

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद- 380015.

क फाइल संख्या : File No : V2(ST)057/A-II/2016-17
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-238-16-17
दिनांक Date : 22.02.2017 जारी करने की तारीख Date of Issue 25/02/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग _____ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं _____
दिनांक : _____ से सृजित

Arising out of Order-in-Original No SD-01//Ref/61/AC/NGM/16-16 Dated 23.03.2016 Issued
by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. N G Mine-Chem Pvt Ltd Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



(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) (जसमें 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 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 रुपए 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 ती 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 अर्ज़ी 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।

4(1) 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 NG Minechem Pvt Ltd, 301, Studio Complex, Nr. Gota Cross Road, S. G. Highway, Ahmedabad-382481 (hereinafter referred to as "the Appellant"), has filed the present appeal against the Order-in-Original No SD-01/Refund/61/AC/NG Minechem/15-16 dated 23.03.2016 (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioners of Service Tax, Division-I, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, the appellant has filled a refund claim of ₹ 3,98,300/- under the provision of Notification No 41/2002-ST dated 29.06.2012 for the rebate of Service Tax paid on the taxable service which were received by an exporter of goods and used for export of goods covered under Shipping Bills or Bill of Export. The appellant had utilised various taxable input service for export of petcoke powder falling under chapter 27 of the Customs Tarrif Act 1975. The rebate in respect of export product i.e petcoke power is Nil under the "Schedule of rates" prescribe under Notification No 41/2012-ST dated 29.06.2012. Accordingly a SCN was issued by the adjudicating authority. By the impugned order the said refund claim was rejected.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the ground that they have filed the refund claim under para 3 of said notification. It does not bar to grant the refund of service tax paid on input service used in export of goods. They have relied upon higher forum judgments in which it is stated that if two exemption Notification covers the goods in question then appellant is entitle for the that notification which gives them grater relief.

4. Personal hearing in the case was granted on 21.12.2016 however the respondent did not turn up. Second hearing was granted on 06.01.2017 wherein representative of the appellant appeared before me and reiterated the contents of grounds of appeal memorandum.

5. I have carefully gone through the facts of the case on records, grounds of the appeal, put forth by the appellant. Looking to the facts of the case, I proceed to decide the case on merits.

6. I find that Notification No.41/2012-ST provides for refund of input service credit. Clause (b) and (c) of said notification reads as under :

"(b) the rebate shall be claimed either on the basis of rates specified in the Schedule of rates annexed to this notification (hereinafter referred to as the Schedule), as per the procedure specified in paragraph 2 or on the basis of documents, as per the procedure specified in paragraph 3;

(c) the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between



the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2;"

7. Therefore, as per above, rebate claim can be claimed either on the basis of rates fixed in the schedule or on the basis of documents, as per procedure prescribed in para 3. I further find that as per said clause (c), for claiming the rebate under para 3, the difference between the rates prescribed under the schedule and the rebate under para 3 should not be less than twenty %.

8. I further find that as per Sr.No.35 of said Schedule, the rate is Nil for the chapter 27.

9. I further find that the claimant has filed the rebate claim as per para 3 and the adjudicating authority has rejected the same for the reason that the rate as per schedule is Nil and therefore, the difference as per clause (c) cannot be ascertained.

10. I further find that in the case of M/S Precast Engg. P.Ltd. vs. Collector of C.Ex., Bombay, as reported in 1997 (96) E.L.T. 488 (Tribunal), Hon'ble CEGAT, New Delhi has held as under :

"Words and Phrases - "Appropriate duty" means appropriate rate of duty - Nil payment of duty under exemption Notification cannot be equated with non-payment of duty under Modvat scheme but can properly be termed as appropriate duty only - Notification No. 43/75-C.E."

11. I further find that nil rate is also duty.

12. I further find that the Govt. policy is to encourage exports and not to tax the same. I further find that there is no restriction in the notification that where the rate is Nil, no rebate shall be granted. I further find that there is no allegation that the input services were not used in the export goods and that the claimant has not fulfilled any other conditions or contravened any of the provisions.

13. I further find that since the rate is nil, the exporter has to opt only the procedure prescribed under para 3 as the difference between the scheduled rate and actual credit under para 3 is 100% and is more than 20% and therefore, rebate is admissible to them.

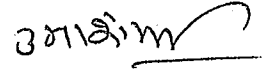
14. In view of the above, the OIO No.SD-01/Refund/61/AC/NG Minechem/15-2016 dated 23.03.2016 passed by the Asstt. Commissioner, Service Tax Div.-I, Ahmedabad rejecting their rebate claim of Rs.3,98,300/- is required to be set aside and rebate claim of Rs.3,98,300/- is admissible.



Order

I set aside the OIO No.SD-01/Refund/61/AC/NG Minechem/15-2016 dated 23.03.2016 and allow the rebate claim of Rs.3,98,300/- with consequential relief.

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


(उमा शंकर)

आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S S Chowhan)
23/3/2017

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,
M/s NG Minechem Pvt Ltd,
301, Studio Complex, Nr. Gota Cross Road,
S. G. Highway, Ahmedabad-382481.

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Dy./Assistant Commissioner, Service Tax, Division-I, Ahmedabad.
4. The Assistant Commissioner(Systems), Service Tax,, Ahmedabad
5. Guard File.
6. P.A. File.

