



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/91,91,112,113/Ahd-I/2017-18 , V2(ST)/53&54/RA/Ahd-II/2017-18

Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-286to291-2017-18
दिनांक Date : 29-01-2018 जारी करने की तारीख Date of Issue 13-2-2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/Div-VIII/Refund/01&02/17-18 दिनांक: 24/7/2017
CGST/WS08/Ref-37&38/PNG/17-18 दिनांक: 21/9/2017 &
STC/Ref/143&144/Brodos/Kmm/AC/D-III/16-17 दिनांक: 19/12/2016 issued by Assistant
Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Brodos India Pvt Ltd
Ahmedabad

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 :

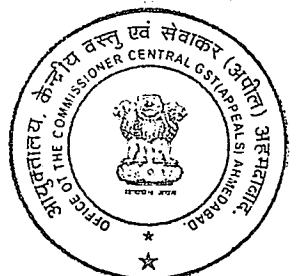
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वड़ किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(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 दिनोंक 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.

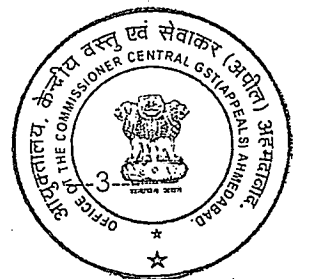
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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 मैन्टल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) 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.



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 यथार्थिती 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 यथार्थिती 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 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."

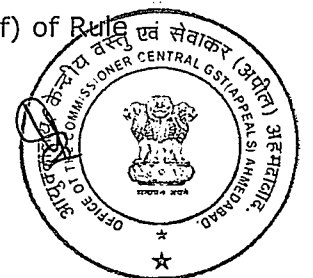


ORDER-IN-APPEAL

This order arises out of appeal filed by the Assistant Commissioner Service Tax, Div-III, Ahmedabad and appeal filed by M/s. Brodos India Pvt.Ltd.,701-704, Landmark, Opp Seema Hall, Anandnagar Road, 100ft. Ring Road Ahmedabad -380 015 (*hereinafter referred to as 'respondent and appellants'*) against following OIO's (in short 'impugned orders') passed by the Assistant Commissioner, Ahmedabad (in short 'adjudicating authority') as detailed below:

Sr No	Appellant	Order-in-Original No. & Date.	Amount of refund involved (Rs.)	Period	Appeal No.
1	A.C. Service Tax, Div-III, Ahmedabad	STC/Ref/143/Brodos /K.M.Mohadikar/AC/ Div-III/16-17 dtd.19.12.2016	2,25,718/-	Oct-2015 to Dec-2015	54/RA/A-II /16-17
2.	A.C. Service Tax, Div-III, Ahmedabad	STC/Ref/144/Brodos /K.M.Mohadikar/AC/ Div-III/16-17 dtd.19.12.2016	1,75,095/-	Jan-2015 to Mar-2015	53/RA/A-II /16-17
3.	M/s. Brodos India Pvt.Ltd	CGST/Div-VIII/REF-1/17-18 DTD. 24.07.2017	1,38,563/-	April-2016 to June -2016	91/A-I /17-18
4	M/s. Brodos India Pvt.Ltd	CGST/Div-VIII/REF-2/17-18 DTD. 24.07.2017	1,39,429/-	July-2016 to Sep-2016	92/A-I /17-18
5	M/s. Brodos India Pvt.Ltd	CGST/WS08/REF-37/17-18 DTD. 21.09.2017	2,06,047/-	Oct-2016 to Dec-2016	112/A-I /17-18
6	M/s. Brodos India Pvt.Ltd	CGST/WS08/REF-38/17-18 DTD. 21.09.2017	1,88,634/-	Jan-2017 to Mar-2017	113/A-I /17-18

2. Briefly stated facts that in all the cases appellants were providing services to their overseas head office under the category of 'Information Technology Software service'. The adjudicating authority sanctioned the refund claims at sr. no. 1 and 2 of the above table under Notifn. No.27/2012-CE(NT) dated 18.06.2012 read with Rule 5 of the Cenvat Credit Rules, 2004. Rejected Sr.No.3 to 6 of above table filed by the said appellants under Notifn. No.27/2012-CE(NT) dated 18.06.2012 read with Rule 5 of the Cenvat Credit Rules, 2004 on the ground that the services rendered by them to their overseas client does not qualify as 'export of service' under Clause(f) of Rule 6A of the Service Tax Rules, 1994.



3. Being aggrieved by the impugned orders at sr no. 1 & 2 of the table the department preferred appeal on the grounds that M/s. Brodos AG, Germany and the M/s. Brodos India Pvt. Ltd. are not the independent parties since all the expenses are remunerated by the M/s. Brodos AG, Germany with additional appropriated mark-up further M/s. Brodos AG, Germany and the M/s. Brodos India Pvt. Ltd does not have principle to principle relationship, therefore the claimant is not independent but is a merely establishment of M/s. Brodos AG, Germany.

4. M/s. Brodos India Pvt. Ltd filed the present appeals against the orders at sr. no.3 to 6 of the table above on the following grounds; Assistant Commissioner has erred on facts and in law by considering claimant/appellant as merely establishment of the M/s Brodos AG, Germany. The appellant placed reliance on the decision of Dell International Services India (P.) Ltd.[2009]22 STT 478 (BANG.-CESTAT). Further they placed Reliance, in case of **Tandus Flooring India Private Limited, in** (Ruling No.AAR/ST/03/2013, Application No. AAR/44/ST12/12-13 decided on August 26, 2013).

5. Personal hearing for all the appeals was held on 11.01.2018. Shri Philip John Fernandez Chartered Accountant appeared on behalf of the appellants and reiterated the ground of appeal and written submission and citation of Dell International Services India (P.) Ltd [2009]22 STT 478 (BANG.-CESTAT).

6. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and the Written Submission filed by the said appellants and oral submission made at the time of personal hearing. I take up all the appeals filed by the department and party, for the final decision. Question to be decided is, whether as per clause (f) of Rule 6A, Claimant is a merely establishments of M/s Brodos AG, Germany or not.

6.1 Reliance placed by the appellants on Dell International Services India (P.) Ltd [2009]22 STT 478 (BANG.-CESTAT), does not comes to their rescue because it pertains to the era prior to Place of provisions of services rules 2012 and Notifn. No.27/2012-CE(NT) dated 18.06.2012.

6.2 Here once it is established by the adjudicating authority in adjudication order at sr. no. 3 to 6 of table above, that the said claimant is a merely establishment of the M/s. Brodos AG, Germany, and decided that it cannot be qualified as export of services. Once service are held to be not the export of services then adjudicating authority had to examine the taxability of services provided by the appellant as they have not paid the service tax on so called export services and also to examine the availability of Cenvat credit to the appellant.

6.3 However departmental appeal at sr. no. 1 and 2 of table above is on the ground that M/s. Brodos AG, Germany and the M/s. Brodos India Pvt. Ltd. are not the independent parties and does not qualify the export of services and they are merely establishment of M/s. Brodos AG, Germany. Here it can be seen that both the appeals are on similar grounds i.e. **distinct persons**, and hence it can be concluded that departmental appeals and appellants appeals are required to be remanded back for fresh consideration for reasons;

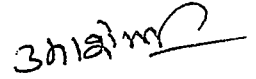


- i) Reliance placed by the appellant, In case of **Tandus Flooring India Private Limited, in** (Ruling No.AAR/ST/03/2013, Application No. AAR/44/ST12/12-13 decided on August 26, 2013), had not been examined by the adjudicating authority thus it is felt necessary to remand the case to examine the above referred citation.
- ii) Once service are held to be not the export of services then adjudicating authority had to examine the taxability of services provided by the appellant as they have not paid the service tax on so called export services and also to examine the availability of Cenvat credit to the appellant.
- iii) It is further felt that department must have issued protective demand show cause notice for recovery of wrongly/erroneously paid refund as department has reviewed the OIO's at sr. no. 1 and 2 of table above, the said protective demand should not be decided until unless the remand matters are decided by the adjudicating authority, to avoid multiple litigation on similar issue.

7. In view of above discussions I, hereby remand all the six cases i.e. departmental appeal and party appeals back to adjudicating authority to decide the matter a fresh in view of discussion at para-6 above.

08. All the six appeals filed by the appellants stand disposed off in above terms.

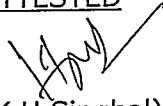
08. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED


(K.H.Singhal)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.
BY R.P.A.D.

To,
M/s. Brodos India Pvt.Ltd.,
701-704, Landmark, Opp Seema Hall,
Anandnagar Road, 100ft. Ring Road
Ahmedabad -380 015

Copy To:-

1. The Chief Commissioner, Central Tax, GST Ahmedabad zone, Ahmedabad.
2. The Commissioner, Central Tax, GST South, Ahmedabad.
3. The Deputy/Assistant Commissioner, Central Tax, GST South, Division VII, Ahmedabad South.
4. The Assistant Commissioner, System, GST South -Ahmedabad
5. Guard File.
6. P.A. File.

