

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

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)206,207,208&209/Ahd-II/2016-17
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-066 to 069 -2017-18
दिनांक 31.08.2017 जारी करने की तारीख Date of Issue 25/9/17

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

ग Assistant Commissioner, Div-III, Service Tax, Ahmedabad द्वारा जारी मूल आदेश सं STC/Ref/
134/Mazda/KMM/AC/D-III/16-17, STC/Ref/ 135/Mazda/KMM/AC/D-III/16-17, STC/Ref/
136/Mazda/KMM/AC/D-III/16-17 & STC/Ref/ 137/Mazda/KMM/AC/D-III/16-17 दिनांक: 07/12/2016 से सृजित

Arising out of Order-in-Original No. STC/Ref/ 134/Mazda/KMM/AC/D-III/16-17, STC/Ref/
135/Mazda/KMM/AC/D-III/16-17, STC/Ref/ 136/Mazda/KMM/AC/D-III/16-17 & STC/Ref/
137/Mazda/KMM/AC/D-III/16-17 दिनांक: 07/12/2016 issued by Assistant Commissioner, Div-III, Service
Tax, Ahmedabad

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

**M/s. Mazda Consultancy services
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 :

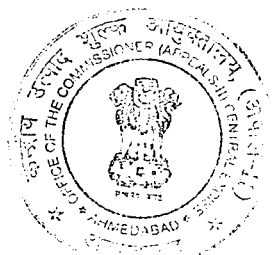
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के
दौरान हुई हो।

(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 ...



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
 - (ii) सेनवैट जमा की ली गई गलत राशि
 - (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- ⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

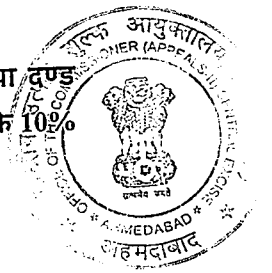
4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।



ORDER IN APPEAL

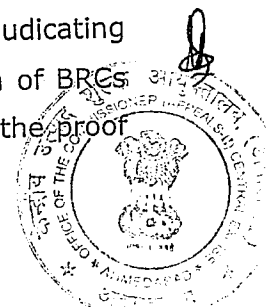
M/s. Mazda Consultancy Services, 752/5, Opp. Karnavati Club, Nr. Kedar Bunglow, S. G. Highway, Ahmedabad, Gujrat-380015 (*hereinafter referred to as the 'appellants'*) have filed the present appeals against the following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed by the Assistant Commissioner, Service Tax, Division-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

Sr. No.	OIO No.	OIO date	Amount of refund claim (₹)	Amount sanctioned (₹)	Reasons for rejection of the claims
1	STC/Ref/134/Mazda/K.M.Mohadikar/AC/Di v-III/16-17	07.12.2016	74,207	0	Non submission of BRC
2	STC/Ref/135/Mazda/K.M.Mohadikar/AC/Di v-III/16-17	07.12.2016	2,30,207	0	Non submission of BRC
3	STC/Ref/136/Mazda/K.M.Mohadikar/AC/Di v-III/16-17	07.12.2016	72,231	0	Non submission of BRC
4	STC/Ref/137/Mazda/K.M.Mohadikar/AC/Di v-III/16-17	08.12.2016	44,159	0	Non submission of BRC

2. The facts of the case, in brief, are that the appellants are registered with the department under the categories of Business Support service and they had filed four refund claims amounting to Rs. 74,207/- & Rs. 44,159/- for the period Jan 2016 to March 2016 and Rs. 2,30,207/- & Rs. 72,231/- for the period Oct 2015 to Dec 2015 under Notification number 27/2012-CE(NT), dated 18.06.2012 in respect of Service Tax paid on input(s) services (specified services) used in output services/goods exported without payment of Service Tax.

3. During scrutiny of the claims, the adjudicating authority had found that the appellants had failed to submit BRCs in any of the export invoices as per the conditions laid down in paragraph 3(d) of the notification number 27/2012-CE(NT), dated 18.06.2012. The appellants have also failed to produce even the copy of FIRC as evidencing that they are getting the remittance in convertible foreign exchange. The adjudicating authority vide the above mentioned impugned orders rejected the refund claims of Rs. 74,207/-, Rs. 2,30,207/-, Rs. 72,231/- & Rs. 44,159/-.

4. Being aggrieved with the impugned orders the appellants have preferred the present appeals. The appellants have submitted that the adjudicating authority has rejected the claims on the ground of non-submission of BRCs along with the claims. The adjudicating authority has also ignored the proof



of the bank statement showing receipt of foreign exchange & ledger copy of the service recipient. Thus, they claimed that the refunds submitted by them were wrongly rejected. They further added that now they have received the BRCs (Copies of BRCs have been submitted by them), therefore their appeals may be allowed.

5. Personal hearing in the matter was granted and held on 21.08.2017. Shri Vipul Khandhar, Chartered Accountant, appeared before me on behalf of the appellants and reiterated the contents of appeal memo. He also requested that since copy of Bank Realization Certificate have been submitted, the appeals may be remanded back.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. Before dwelling on to the dispute, I would like to reproduce the relevant paras 2 & 3 of the CBEC Notification number 27/2012-CE(NT), dated 18.06.2012:

"2.0 Safeguards, conditions and limitations.- Refund of CENVAT Credit under rule 5 of the said rules, shall be subjected to the following safeguards, conditions and limitations, namely:-

(a) the manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter:

provided that a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter.

(b) in this notification quarter means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

(c) the value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant.

(d) the total value of goods cleared during the quarter shall be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant.

(e) in respect of the services, for the purpose of computation of total turnover, the value of export services shall be determined in accordance with clause (D) of sub-rule (1) of rule 5 of the said rules.

(f) for the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011.

(g) the amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.

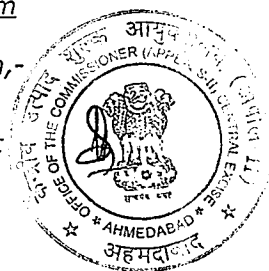
(h) the amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim.

(i) In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and amount sanctioned.

3.0 Procedure for filing the refund claim. - (a) The manufacturer or provider of output service, as the case may be, shall submit an application in Form A annexed to the notification, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, in whose jurisdiction,

(i) the factory from which the final products are exported is situated.

(ii) the registered premises of the provider of service from which output services are exported is situated.



(b) The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944).

(c) The application for the refund should be signed by-

(i) the individual or the proprietor in the case of proprietary firm or karta in case of Hindu Undivided Family as the case may be;

(ii) any partner in case of a partnership firm;

(iii) a person authorized by the Board of Directors in case of a limited company;

(iv) in other cases, a person authorized to sign the refund application by the entity.

(d) The applicant shall file the refund claim along with the copies of bank realization certificate in respect of the services exported.

(e) The refund claim shall be accompanied by a certificate in Annexure A-I, duly signed by the auditor (statutory or any other) certifying the correctness of refund claimed in respect of export of services.

(f) The Assistant Commissioner or Deputy Commissioner to whom the application for refund is made may call for any document in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim.

(g) At the time of sanctioning the refund claim the Assistant Commissioner or Deputy Commissioner shall satisfy himself or herself in respect of the correctness of the claim and the fact that goods cleared for export or services provided have actually been exported and allow the claim of exporter of goods or services in full or part as the case may be."

7. It is evident from the para 3(d) of the above notification that the appellant shall file the refund claim along with the copies of bank realization certificate in respect of the services exported. But, the appellants had failed to submit BRCs in any of the export invoices as per the conditions laid down in the notification. The appellants had also failed to produce even the copy of FIRC's before the adjudicating authority as evidencing that they were getting the remittance in convertible foreign exchange. Therefore, the adjudicating authority found it difficult to establish whether they had indeed exported such services and received foreign remittances against such exports or otherwise and rejected the refund claims. Since the appellants had received the BRCs subsequently and the same have been submitted here for consideration, the cases need to be remanded back to the adjudicating authority for verification of the BRCs. The adjudicating authority should also check the applicability of the said BRCs in the refund claims. The appellants are also directed to provide all possible assistance to the adjudicating authority in relation to the above mentioned claims.

8. Further, it is also observed here that they had filed four refund claims, two for the same quarter of Jan 2016 to March 2016 and other two for the same quarter of Oct 2015 to Dec 2015 under Notification number 27/2012-CE(NT), dated 18.06.2012. As per Para 2 of the notification (relevant sub- paras have been reproduced here again):



" (a) the manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter:

provided that a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter.

(b) in this notification quarter means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

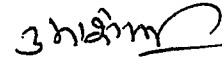
(c) the value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant."

It is quite clear from the above that the appellant shall submit not more than one claim of refund for every quarter, provided that the appellant exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter. Therefore, the adjudicating authority should also check and verify the refund claims properly in this context.

9. In view of the foregoing the aforementioned four appeals are disposed of by remanding the matter back to the adjudicating authority in terms of the discussion held above.

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


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



(उमा शंकर)

आयुक्त (अपील्स)

Attested


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

BY SPEED POST TO:

M/s. Mazda Consultancy Services,
752/5, Opp. Karnavati Club, Nr. Kedar Bunglow,
S. G. Highway, Ahmedabad, Gujrat-380015.

Copy to:

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Commissioner, Central Tax, Ahmedabad South.
- (3) The Assistant Commissioner, Central Tax Division-VII, Ahmedabad South.
- (4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad.
(for uploading the OIA on website)
- (5) Guard file

