• आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटेकनिक के पास, आमबाबाडि,
अहमदाबाद – 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(76 & 73)/92/Ahd-I/2015-16 / 3169-3173
Stay Appl.No. NA/2015-16

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-030-2016-17**
दिनाँक Date : **18.11.2016**जारी करने की तारीख Date of Issue 28/11/2016

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Asst. COMMR.,DIV-II ,केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं **04/Ref/2015-16**
दिनाँक: **03.11.2015,** से सृजित

Arising out of Order-in-Original No. **04/Ref/2015-16** दिनाँक **03.11.2015** issued by Asst. COMMR.,DIV-II, Central Excise, Ahmedabad-I

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Lallubhai Amichand 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 a 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक 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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th 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 प्रकिया 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.

(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।

(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 मामलें 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.

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.

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, provided that the pre-deposit amount shall not exceed Rs.10 Crores. 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 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. Lallubhai Amichand Limited, 175/3, Ghodasar Village, Nr. GIDC, Vatwa, Ahmedabad[for short - *'appellant'*] has filed this appeal against OIO No. 4/Ref/2015-16 dated 3.11.2015, passed by the Assistant Commissioner, Central Excise, Division-II, Ahmedabad-I Commissionerate [*for short - 'adjudicating authority'*].

2. Briefly stated, the facts are that the appellant filed a refund claim of Rs. 19,08,685/- on 29.12.2014 under notification No. 41/2012-ST dated 29.6.2012, in respect of Service tax paid on taxable services utilized for export of goods made during the period from 2008-09 to 2012-2013. Incidentally, the service tax amount of Rs. 19,08,685/-, of which the refund was sought, was paid vide different challans in the years 2013 and 2014 under VCES [Voluntary Compliance Encouragement Scheme, 2013].

3. A show cause notice dated 8.9.2015 was issued, asking the appellant to show cause as to why the refund should not be rejected on various grounds, mentioned in the said notice. After following the principles of natural justice, the adjudicating authority vide his impugned OIO, rejected the refund. It is against this rejection of refund, that the appellant has filed the present appeal.

4. The appellant, in this appeal has raised the following averments:

- the service tax in respect of which refund was sought was paid in December 2013 and June 2014; that the said tax was paid under VCES under reverse charge mechanism; that the harmonious interpretation of the notifications in vogue reveals that the limitation period of one year should be from the date of export or date of payment of service tax – **whichever is later**;
- that they rely on the case of KKSK Leather Processors [2013 TIOL 1797] and Chandreshekhar Exports [2015 TIOL 2448];
- that vide notification No. 17/2008-ST, which amended notification Nos. 41/2007-ST, service of commission agents, was added to the list of specified services; that though in notification Nos. 17/2009-ST and 52/2011-ST, the service of commission agents do not find a mention under specified services – but since the notifications are rescinded, they are not operative and hence the claim needs to be looked upon based on the conditions in vogue when the refund is filed; that on the date of filing of refund claim, the services of commission agent is duly covered in the specified services;
- that they rely on the case of Fazlani Exports [2015 TIOL 1088];
- the finding that service tax paid under reverse charge is not eligible for refund is not a correct reading of the notification;
- that the services have been received beyond the place of removal;
- that since the refund is filed under notification No. 41/2012-ST, [which prescribes certification from statutory auditor only in case of refund exceeding 0.5% of FOB value], they have correctly obtained self certification from the Board of Directors;
- that they are not claiming refund of tax paid under VCES but are claiming rebate/refund of tax paid on taxable services used for export of goods.

5. Personal hearing in the matter was held on 8.11.2016. Shri Rajiv Luthia, Chartered Accountant, appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal. He further submitted additional submissions, which reiterated the averments, already raised in the grounds of appeal.

6. I have gone through the facts of the case, the grounds of appeal and the oral averments, raised during the course of personal hearing.

7. Before dwelling into the issue, I would like to briefly mention the allegations raised in the show cause notice *vis-a-vis* the findings of the adjudicating authority, which are as follows:

Sr. No.	Allegations in the show cause notice	Findings of the adjudicating authority
1	The refund claim filed under notification No. 41/2012-ST is also in respect of exports for the period when the said notification was not in vogue;	The relevant notification in vogue would apply; that it being a procedural lapse, the same is condoned; that the claim needs to be examined under the relevant notifications in force at the relevant point of time as per the provisions contained therein.
2	The refund claim is hit by limitation;	Since the notifications concerned do not mention date of payment of service tax to be of any relevance for determining the relevant date, the refund claim filed is hit by limitation, as the claims were filed beyond one year **from the date of export**.
3	The service of export commission service, in respect of which rebate by way of refund, is being sought, is not a part of specified services;	The service export commission was not listed as a specified service under notifications Nos. 17/2009-ST and 52/2011-ST and to that extent, the appellant is not eligible for the refund.
4	The service in respect of which the refund is sought were not provided beyond the place of removal;	refund is not eligible since the services were not provided beyond the place of removal.
5	The necessary certification of the chartered accountant is not enclosed with the refund application;	In respect of exports before the period 29.6.2012, certificate of the chartered accountant was a must and hence, the refund claim is liable to be rejected to that extent.
6	The service tax amount in respect of which refund is sought was paid by way of VCES – and is therefore not eligible for refund.	availing CENVAT credit and claiming refund is different. Relying on CBEC's clarification dated 8.8.2013 which speaks about CENVAT credit availment in case of payments under VCES, for claiming refund is not tenable.

8. Broadly, the issue to be decided is whether the appellant is eligible for rebate by way of refund under notification No. 41/2012-ST dated 29.6.2012. However, for deciding the main issue, I would like to proceed step-wise and first deliberate the matter issue-wise, which would lead to a harmonious resolution of the present dispute.

9. However, before moving to the issues concerned, I would like to start with the observations of the Hon'ble Supreme Court in the case of Favourite Industries [2012(278) ELT 145 (SC)], wherein on the question of **interpretation of notifications**, the court held as follows:

> *14. Before we deal with the contentions canvassed by the learned counsel for the parties to the lis, we deem it appropriate to notice the observations made by the Constitution Bench of this Court in the case of Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal & Ors., 2010 (260) E.L.T. 3 (S.C.), insofar as the mechanism and interpretation of an exemption notification issued under a fiscal enactment. This Court has observed in the said decision:*
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> > *"A provision especially a fiscal statute providing for an exemption, concession or exception has to be construed strictly. An exemption notification has to be interpreted in the light of the words employed by it and not on any other basis. A person who claims exemption or concession must establish clearly that he is covered by the provision(s) concerned and, in case of doubt or ambiguity, the benefit of it must go to the State."*
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> *15. The observations made by the Constitution Bench of this Court are binding on us.*

25. The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the exemption notification requires to be strictly construed by the Courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous. In Commissioner of Customs, Kolkata v. Rupa & Co. Ltd., 2004 (170) E.L.T. 129 (S.C.), this Court has observed that the exemption notification has to be given strict interpretation by giving effect to the clear and unambiguous wordings used in the notification.

Since the present dispute revolves around rebate by way of refund, under a notification – I am bound by this order and am therefore, proceeding forward keeping in mind the aforementioned directions, while deciding this matter.

Applicability of Notification

10. The fact undisputed is that the claim for rebate by way of refund has been filed under notification No. 41/2012-ST dated 29.6.2012, which came into effect on 1.7.2012. However, the refund sought is in respect of exports of goods made during the period from 2008-2009 to 2012-2013. Surely, when the notification under which the said refund is being sought, was **not** in vogue, the question of a benefit under the said notification, simply does not arise. Taking a larger view, and holding it as a procedural lapse, the adjudicating authority has however held that the refunds would be governed by the notifications which were in vogue during the period to which it relates. Therefore, the notifications to which this refund relates to would be (i) notification No. 41/2007-ST dated 6.10.2007, (ii) notification No. 17/2009-ST dated 7.7.2009, (iii) notification No. 52/2011-ST dated 30.12.2011 and (iv) notification No. 41/2012-ST dated 29.6.2012. As far as this issue is concerned, the appellant not having disputed this portion of the finding, I agree with the view taken by the adjudicating authority.

Issue of limitation

11. The four notifications, *ibid,* prescribe a time period within which the refund claims were to be filed. These are mentioned in paragraph 6 of the show cause notice. The adjudicating authority after examining these four notifications held that the refund claim filed by the appellant was hit by limitation of time. The appellant in his averment has argued that refunds can be filed only after the service tax was paid; that since the refund claims were filed within one year from payment of service tax, [which as is mentioned was paid under VCES, 2013] a harmonious interpretation would make the limitation one year from the date of export or date of payment, whichever is later. The argument is fallacious. This interpretation would mean expounding the notification. This would further mean reading words and phrases into the notification, which was not intended by the drafters in the first place. Nevertheless, this would mean going beyond what the Apex Court has directed of how a notification is interpreted [paragraph 9 supra]. The argument of the appellant therefore is not tenable. The wordings of the notification, clearly state, that the refund application is to be filed within a stipulated period from the date of export and not from the date of payment.

11.1 The appellant has relied upon two case laws, which I would like to discuss.

[a] KKSK Leather Processors (P) Ltd [2014(35) STR 956].

The case law deals with refund under notification No. 41/2007 dated 6.10.2007, which was directed to be examined under Rule 5 of the CENVAT Credit Rules, 2004. The case law stands distinguished on two counts [i] the refund under question also involves claims pertaining to a period where-in a specific time frame of one year was incorporated into the subsequent notifications after notification No. 41/2007-ST and [ii] in this case the refund is not under Rule 5 of the CENVAT Credit Rules, 2004.

[b] Chandrashekhar Exports [2015-TIOL-2448]

The case law stands distinguished as the refund under question also involves claims pertaining to a period where-in a specific time frame of one year was incorporated into the subsequent notifications after notification No. 41/2007-ST.

11.2 In-fact, the issue of limitation in respect of notification Nos. 41/2007-ST and 17/2009-ST was decided **by our jurisdictional Tribunal** in the case of M/s. Sandoz Polymers Pvt. Ltd. [2013 (30) S.T.R. 527], wherein it was held as follows :

> 3. After considering the submissions made by both the sides, even though in my opinion the decision in the case of *Essar Steel Ltd.* relied upon by the ld. counsel may not be applicable and there is some force in the arguments advanced by the ld. A.R., in the view of the opinion taken by one of the Commissioners in Trade Notice No. 7/2010 dated 4-3-2010, I consider it appropriate that the benefit should be extended to the appellant in this case also. The paragraph 2 of the trade notice issued by Commissioner, Dibrugarh is reproduced below:
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> > *"2. The matter has been examined by the Board. In this regard, I am directed to state that though Notification No. 17/2009-S.T., dated 7-7-2009 simplifies the refund scheme, the nature of benefit given to the exporters remains as it was under Notification No. 41/2007-S.T. Further, the new notification does not bar its applicability to exports that have taken place prior to its issuance. Therefore, the scheme prescribed under Notification No. 17/2009-S.T. would be applicable even for such exports subject to conditions that (a) refund claim are filed within the stipulated period of one year; and (b) no previous refund claim has already been filed under the previous notification. [Authority : Board's Letter F. No. 354/256/2009-TRU, Government of India. Ministry of Finance, Department of Revenue, Tax Research Unit, New Delhi, dated the 1st January, 2010]".*
>
> 4. It may be seen that in terms of the paragraph 2 of the trade notice reproduced above, the submissions of the ld. counsel that except for a portion of the claim prior to more than one year from the date of receipt of the claim by the Revenue, the balance amounts claimed as refund would be admissible has to be upheld. Accordingly, the appeal is allowed to the extent of refund claims within one year from the date of export as per the notification and the matter is remanded to the original adjudicating authority for fresh consideration of the claims in terms of the trade notice issued by Commissioner of Central Excise & Service Tax, Dibrugarh
>
> *[emphasis added]*

11.3 Further CBEC, vide its clarification issued vide Circular No. 112/6/2009-S.T., dated 12-3-2009 in respect of notification No. 41/2007-ST dated 6.10.2007, [under which the prescribed time period was of six months], has clarified as follows:

IV	*Whether the limitation period of six month would be counted from the date of exports or from the date of receipt of remittances?*	*It is clearly prescribed in the notification that limitation period of six month is to be computed from the date of exports.*

11.4 The appellants averment that a harmonious interpretation would make the limitation under the notification, *ibid,* one year from the date of export **or** date of payment, whichever is later – cannot be accepted, because a three member bench of the Hon'ble Supreme

Court in the case of Kashyap Engineering and Metallurgicals Private Limited [2002 (142) ELT 518(SC)], on the question of limitation, held, that Courts even in a writ petition has to take note of the provisions of the Act and must exercise its discretion consistent with those provisions. Further, in the case of *Doaba Cooperative Sugar Mills* (37 E.L.T. 478), the Hon'ble Supreme Court held as follows :

> *But in making claims for refund before the departmental authority, an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. **The authorities functioning under the Act are bound by the provisions of the Act.** If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the Act will prevail.*
>
> [emphasis provided]

11.5 Since the averment of the appellant that limitation should be from one year, from the date of export **or** date of payment, whichever is later, would tantamount to extending the limitation, mentioned in the notification thereby leading to a divergence from the law as laid down by the Hon'ble Supreme Court of India, I agree with the finding of the lower authority that the refund is hit by limitation.

Whether export commission is included in specified service under the notifications

12. The appellant has stated that in respect of notification Nos. 17/2009-ST and 52/2011-ST, services of commission agents were never a part of specified services. However, as far as notification No. 41/2007-ST and 42/2012-ST, this was a part of the specified service. However, the appellant has argued that the refund claim is under 42/2012-ST and the claim is to be examined in respect of the services notified on the date of claiming refund and not in respect of the period of export. The appellant has also relied on the case of Fazlani Exports Private Ltd [2015 TIOL 1088]. I agree with the argument made by the appellant. The refund filed could not have been rejected just on the grounds that under notification Nos. 17/2009-ST and 52/2011-ST, the services of commission agents were not a part of specified services.

Services were not provided beyond the place of removal

13. As far as the contention of revenue is concerned that the services were not provided beyond the place of removal and therefore, was not eligible for refund I find that vide Section 160 of the Finance Act, 2016, read with the tenth schedule, clauses (A) and (B) of Explanation contained in Notification No. 41/2012-ST dated 29.6.2012, were retrospectively amended for the period 01.07.2012 to 02.02.2016. The impact of the aforementioned retrospective amendment is that 'specified services' would now mean taxable services that have been used beyond the factory gate or any other premises or place of production. The disputes based on the contention that every service upto the port [which in the case of manufacturer-exporter was the 'place of removal'] would not be a 'specified services' and therefore would not be eligible for refund under Not. No. 41/2012-ST dated 29.6.2012, stands resolved. Now, the effect of the aforementioned retrospective amendment is that any taxable service used beyond the factory gate or place or premises of production of manufacturing, etc. would be 'specified services' as per notification

supra, and would thus be eligible for refund, provided other conditions of the notification are met. However, this retrospective amendment as is already mentioned is from 01.07.2012 to 02.02.2016, only. The refund in the present case covers the period from 2008-09 to 2012-13. The appellant's argument is that the export commission paid to foreign commission agent, who is their marketing/sales agent and who renders them services of procuring orders from the foreign clients, is beyond the place of removal. By no stretch of imagination, can it be held that these services were provided within the place of removal. The allegation of revenue that these services were not provided beyond the port [place of removal], is therefore, not tenable.

Certification by chartered accountant

14. Against the finding of the adjudicating authority that in respect of exports before the period 29.6.2012, certificate of chartered accountant was a must and that the claim to that extent stood rejected, since the refund sought was more than 0.25% of the declared FOB value, the appellant has argued that his claim is under notification No. 41/2012-ST dated 29.6.2012, wherein the cap is of 0.50% of FOB value and since his claim was upto 0.44%, the same ought to have been sanctioned. The argument is contra the averment, in respect of limitation wherein the appellant himself has taken all the notifications which were in vogue at different periods of time, to put forth his claim. It is difficult to understand how conditions of notification No. 41/2012-ST would be applicable in respect of claim for a period when the notification was not in vogue and a different notification was in vogue which stipulated a certain condition, which in this case is not fulfilled. The argument, being not tenable stands rejected. I therefore, uphold the finding of the lower adjudicating authority, in this regard.

Whether refund can be granted in respect of an amount paid under VCES

15. The appellant has argued that this claim is not a refund of tax paid under VCES but a claim in respect of tax paid on taxable services used for export of goods. Before dwelling any further, I would like to mention that it was through Chapter VI under Finance Act, 2013, that the Service Tax Voluntary Compliance Encouragement Scheme, 2013 was introduced. The salient features of the scheme was that it was introduced to encourage voluntary compliance, which could be availed by non filers or stop filers or persons who have not made truthful declaration in their return wherein the defaulter was required to make a truthful declaration of all his pending tax dues from October 2007 to December 2012 and pay the dues by the dates specified in the scheme. However, one note worthy feature of the scheme was Section 109 of the Finance Act, *ibid*, which is reproduced below:

> *109. No refund of amount paid under the Scheme. —*
> *Any amount paid in pursuance of a declaration made under sub-section (1) of section 107 shall not be refundable under any circumstances.*

The intention is therefore, clear. No refund is to be allowed in respect of the amount paid under the scheme. The appellant has not contested that the amount for which refund is being sought was paid under VCES. The appellant's contention that they are not claiming refund of tax paid under VCES but are claiming rebate/refund of tax paid on taxable services used for export of

goods, is not a tenable argument. Section 109 is unequivocally clear. No refund can be allowed of any amount paid in pursuance of a declaration made under sub section 107(1), **under any circumstances**. Even otherwise, it is very surprising that after availing the benefit of an amnesty scheme to regularize the tax dues which were not paid, the appellant has now filed the refund – although the scheme debars a beneficiary from filing a refund, in respect of the amount paid under the scheme. Thus, it is clear that no refund can be granted under any circumstances in respect of any amount paid under VCES. As the refund sought by the appellant is in respect of an amount paid under VCES, the same was correctly rejected by the adjudicating authority. Hence, I agree with the finding of the adjudicating authority, in this regard.

16. In view of the foregoing, the appeal is rejected in view of the findings recorded at paragraphs 11.5, 14 and 15, *supra*. The impugned OIO dated 3.11.2015, rejecting the refund claim filed by the appellant, is upheld.

17. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

(उमा शंकर)
आयुक्त (अपील्स - I)

Date: 18/11/2016

Attested

(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

To

M/s. Lallubhai Amichand Limited,
175/3, Ghodasar Village,
Nr. GIDC, Vatwa,
Ahmedabad

Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Principal Commissioner of Central Excise, Ahmedabad-I
3. The Additional Commissioner (System), Central Excise, Ahmedabad-I
4. The Deputy Commissioner, Central Excise, Division-II , Ahmedabad-I
5. Guard file.
6. P.A
7.

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS) CENTRAL EXCISE AHMEDABAD अहमदाबाद