



- आयुक्तालय (अपील-1) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटिकनिक के पास, आमबाबाडि,
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/119 & 120/Ahd-II/2015-16
Stay Appl.No. NA/2015-16

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-033 & 034 -2016-17
दिनांक Date : 25.11.2016 जारी करने की तारीख Date of Issue 9/11/16

श्री उमा शंकर आयुक्त (अपील-1) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग DEPUTY COMMRR., Div-III, केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं MP/27/DC/2015-16-
Ref ST दिनांक: 11-01-2016 & MP/28/DC/2015-16-Ref ST दिनांक: 13-01-2016 से सृजित

Arising out of Order-in-Original No. MP/27/DC/2015-16-Ref ST दिनांक 11-01-2016 &
MP/28/DC/2015-16-Ref ST दिनांक: 13-01-2016 issued by DEPUTY COMMRR., Div-III, Central
Excise, Ahmedabad-I

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

Choksi Colours Pvt. Ltd.

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 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) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त 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।



... 2 ...

(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.

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.

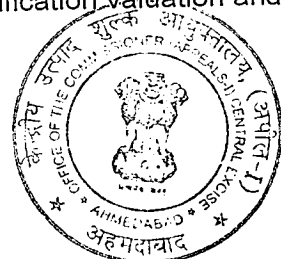
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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.



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 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, 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 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

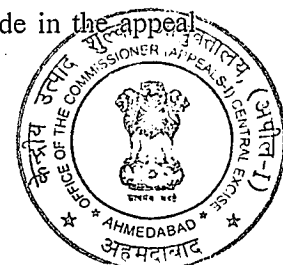
M/s. Choksi Colours Private Limited, 603, Satkar, Behind Swastik Complex, C.G.Road, Ahmedabad- 380 006 and M/s. Choksi Organics Private Limited, 604, Satkar, Behind Swastik Complex, CG Road, Ahmedabad- 380 006(for short- "appellants") against order-in-original passed by the Deputy Commissioner, Central Excise, Central Excise, Division-III, Ahmedabad-I (for short - "adjudicating authority"). The details of the appeals are as follows:

Sr. No.	OIO No. and date	Amount involved (Rs.)	Period involved	Appeal No.	Name of the appellant
1	MP/27/DC/2015-16-Ref-ST dated 11.1.2016	57,285/-	July 2014 to September 2014	119/Ahd-I/2015-16	M/s. Choksi Colours Private Limited.
2	MP/27/DC/2015-16-Ref-ST dated 13.1.2016	75,609/-	July 2014 to September 2014	120/Ahd-I/2015-16	M/s. Choksi Organics Private Limited.

2. Briefly stated, the appellants have filed refund claim, as detailed above, under notification No. 41/2012-ST dated 29.6.2012, seeking refund of service tax paid on the taxable services, which were received and used for export of goods manufactured by them. The said notification grants rebate of service tax paid on specified services, received and used by exporter of goods, by way of refunding the service tax so paid, subject to certain conditions. The taxable services involved in both the claims are [i] agency charges; [ii] port charges; [iii] THC charges; and [iv] transportation of goods in containers by rail. The adjudicating authority, vide the impugned order has rejected the refund primarily on the ground that the appellant being a manufacturer-exporter, the 'place of removal' was the "port of export" for them; and that since these services were rendered upto the 'place of removal', refund ought not to have been allowed in view of Sr. No. 1(a) of notification No. 41/2012-ST dated 29.6.2012, which states that the taxable services should have been used beyond the 'place of removal', in order to qualify for rebate of service tax paid.

3. Being aggrieved, the appellants have filed appeals, *inter alia*, stating that the services utilized by them were related to export of goods only; that the Authority has grossly erred in relying upon the CBEC Circular dated 20.10.2014 and 28.2.2015 because circulars cannot go beyond the scope of the provisions of the Act and in the present case as per the relevant Notification and the Central Excise Act, the place of removal is a factory of the appellant in view of notification No. 1/2016-ST dated 3.2.2016.

4. Personal hearing was held on 22.11.2016. Ms. Richa A Gandhi, appeared before me on behalf of both the appellants and reiterated the submissions made in the appeal memorandum.



5. I have carefully gone through the facts of the cases on record and the submission made by the appellants. The instant appeals are required to be considered in view of notification No. 41/2012-ST dated 29.06.2012, as amended by notification No. 01/2016-ST dated 03.02.2016 and definition of 'place of removal'. Therefore, it is necessary to reproduce the relevant excerpts of the said notification and definition of place of removal.

6. The relevant excerpts of the notification No. 41/2012-ST are as follows:

Provided that –

(a) *the rebate shall be granted by way of refund of service tax paid on the specified services.*

Explanation. - For the purposes of this notification,-

(A) *"specified services" means -*

(i) *in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;*

(ii) *in the case of goods other than (i) above, taxable services used for the export of said goods;*

but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (1) of rule (2) of the CENVAT Credit Rules, 2004;

(B) *"place of removal" shall have the meaning assigned to it in section 4 of the Central Excise Act, 1944 (1 of 1944); "*

7. As regards 'place of removal', the definition in Rule 2 of the CENVAT Credit Rules, 2004, states as follows:

2. *In the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), in rule 2, after clause (q), the following clause shall be inserted, namely –*

'(qa) "place of removal" means-

(i) *a factory or any other place or premises of production or manufacture of the excisable goods;*

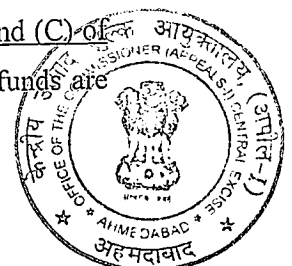
(ii) *a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;*

(iii) *a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed;'*

CBEC, vide its Circular No. 999/6/2015-Cx dated 28.2.2015 has issued clarification, subsequent to Circular No. 988/2/2014-Cx dated 20.10.2014, to the effect that:

6. *In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly.*

8. A combined reading of the notification No. 41/2012-ST dated 29.6.2012, along with the clarifications issued by the Board on the term 'place of removal' and the insertion of its definition into the CENVAT Credit Rules, 2004, clearly leads to a conclusion that the rebate under notification *ibid*, is to be granted by way of refund of service tax paid on the 'specified services', which are received by an exporter of goods and used for export of goods. The 'specified services' in the case of excisable goods are those taxable services that have been used beyond the 'place of removal', for the export of the said goods and which are not mentioned in sub-clauses (A), (B), (BA) and (C) of clause (1) of rule (2) of the CENVAT Credit Rules, 2004. Of course, these refunds are



subject to other conditions mentioned in this notification. In light of above, the Deputy Commissioner has held that the impugned services, the refunds of which have been claimed, were not rendered beyond the place of removal and therefore the refund was not eligible to the appellants.

9. 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. Section 160 *ibid* is reproduced below:

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.

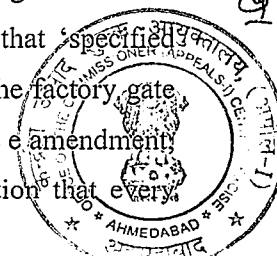
(3) Notwithstanding anything contained in the Finance Act, 1994, an application for the claim of rebate of service tax under sub-section (2) shall be made within the period of one month from the date of commencement of the Finance Act, 2016.

THE TENTH SCHEDULE

(See Section 160)

Notification No	Amendment	Period of effect of amendment
G.S.R.519 (E), dated 29 th June 2012 [No.41/2012-Service Tax, dated 29 th June, 2012]	In the said notification, in the explanation a) in clause (A), for sub-clause (i), the following sub-clause shall be substituted and shall be deemed to have been substituted, namely:— (i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export;"; (b) clause (B) shall be omitted.	1 st day of July 2012 to 2 nd day February, 2016. (both days inclusive)

10. The effect of the aforementioned retrospective amendment brought into vide Finance Act, 2016 in notification No. 41/2012-ST dated 29.6.2012, 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 for the period of retrospective amendment, i.e. from 01.07.2012 to 02.02.2016. The disputes based on the contention that every

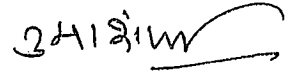


service upto the port [which in the case of manufacturer-exporter was the 'place of removal'] would not be a 'specified services' and therefore, would not be eligible for refund under notification. No. 41/2012-ST dated 29.6.2012, stands resolved. Now, the effect of the aforementioned retrospective amendment is that any taxable service used beyond the factory gate or place or premises of production of manufacturing, etc. would thus be 'specified services' as per notification supra, and would thus be eligible for refund, provided other conditions of the notification are met. In view of above discussed legal position, the impugned order holding that the services under consideration were rendered upto the place of removal, port being the place of removal – becomes extraneous.

11. In view of retrospective amendment in the notification *ibid*, the impugned orders become non-est. Hence, the impugned orders are set aside and the cases are remanded to the adjudicating authority to decide the matter afresh, in view of the foregoing discussion.

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

12. The appeal filed by the appellants stand disposed of in above terms.




(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 27/11/2016

Attested


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

BY R.P.A.D.

To

M/s. Choksi Colours Private Limited, 603, Satkar, Behind Swastik Complex, C.G.Road, Ahmedabad- 380 006	M/s. Choksi Organics Private Limited, 604, Satkar, Behind Swastik Complex, CG Road, Ahmedabad- 380 006
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Copy to:

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Principal Commissioner of Central Excise, Ahmedabad-I
3. The Joint Commissioner (System), Central Excise, Ahmedabad-I
4. The Deputy/ Assistant Commissioner, Central Excise, Division-III, Ahmedabad-I.
5. Guard file.
6. P.A

