आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलेफैक्स07926305136

स्पीड पोस्ट

क फाइल संख्या : File No : V2(32)22/EA-2/Ahd-South/2019-20/1HH82 TO 1HH87

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-03-2020-21**
दिनाँक Date : **24-04-2020** जारी करने की तारीख Date of Issue 04/06/2020

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **MP/13/AC/19-20** दिनाँक: **20.08.2019** , issued by Asst. Commissioner, Div-III, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Kiri Dyes and Chemicals 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 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.

(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. 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. 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

The Department has filed this appeal, as per Review Order No.18/2019-20 dated 21.11.2019, against Order-in-Original No.MP/13/AC/2019-20 dated 20.08.2019 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner of CGST, Division-III, Ahmedabad South [hereinafter referred to as "adjudicating authority"] in the case of M/s Kiri Dyes and Chemicals, Ahmedabad [hereinafter referred to as "Respondent"].

2. Briefly stated, the facts of the case are that the Respondent has filed a refund claim amounting to Rs.3,43,300/-on 08.07.2009. The backdrop for filing the said refund claim is that the Respondent had imported raw materials for the purpose of manufacturing of excisable goods after paying Import Duty during 23.04.2017 to 30.06.2017. However, the Respondent has not paid the Service Tax amounting to Rs.3,43,300/- on Sea Freight amount of Rs.22,88,656/- paid to the Shipping Lines who not having any establishment in taxable territory of India. The exemption from payment of Service Tax given to transportation of Goods by Sea or Air under Negative List, vide Sr. No. (p)(ii) of Section 66D of the Finance Act, 1994, has been omitted with effect from 01.06.2016, vide Notification No.09/2016-ST dated 01.03.2016. With reference to the said Notification, the Respondent has paid the due Service Tax amounting to Rs.3,43,300/-, as a recipient of service, on 24.12.2018 without paying due interest on delayed payment. However, since the Respondent could not avail the Cenvat credit of the said amount due to implementation of GST w.e.f 01.07.2017, they filed the refund in question under Section 11 B of the Central Excise Act, 1944 read with Section 142 (6) (a) of the CGST Act, 2017.

2.1 The adjudicating authority, vide impugned order, has sanctioned the refund claim amounting to Rs.3,43,300/- and appropriated the interest of Rs.79,807/- for late payment of Service Tax from the sanctioned refund amount.

3. Aggrieved with the impugned order, the Department has filed the instant appeal on the grounds that:

- Section 142 (8) (a) of the CGST Act, 2017 clearly indicates that input tax claimed is not admissible in respect of the tax recovered as arrears under the CGST Act,2017; that in the instant case, the tax has been recovered as arrears after the appointed day i.e 20.06.2017 under the CGST Act and as such the input tax credit of the same is not admissible.
- Since, the input tax credit is not admissible, the natural corollary that follows is that refund is not admissible.
- The Service Tax has been paid as a liability of the Respondent under reverse charge mechanism and such amount is not covered under any of the categories specified in Section 11B of the Central Excise Act, 1944.

- The adjudicating authority has referred the provisions of Section 142(6)(a) of the CGST Act read with Section 174 of the said Act; that Section 142(6)(a) ibid pertains to proceeding of appeal, review or reference relating to claim of Cenvat credit; that the Respondent's case does not deal with any proceeding of appeal, review or reference related to Cenvat credit and as such the said provisions would not apply; that the adjudicating authority has erred in applying the said provisions.

3. The Respondent has filed Cross-Objection to the Department appeal, wherein, they, inter-alia, submitted that:

- The Department appeal hits by limitation as provided under Section 84(2) of the Finance Act, 1944; that the impugned order was not reviewed within the stipulated time as provided under Section 84(2) of the Act and needs to be dismissed. The Respondent relied on various case laws in this regards.
- The Department has grossly made error in interpreting the Section 148(8) (a) of the CGST Act, 2017; that the Respondent had paid the Service Tax in question under reverse charge mechanism in respect of service provided prior to GST Regime under the provisions of Finance Act, 1944 and not under the provisions of CGST Act, 2017.
- They claim the refund in question in accordance with the provisions of Section 11 B(1) of the Central Excise Act, 1944 and as per provisions of Rule 3 of the Cenvat Credit Rules, 2004.
- The Constitutional validity of levy of Service Tax on Ocean Freight under RCM from the importer under Notification 15/2017-ST and 16/2017-ST both dated 13.04.2017 is struck down as ultra vires by the Hon'ble High Court of Gujarat in the case of M/s SAL Steel Ltd, vide order dated 06.09.2019.

4. Personal Hearing in the matter was held on 19.03.2020. Shri R.R.Dave, Consultant appeared for the same and re-iterated the submissions made in Cross-Objection. He further submitted that the Department appeal is hit by limitation.

5. I have carefully gone through the facts of the case and submissions made by the Department in Appeal Memorandum and submission made by the Respondent in Cross-objection as well as during Personal Hearing. The limited point to be decided in the instant case is relating to eligibility of refund claim amounting to Rs. 3,43,300/-, paid on sea freight charges during GST regime.

6. Before going into the merit of the case, first I take the issue of time bar of Department appeal, as contended by the Respondent. Section 84 of the Finance Act, 1994 reads as under:

"The Principal Commissioner of Central Excise or Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise

(Appeals) for the determination of such points arising out of the decision or order as may be specified by the Principal Commissioner of Central Excise or Commissioner of Central Excise in his order.

*(2) Every order under sub-section (1) shall be made within a period of **three months** from the date of communication of the decision or order of the adjudicating authority.*

*(3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of **one month** from the date of communication of the order under sub-section (1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application."*

I find that the Department has filed the instant appeal on 21.11.2019 as per Review Order dated 18/2019-20 dated 21.11.2019, against impugned order dated 20.08.2019 received on 22.08.2019. Therefore, in view of provisions of Section 84 supra, the Department has filed the appeal within the prescribed time limit and the Respondent's contention is not correct and sustainable.

7. As regards eligibility of refund claim, I find that it is a case of late payment of Service Tax on Ocean Freight/Sea Freight charges paid by the Respondent under Reverse Charge Mechanism during GST regime; that since they were not in position take Cenvat credit on such payment, they filed refund claim under Section 11B the Central Excise Act, 1944 read with provisions of Section 142 (6) (a) of the CGST Act, 2017.

7. I find that the adjudicating authority has sanctioned the refund claim in question under the provisions of Section 11B of the Central Excise Act, 19144 (CEA) read with Section 83 of the Finance Act, 1944 read with provisions of Section 142 of the CGST Act. While sanctioning the refund amount to the appellant, the adjudicating authority has also appropriated the interest amounting to Rs.79,807/- on late payment of Service Tax which was not paid by the appellant. However, I find that in the impugned order, the adjudicating authority has not discussed the eligibility of refund claim or on which ground the refund is eligible to the apapellant. Therefore, it is presumed that the adjudicating authority has sanctioned the refund under Section 11 B of the CEA read with Section 142(6) (a) of the CGST Act, 2017, under which the Respondent had claimed the refund.

8. I find that the Department, in their Appeal Memorandum, has contended that Section 142 (6) (a) of the CGST Act is not applicable in the instant case as the Section ibid pertains proceedings of appeal, review or reference relating to claim of Cenvat credit. They further contended that as per provisions of Section 142 (8) (a) of the CGST Act, 2017, no input tax credit is available to the appellant as the Service Tax liability was recovered from them as arrears after introduction of GST regime.

8. I find force in the contention of the Department. The appellant has filed the under Section 11 B of the CEA read with provisions of Section 142(6)(a) of the CGTST Act. I find that the Respondent has claim refund as Credit of Input Service paid on Ocean Freight/Sea Freight during GST regime. There is no provision under Section 11 B ibid to allow refund of input or input service which was not availed. Further, Section 142 (6)(a) ibid is relating to proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated, before or after GST regime. The instant case is not arising out of any appeal proceedings, review or reference to a claim of Cenvat Credit, therefore, Section 142(6) (a) of the CGST Act is not applicable to the appellant's case. The provisions of Section 142(8) (a) stipulates that *"where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act".* In the instant case, the appellant had paid the amount in question on 24.12.2018, though it was payable from 01.06.2016. Therefore, even during pre-GST regime also, they were not eligible to avail Cenvat credit under the provisions of Cenvat Credit Rules, 2004.

10. In view of above discussion, the refund amount sanctioned by the adjudicating authority is erroneous, as contended by the Department.

10. However, I find that the appellant has placed reliance on the Hon'ble High Court of Gujarat's order dated 06.09.2019 in case of M/s SAL Steel Ltd, wherein, the Hon'ble Court has struck down the Notification No.15/2017-ST making Rule 2(1)(d)(EEC) of the Service Tax Rule and inserting explanation V to Reverse Charge under Notification No.30/2012-ST. It appears that the said plea was not taken by the appellant before the adjudicating authority as the Hon'ble Court has pronounced the judgment only on 06.09.2019.

10.1 I find that clause (p)(ii) of Section 66D of the Finance Act, 1994 has been omitted w.e.f.01.06.2016. Prior to the omission, the said clause of Section 66D ibid reads as under:

> *"66D-The negative list shall comprise of the following service, namely-*
>
> .....
>
> *(p) Service by way of transportation of goods-*
>
> *(i).....*
>
> *(ii) by an aircraft or a vessel from a place outside India upto the Customs station of clearance in India, or*

In the said judgment supra, I find that the Hon'ble High Court has considered the taxability of Service Tax, by virtue of clause (p)(ii) of Section 66 D of the Finance Act, 1944 in respect of services by way of transportation of goods by vessel from a place outside India upto the customs station of clearance in India. The Hon'ble Court has observed as under:

22. In the case on hand, indisputably, the overseas sellers/suppliers of the goods have made contracts with the shipping line/shipper for sea transportation of the goods, and such overseas sellers/suppliers have made payment of transportation charges to the shipping line; and admittedly there is no contract nor any arrangement between the Petitioners (who are Indian importers/buyers of the goods) and the shipping line for sea transportation. Thus, Ocean freight is admittedly paid by the overseas suppliers/sellers to the shipping line, and therefore the overseas suppliers i.e. the sellers of the goods located in foreign country are the persons who have received service of sea transportation from the shipping line, and the value of such service i.e. ocean freight is also paid by such overseas suppliers/sellers for receiving such service.

23. "Ocean freight" is the colloquial expression; but the service for which service tax is proposed to be collected under the impugned provisions is described as the "transportation of goods by a vessel from a place outside India upto the Customs station of clearance in India....." in all the impugned provisions under Rule 2(1)(d)(EEC) of Service Tax Rules, Rule 6(7CA) of Service Tax Rules and also in Explanation V of reverse charge Notification No.30/2012-ST. The service for which tax is proposed to be collected under the impugned provisions is thus admittedly rendered and consumed outside the country, because the service is that of transportation of goods by a vessel from a place outside India upto the Customs station of clearance in India.

24. "Customs station" is defined under Section 2(13) of the Page 35 of 80 Downloaded on : Tue May 19 17:01:30 IST 2020 C/SCA/20785/2018 JUDGMENT Customs Act, 1962 to mean any Customs port, Customs Airport, International Courier Terminal, Foreign Post Office or land Customs station; and thus "Customs station" is a place on the land mass of the country. In this case, the transportation of goods by a vessel is involved, and therefore the Customs station of clearance in India would be the "Port", where the goods are unloaded from the vessel and then assessed to customs duties under Section 46 and 47 of the Customs Act, and then clearance of the goods shall be allowed on payment of duties assessed. This Court has conclusively held in para 11 of Prabhat Cotton and Silk Mills Ltd. 1982 (1) ELT 203 (Guj.) that importation into India was with reference to the land mass of India, and not with reference to the territorial waters of India. The judgement of this Court and the judgements of the several other High Courts are referred to in Lucas TVS, Madras 1987 (28) ELT 266 (Mad.) by the Madras High Court, and while agreeing with the judgement of this High Court at para 18, other judgements are referred to from paras 19 to 24, and it is held by the Madras High Court also that import in India means import on the land mass of the country, and not merely in the territorial waters. The judgement of the Mumbai High Court in case of Apar Pvt. Ltd. (referred to in para 26 of the above Madras High Court judgement) is over-ruled by the Surpeme Court in UOI V/s Apart Pvt. Ltd. 199 (112) ELT 3 (SC).

25. Thus, the service proposed to be taxed under the impugned provisions is admittedly that of transportation of goods upto the Indian Port i.e. land mass of the country; and this service covering sea transportation of hundreds or thousands of KMs is an event occurring beyond the land mass of the country, and hence in the nature of an extraterritorial Page 36 of 80 Downloaded on : Tue May 19 17:01:30 IST 2020 C/SCA/20785/2018 JUDGMENT event. The provisions of the Finance Act, 1994, which is an Act of the Parliament for levy of service tax, do not permit nor empower the Central Government to collect service tax on such extraterritorial events, and the services which are rendered and consumed beyond the land mass of the country.

The Hon'ble Court has, in the impugned order, finally struck down the levy of Service Tax on Ocean Freight/Sea Freight. The relevant para is also reproduced hereinbelow:

"58. In view of the aforesaid discussion, the writ application succeeds and is hereby allowed. The Notification Nos.15/2017- ST and 16/2017-ST making Rule 2(1)(d)(EEC) and Rule 6(7CA) of the Service Tax Rules and inserting Explanation-V to reverse charge Notification No.30/2012-ST is struck down as ultra vires Sections 64, 66B, 67 and 94 of the Finance Act, 1994; and consequently the proceedings initiated against the writ applicants by way of show cause notice and enquiries for collecting service tax from them as importers on sea transportation service in CIF contracts are hereby quashed and set aside with all consequential reliefs and benefits".

11. In view of above decision of Hon'ble High Court of Gujarat, levy of Service Tax on sea transportation is unconstitutional. I find that the appellant is not a party to the Writ Application filed before the Hon'ble Court. Therefore, refund of Service Tax paid on service received under Reverse Charge Mechanism in question is admissible to them if they filed the refund application within one year as prescribed under Section 11 B of the CEA. I find that the appellant has filed refund application on 08.07.2019 against the payment of Service Tax made on 24.12.2018. Therefore, it is well within the prescribed time limit under Section 11 B ibid. Under the circumstances, the appellant is eligible for refund of Service Tax paid as the Hon'ble High Court of Gujarat has struck down the levy of Service Tax on sea transportation.

12. In view of above, I reject the appeal filed by the Department. The appeal stands disposed of accordingly.

(Akhilesh Kumar)
Commissioner (Appeals)
/04/2020

Attested
(Mohanan V.V)
Superintendent (Appeals)
CGST, Ahmedabad

By R.P.A.D

To

M/s Kiri Dyes & Chemicals Ltd
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The Assistant Commissioner of CGST
Division-III, Ahmedabad South.

Copy to:

1. The Principal Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, CGST, Ahmedabad South
3. The Ssupdt., CGST, Range-III, Division -III, Ahmedabad South
4. The Assistant Commissioner, System-CGST Ahmedabad South
5. Guard File.
6. P.A. File.