

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015	 7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 : 079-26305065	टेलिफैक्स : 079 - 26305136	

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(90)/95/Ahd-I/2017-18 / 1804-1807
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-370-2017-18
दिनांक Date : 27-02-2018 जारी करने की तारीख Date of Issue 22.03.18

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/14/AC/2017-18/Ref(ST) दिनांक: 9/8/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent .
M/s Angiplast 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) केन्द्रीय 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 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.

(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 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.

(i) 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) 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 मैनटल 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 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।

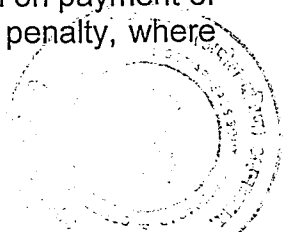
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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

This appeal has been filed by M/s. Angiplast Pvt. Ltd., Plot No. 4803, Phase-IV, GIDC, Vatva, Ahmedabad- 382445. (hereinafter referred to as "the appellant") against the OIO No. MP/14/AC/2017-18-Ref (ST) dated 09.08.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Tax, Div-III, Ahmedabad South Commissionerate (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the appellant is engaged in manufacture and export of Non Pyrogenic Intravenous Infusion Sets. The appellant filed a refund claim of service tax paid in respect of various services received and utilized for export of goods viz., Forwarding charges, CHA charges, Bank Charges and Transport (services) during the period from July-2016 to September-2016, in terms of Para 3 of Notification No. 41/2012-ST dated 29.06.2012 along with the relevant documents. On scrutiny of the documents, it was noticed that some of the shipping bills pertain to June 2016 and further, some of the input service tax invoices pertain to October 2016; that they neither submitted invoices in original nor certified by a chartered accountant; that the Chartered Accountant certificate submitted by the appellant along with the refund claim in terms of para 3 (h) (B) and (i) of the notification *ibid* was not in the proper format.

2.1 Consequently, a show cause notice was issued *inter alia*, alleging that the appellant did not fulfill the conditions laid down in notification No. 41/2012-ST dated 29.06.2012. This refund claim was later on rejected vide the impugned order by the adjudicating authority.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that:

(i) they filed the refund claim for the period from July- 2016 to September -2016 and the adjudicating authority's contention that some of the shipping bills pertain to June -2016 and further some of the input service tax invoices pertain to October- 2016 does not stand good for the reason that relevant date for the export is considered to be the date when LET export order is issued for a particular consignment and the same is required to be mentioned in the Form A-1 annexed with the notification. In the instant case, all LET export orders were issued between the period from 01.07.2016 to 30.09.2016 as reflected in the Form A-1 of the refund application and all shipping bills submitted by them pertains to the relevant period only and with regard to observation of the adjudicating authority that some of the input service tax invoices pertain to October- 2016, the appellant submits that the service providers usually raise bills/invoices only after the export is made. Therefore, in cases where the invoices were issued in the month of October 2016, the export in those cases was made in the month of September 2016 or August 2016.

(ii) they used to submit self attested photocopies of the of the service tax input invoices previously and the department had never raised any objection regarding submission of self certified copies of input invoices and further the notification *ibid* does not stipulate that the documents are required to be filed in original for claiming the rebate by way of refund.

(iii) they submitted that rejecting the chartered accountant certificate on the ground that the certificate was not worded properly does not holds good. They have relied on the case of M/s. Tirumala Bearings Pvt. Ltd. [2016 (335) E.L.T. 145 (Tri.- Bang)] wherein it is held that a certificate issued by a Chartered Accountant or Cost Accountant is a good evidence and the same cannot be sidelined lightly without production of any other evidence to show that the said certificate is wrong one and herein the adjudicating authority has not provided any contrary evidence that the certificate issued by the Chartered Accountant is a wrong certificate.



The appellant further requested to sanction the refund along with the applicable interest.

4. A personal hearing in the matter was held on 22.01.2018 and Smt. Shilpa P. Dave, Advocate appeared on behalf of the appellant and reiterated the grounds raised in the appeal.

5. I have carefully gone through the facts of the case on records, appeal memorandum and submissions made by the appellant at the time of personal hearing. The issue before me is to decide whether the appellant is eligible for service tax refund-under notification No. 41/2012-ST dated 29.06.2012 or otherwise.

6. The adjudicating authority rejected the service tax refund claim filed by the appellant vide the impugned order on the following grounds:

(i) that some of the shipping bills pertain to the period June 2016 and further, some of the input service tax invoices pertain to October 2016, whereas the service tax refund was filed for the period from 01.07.2016 to 30.09.2016.

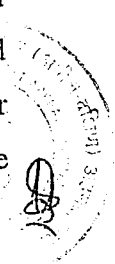
(ii) the appellant did not submit the documents in original nor were the documents certified by the Chartered Accountant.

(iii) The certificate issued by the Chartered Accountant was not in the prescribed format as required under notification *ibid*.

Now I discuss the above points one by one, in detail:

6.1 The adjudicating authority rejected the refund claim filed by the appellant on the ground that some of the shipping bills pertain to the period June 2016 and further, some of the input service tax invoices pertain to October 2016, as discussed in para 6 (i) *supra*. The relevant date for export is considered to be the date when LET export order is issued for a particular consignment and in respect of shipping bills belonging to June 2016, I find that all LET export orders in respect of these shipping bills were issued during the period from 01.07.2016 to 30.09.2016 as ascertained from the refund application filed in Form A-1 and therefore, the adjudicating authority's contention that the shipping bills were not related to the period for which the refund was filed is not tenable. Further, the adjudicating authority has also contended that some of the input service tax invoices pertain to October 2016. The appellant in their grounds of appeal has contended that those invoices were raised during October 2016 and the export was made during August/September 2016. However from the documents submitted I don't find anything that would corroborate the appellant's claim. In view of this, I direct the appellant to submit the relevant documents to the adjudicating authority to substantiate their view within four weeks of receipt of this order.

6.2 The adjudicating authority rejected the refund claim on the ground that they neither submitted original copy of the input invoices nor were they certified by the Chartered Accountant. The appellant in their grounds of appeal stated that they used to submit self attested photocopies of the of the service tax input invoices previously and the department had never raised any objection and further the notification *ibid* does not stipulate that the documents are



required to be filed in original for claiming the rebate by way of refund. I find that Clause (h) of Para 3 of Notification No. 41/2012 -ST dated 29.06.2012 makes it mandatory to submit the original copy of the invoices while filing the refund claim. The relevant extract is reproduced below for ease of reference:

(3) the rebate shall be claimed in the following manner, namely:-

- a)
- b)
- c)
- d).....
- e)
- f).....
- g)

h) where the total amount of rebate sought under a claim is upto 0.50% of the total FOB value of export goods and the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Textiles, Form A-1 shall be submitted along with relevant invoice, bill or challan, or any other document for each specified service, in original, issued in the name of the exporter, evidencing payment for the specified service used for export of the said goods and the service tax paid thereon, certified in the manner specified in sub-clauses (A) and (B):

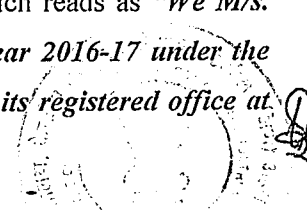
(A) if the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be self-certified by the exporter and if the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;

(B) the documents enclosed with the claim shall also contain a certificate from the exporter or the person authorised by the Board of Directors, to the effect that specified service to which the document pertains has been received, the service tax payable thereon has been paid and the specified service has been used for export of the said goods under the shipping bill number;

i) where the total amount of rebate sought under a claim is more than 0.50% of the total FOB value of the goods exported, the procedure specified in clause (h) above shall stand modified to the extent that the certification prescribed thereon, in sub-clauses (A) and (B) shall be made by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of the Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961(43 of 1961), as the case may be;

From above, it is clear that the appellant necessarily have to submit relevant invoices, bill or challan or any other document in original. In five of the shipping bills, the total amount claimed as refund is more than 0.50% of the total FOB value of the goods exported and hence in respect of those, certification as prescribed in sub-clauses (A) and (B) *supra*, has to be made by the Chartered Accountant who audits their annual accounts for the purpose of Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961 (43 of 1961) in terms of clause (i) of Para 3 of the notification *ibid*. The appellant neither submitted the documents in original nor were the documents certified by the Chartered Accountant in respect of aforesaid five shipping bills. In view of the foregoing, the appellant is directed to submit the input service invoices in original duly certified by the Chartered Accountant in those cases where the refund claimed is more than 0.50% of the total FOB value to the adjudicating authority within four weeks of receipt of this order.

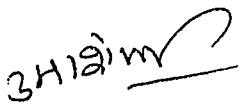
7. Further, the adjudicating authority has also rejected the refund claim on the ground that Chartered Accountant certificate submitted by the appellant is not in the proforma as prescribed in the notification *ibid*. The appellant submitted a Chartered Accountant certificate which reads as "*We M/s. S.G. Marathe & Co., duly appointed for audit of annual financial accounts year 2016-17 under the companies Act, 1956. This is to certify that M/s. Angiplast Private Ltd. having its registered office at*




Plot No. 4803, Phase -IV, G.I.D.C, Vatva, Ahmedabad- 382445, Gujrat State, India, has claimed Service Tax Refund Rs. 151980/- for the period from 01.07.2016 to 30.09.2016. With respect to the said claim we have verified the necessary documents and papers and same are found in order and certify that the service tax claim of Rs. 1,51,980/- is found true and correct" The appellant in their grounds of appeal has contended that the adjudicating authority did not provide any contrary evidence that the certificate issued by the Chartered Accountant is wrong one and rejecting the refund claim merely on the ground that the certificate issued by Chartered Accountant is not worded properly as prescribed in the notification *ibid* does not hold good. They relied on case of M/s. Tirumala Bearings Pvt. Ltd. [2016 (335) E.L.T. 145 (Tri.- Bang)] wherein it is held that a certificate issued by a Chartered Accountant or Cost Accountant is a good evidence and the same cannot be sidelined lightly without production of any other evidence to show that the said certificate is wrong one. On careful reading of the aforesaid case law, I find that the aforesaid case law is about unjust enrichment and in the instant case, the notification *ibid* specifically mandates the claimant to submit a certificate issued by the Chartered Accountant in the form prescribed therein. Hence the case law relied on is not relevant and applicable in the present case. Further, I find that Sub- clause (B) of clause (h) and clause (i) of Para 3 of the notification *ibid* makes it mandatory for a claimant to submit a certificate in the prescribed proforma along with the refund application. The notification clearly specifies that a certificate from a Chartered Accountant (in case of claim being more than 0.50% of FOB value) or from the exporter/the person authorised by the Board of Directors of the company (in case of claim being less than 0.50% of FOB value) has to be submitted along with the refund claim certifying that "*specified service to which the document pertains has been received, the service tax payable thereon has been paid and the specified service has been used for export of the said goods under the shipping bill*". I direct the appellant to submit a certificate to the adjudicating authority in the prescribed proforma as discussed *supra* within four of receipt of this order.

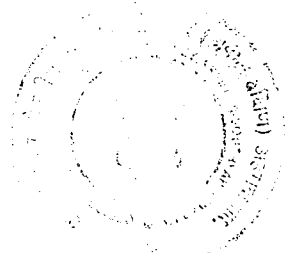
8. In view of the foregoing discussion, I direct the appellant to submit the documents as discussed *supra*, to the adjudicating authority within four weeks of receipt of this order. The adjudicating authority is further directed to decide the case afresh after receiving the documents after following the principles of natural justice. The matter is being remanded back only to ensure that there is no miscarriage of justice.

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


(उमा शंकर)
आयुक्त (अपील्स)

Attested


(Vinod Lukose)
Superintendent,
Central Tax(Appeals),
Ahmedabad.



By RPAD

To,

M/s. Angiplast Pvt. Ltd.,
Plot No. 4803, Phase-IV,
GIDC, Vatva,
Ahmedabad- 382445

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad South.
3. The Addl./Joint Commissioner, (Systems), Central Tax, Ahmedabad South.
4. Guard file.
5. P.A .to Commissioner (Appeals).

