रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065

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)84/A-II/2015-16** /2921 to 2925

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-SVTAX-000-APP-024 to 027-16-17**

दिनाँक Date : **30.05.2016** जारी करने की तारीख Date of Issue 08/06/16

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 _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original No As Per Order Dated **As Per Order**

Issued by Assistant Commissioner, Div-II, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता **Name & Address of The Appellants**

M/s. Shreyas Plastic 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 विरूद्ध 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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 accompanied 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)**(उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A2l9k 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 शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्धित 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 है –

(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 अर्ज़ी एवं अपील को लागू नहीं होगे।

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. Shreyas Plastics, 21/22 GF, National Chambers, Nr. City Gold, Ashram Road, Ahmedabad *(hereinafter referred to as '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-II, Ahmedabad *(hereinafter referred to as 'adjudicating authority')*;

Sr. No.	OIO No.	OIO date	Amount of refund claimed (₹)	Date of filing the refund claim	Amount sanctioned (₹)
1	SD-02/Ref-132/DRM/2015-16	15.09.2015	2,27,889	13.07.15	1,85,177
2	SD-02/Ref-133/DRM/2015-16	15.09.2015	1,97,297	13.07.15	1,53,682
3	SD-02/Ref-134/DRM/2015-16	15.09.2015	1,56,854	23.04.15	58,728
4	SD-02/Ref-131/DRM/2015-16	14.09.2015	1,64,609	23.04.15	1,16,480

2. The facts of the case, in brief, are that the Appellants are holding Service Tax Code No. AAFFS7415JSE001 and had filed a refund claims of ₹ 2,27,889/-, ₹ 1,97,297/-, ₹ 1,56,854/- and ₹ 1,64,609/- on 13.07.2015, 13.07.2015, 23.04.2015 and 23.04.2015 respectively under Notification No.41/2012-ST dated 29.06.2012 in respect of Service Tax paid on the specified services used for export of goods.

3. During scrutiny of the above claims, the adjudicating authority had found that the price consideration between the buyer and the appellants was on FOB basis. In case of export transaction where FOB price is the consideration, the goods are to be delivered on the vessel which means the place of delivery is the port of shipment. Therefore, the services availed up to the point would become services availed up to the place of removal and not services availed beyond the place of removal hence, the refund claim appeared to had failed to fulfill the basic spirit of the Notification No. 41/2012-ST dated 29.06.2012 and Circular No. 999-2015CX. Further, the adjudicating authority could not establish the relation between the input invoices and export invoices. He also stated that the appellants did not submit BRCs related to any of the shipping bills. The appellants also did not submit, before the adjudicating authority, the statements of bank account with relevant ledger for evidence of payment of input invoices. During further scrutiny of the above claims, the adjudicating authority had found that the appellants, in some cases, had mentioned Airway Bill numbers instead of Shipping Bill numbers and Shipping Bill is a mandatory document, which is required as a "Proof of Export" in case of refund/rebate. It was noticed that

they prepare two types of export invoices bearing series number **E** & **S**. The invoices bearing **E** series are cleared under preparation of shipping bill whereas invoices bearing **S** series are exported as an emergency clearance on priority basis without preparing ant shipping bill. As no shipping bills are raised in the case of invoices bearing **S** series, it was seen that airway bill number in the column of shipping bill number in Annexure A to Form A-I is mentioned. Thus, show cause notices were issued to the appellants which were adjudicated by the adjudicating authority vide the impugned orders. The adjudicating authority, vide the above impugned orders, rejected part claim of refund amounting to ₹ 42,712/-, ₹ 43,615/-, ₹ 98,126/- and ₹ 48,129/- respectively.

4. Being aggrieved with the impugned order the appellants have preferred the present appeals. Regarding the rejected amounts, stated the appellants, same cannot be rejected as the goods were exported and the refunds were claimed in relation to services related to export of goods beyond the place of removal. They stated that they have received payment against the goods exported outside India in convertible foreign exchange. The appellants further claimed that they have satisfied all the conditions of Notification No. 41/2012-ST. They argued that in regard to their **S** series invoices, the goods were exported under general manifesto prepared by the courier agency and the same have been exported by flight. In such cases, shipping bills are not filed and they have already filed airway bill or bill of courier agency through which the export has taken place. Also, since the shipping bills were filed in the name of the courier agency, the BRC could not be generated in the name of the appellants.

5. Personal hearing in the matter was granted and held on 04.05.2016. Shri Abhishek Chopra, CA appeared before me and reiterated the contents of appeal memo. He tabled before me further written submission in support of his arguments and requested that the department should accept Airway Bill in place of Shipping Bill.

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. I find that the issue pertains to the submission of Airway Bill by the appellants and subsequently rejection of the part claims by the adjudicating authority. In this regard, I find that the adjudicating authority has not discussed anything about whether the export under general manifesto has been rightly done or otherwise. He has simply stated, in the impugned orders, that the goods are exported through flight under general manifesto prepared by the courier. The adjudicating authority, in the impugned orders, agrees to the fact that the export has actually taken place. The only lacuna on the part of the appellants is that they have failed to

file Shipping Bills and have exported under Airway Bills and general manifesto. In this regard, I would like to mention the judgment of CESTAT, West Zonal Bench, Mumbai in the case of Madura Garments Exports Ltd. vs Commr. of Central Excise & Service Tax, LTU, Mumbai as below;

> *".....Similarly, in respect of courier service also service provider invoices indicating airway bill number, name and address of recipient, destination of courier delivered, weight and number of pieces and amount charged for service therefore, correlation clearly established. .....I am of the considered view that even though 100% compliance of the conditions were not made by the appellant, but when the correlation of service with the export goods is established on the basis of other appropriate documents, even if any deficiency in fulfilling the condition exist, on that basis refund cannot be denied. Therefore, the Commissioner (Appeals) order, which is only on the basis of certain conditions stipulated in the Notification was not complied with but ignoring the fact that non-compliance of such condition was compensated with other corroborative documents, cannot be sustained and the same is set aside".*

Also, in the case of Alpine Apparels vs Commissioner of Central Excise, Delhi, the Hon'ble CESTAT, Pricipal Bench, New Delhi has proclaimed that;

> *".....invoices for export and those used by courier agency, giving all details specified in Notification No. 17/2009-ST, including name and address of exporter, except for receipt issued by courier agency which did not show IEC code number of exporter. It was minor infraction of notification condition, for which substantial benefit of refund could not be denied. Co-relation established by exporter through different documents was sufficient for grant of refund".*

In the case of Ford India Pvt. Ltd. vs Asstt. Commr., Central Excise, Chennai {2011(272) ELT-353}, Hon'ble Madras High Court proclaimed that *".....substantive compliance is sufficient where factum of export is not in doubt. Rebate being a beneficial scheme, it should be interpreted liberally".*

Similar view has been expressed by various judicial authorities in many cases *viz.* Birla VXL Ltd.-1998 (99) ELT 387 (Tri), Alpha Garments- 1996 (86) ELT 600 (Tri), Ikea Trading India Ltd.- 2003 (157) ELT-359(GOI) etc.

Also, in the CBEC Circular number 294/10/97-CE dated 30.01.1997, it is clarified that (paragraph number 6);

"It has, therefore, been decided that the cases where exporters submit the proof that goods have actually been exported to the satisfaction of the rebate sanctioning authority, and that where goods are clearly identifiable and correlatable with the goods cleared from factory on payment of duty, the condition of exports being made directly from the factory/ warehouse should be deemed to have been waived. Other technical deviations not having revenue implications may also be condoned."

In view of the above, it is very much clear that when it is confirmed that the export has taken place and remittance has been received we cannot deny the benefit of refund to the person concerned.

8. Further, during the course of personal hearing, the appellants have stated before me that they prepare two types of export invoices bearing series number **E** & **S** for every day. Invoice bearing **E series** are cleared under preparation of shipping bill which may be considered as normal cargo whereas invoice bearing **S series** are exported as an emergency clearance on priority basis and are made in the evening of the day same is dispatched and handed over to courier agency for export. Such goods are exported under general manifesto prepared by the courier and the same has been exported through their flight. The goods exported under the bills bearing S-Series number have been exported through courier without shipping bills. No shipping bill is raised in this case and as such they have mentioned Airway Bill number in the shipping bill column and have attached Airway Bill copy in the file. I find the contention of the appellants to be genuine and if at all non filing/ non submission of shipping bills is to be taken as an issue, still it is a procedural lapse on the part of the appellants and for which the refunds cannot be denied.

9. In view of above, I set aside the impugned orders with consequential relief to the appellants.

(UMA SHANKER)
COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

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

To,

M/s. Shreyas Plastics,

21/22 GF, National Chambers,

Nr. City Gold, Ashram Road,

Ahmedabad-380 009

Copy to:

1) The Chief Commissioner, Central Excise, Ahmedabad.
2) The Commissioner, Service Tax, Ahmedabad.
3) The Dy./Asst. Commissioner, Service Tax, Division-II, Ahmedabad.
4) The Asst. Commissioner(System), Service Tax Hq, Ahmedabad.
5) Guard File.
6) P.A. File.