्स)  
Date : .1.2019

