

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) 20/RA/A-II/2015-16 & 7965 to 7989  
ख अपील आदेश संख्या Order-In-Appeal No. AHM-SVTAX-000-APP-00028 to 031-16-17  
दिनांक Date : 31.05.2016 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  
\_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No. As per Order Date : As per Order

Issued by Asstt. Commr., Div-II, Service Tax, Ahmedabad

ध प्रतिवादी का नाम / Name & Address of the Respondent

**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 :-

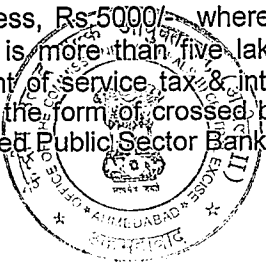
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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, Meghani Nagar, New Mental Hospital Compound, 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ 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 वहाँ रूपए 10000/- फीस भेजनी होगी। स्टे के लिए आवेदन- पत्र के साथ रूपए 500/- 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 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 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) 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, बशर्त 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 बशर्त 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,

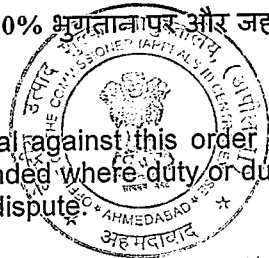
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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।

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.



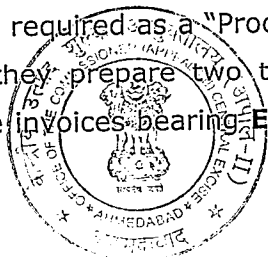
**:: ORDER-IN- APPEAL ::**

The Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'appellant'*) has filed the present appeal against following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed in the matter of refund claim filed by M/s. Shreyas Plastics, 21/22 GF, National Chambers, Nr. City Gold, Ashram Road, Ahmedabad (*hereinafter referred to as 'respondents'*);

Sr. No	OIO No.	OIO date	Amount of refund claimed (₹)	Date of filing the refund claim	Rev. Order No.
1	SD-02/Ref-133/DRM/2015-16	15.09.15	1,97,297	13.07.15	20/2015-16
2	SD-02/Ref-131/DRM/2015-16	14.09.15	1,64,609	23.04.15	18/2015-16
3	SD-02/Ref-132/DRM/2015-16	15.09.15	2,27,889	13.07.15	19/2015-16
4	SD-02/Ref-134/DRM/2015-16	15.09.15	1,56,854	23.04.15	21/2015-16

2. The facts of the case, in brief, are that the Respondents are holding Service Tax Code No. AAFFS7415JSE001 and had filed a refund claims amounting to ₹1,97,297/-, ₹1,64,609/-, ₹2,27,889/- and ₹1,56,854/- on 13.07.2015, 23.04.2015, 13.07.2015 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, it was noticed that the price consideration between buyer and the respondent 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



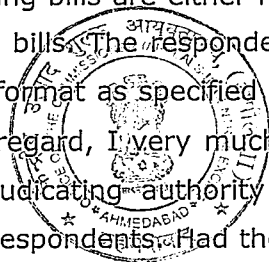
shipping bill whereas invoices bearing **S** series are exported as an emergency clearance on priority basis without preparing ant shipping bill. As no shipping bills are raised in the case of invoices bearing **S** series, it was seen that airway bill number in the column of shipping bill number in 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 refunds amounting to ₹43,615/-, ₹48,129/-, ₹42,712/- and ₹98,126/- and sanctioned rest of the claim of refunds amounting to ₹1,53,682/-, ₹1,16,480/-, ₹1,85,177/- and ₹58,728/- respectively.

4. The impugned orders were reviewed by the Commissioner of Service Tax, Ahmedabad and issued review orders No. 20/2015-16, 18/2015-16, 19/2015-16 and 21/2015-16 respectively all dated 18.12.2015 for filing an appeal under section 84(1) of the Finance Act, 1994 on the ground that the adjudicating authority had sanctioned certain portion of the refund claims. However, the refund claims are not filed in proper format and the service provider's invoices are not in corroboration with the export documents. In certain cases, it has been noticed that the amount of refunds claim for certain shipping bills are either higher or nearly equal to the FOB value of the said shipping bills. In light of the above mentioned review order, the appellant filed the present appeal to pass an order for recovery of a refund amount along with interest.

5. Personal hearing in the matter was granted and held on 11.05.2016. 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. Shri Copra showed me list of consolidated invoices and their break-up and submitted that there is correlation with each airway 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 respondents at the time of personal hearing.

7. The issue pertains to the refund claims that are not filed in proper format and the service provider's invoices are not in corroboration with the export documents. In certain cases, it has been noticed that the amount of refunds claim for certain shipping bills are either higher or nearly equal to the FOB value of the said shipping bills. The respondents claimed that the refund claims were filed in Form A-1 format as specified in Notification No. 41/2012-ST dated 29.06.2012. In this regard, I very much agree to the argument by the respondents that the adjudicating authority has never questioned the format of refunds filed by the respondents. Had the respondents did not follow



*[Handwritten signature]*

the procedures as laid down in the Notification No. 41/2012-ST dated 29.06.2012 while filing the refund claims, the claims would have been rejected at the initial stage of scrutiny of the claims. However, same is not the case and nothing, in this regard, has been stated either in the show cause notices or in the impugned orders. Further, in the appeals, the appellant has mentioned that the claims are not in order as they were not filed as per Notification No. 41/2012-ST dated 29.06.2012 but nothing specific is said as to how the claims are not in order. Therefore, I do not agree to the claim submitted by the appellant regarding the legitimacy of the refund claims.

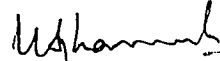
8. Regarding the second issue that the amount claimed for individual shipping bill could not be correlated with the invoices raised by the service provider; the respondents have submitted before me revised self certified claimwise annexure. The said annexure are easy enough to correlate with the individual shipping bills to the service provider invoices. In fact, the allegation put forward by the appellant that in certain cases amount of refund claimed is either higher or nearly equal to the FOB value of the shipping bills, gets negated. The respondents have submitted before me the details of each invoice which shows that the claims *vis a vis* FOB value of the individual shipping bills are quite less. In the appeal number 19/2015-16 dated 18.12.2015, the appellant, in paragraph 5.3, has alleged that the amount of refund claimed is ₹93,460/- for shipping bill number 4755153. But as per shipping bill number 4755153, the FOB value is ₹96,701/-. However, on verification of the annexure submitted by the respondents, I found that the actual amount of claim pertaining to the said shipping bill is only ₹5,856/-. On going through the details of invoice of the specified services used for export of the goods, it is seen that the specified services pertaining to the invoice number 100002196245 dated 18.09.2014 were used in the goods exported by shipping bills number 4723675, 2481324322, **4755153**, 2481324344, 4783854, 2481324366, 4807549, 2481324381, 4828515, 4830107, 2481324414, 4856786, 2481324436, 4877452, 2481324451, 4887174, 2481324473, 4908730, 2481324495, 4930564, 2481324510, 4952540, 2481324510 and 2481324543. However, it is not possible at this stage to verify each and every shipping bill and correlate with the invoices. Therefore, I remand back the cases to the adjudicating authority for 100% verification of the shipping bills and the invoices.

9. Also, I find that the show cause notice has not discussed anything about refund claims not filed in proper format and the service provider's invoices are not in corroboration with the export documents. Therefore, going beyond the scope of the show cause notice and filing the review appeal is not proper. The adjudicating authority has verified all the documents produced by the respondents and was properly satisfied with it. Thus, my view is that the



refund claim is complete in all aspect and same cannot be denied to the respondent due to certain procedural lapse. As I am satisfied with the submissions made by the respondents, I remand back the cases to the adjudicating authority only for 100% verification of the shipping bills and correlate with the concerned invoices.

10. The appeal is disposed off in terms of the discussion held above.

  
(UMA SHANKER)

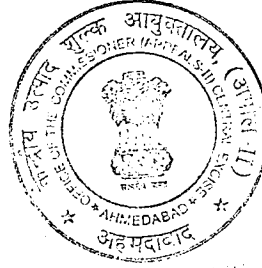
COMMISSIONER (APPEAL-II)  
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

  
(S. DUFFA) 2610516

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 Addl. Commissioner, Service Tax, Ahmedabad.
4. The Dy./Asst. Commissioner, Service Tax, Division-II, Ahmedabad.
5. The Asst. Commissioner(System), Service Tax Hq, Ahmedabad.
6. Guard File.
7. P. A. File