57

::आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::

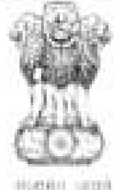
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot – 360 001

Tele Fax No. 0281 – 2477952/2441142 Email: cexappealsrajkot@gmail.com



रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फ़ाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/84/GDM/2016	399/ST/REF/2016-17	10/20/2016

6070 to 6073

ख अपील आदेश संख्या (Order-In-Appeal No.):

KCH-EXCUS-000-APP-099-2017-18

आदेश का दिनांक / Date of Order:	**01.11.2017**	जारी करने की तारीख / Date of issue:	**06.11.2017**

कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh**, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपलिखित जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham:

घ **अपीलकर्ता &** प्रतिवादी का नाम एवं पता /Name & Address of the **Appellant &** Respondent :-

M/s. Adani Wilmar Ltd., Survey No. 169vPlot No. 03,, Adani Port Road, Mundra, Kutch,

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- ३८००१६ को की जानी चाहिए ।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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 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. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।/

For an appeal to be filed before the CESTAT, 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, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 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.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs 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

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केंद्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
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.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए है।/
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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। /
In case, if the order covers various numbers 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 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। /
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.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER IN APPEAL ::

M/s. Adani Wilmar Limited, Village Dhrub, Mundra – Kutch - 370421 (hereinafter referred to as "Appellant") has filed present appeal, against Order-in-Original No. 399/ST/REF/2016-17 dated 20.10.2016 (hereinafter referred to as "the impugned order"), passed by the Assistant Commissioner, Service Tax Division, Gandhidham - Kutch (hereinafter referred to as the "lower adjudicating authority").

2. Briefly stated, facts of the case are that appellant was manufacturer-exporter, had filed refund claims under Notification No. 41/2012-ST dated 29.06.2012 (hereinafter referred to as "the said Notification"), claiming refund of service tax paid on specified services used for export of goods.

2.1 The lower adjudicating authority vide Order-In-Original No. 278/ST/Refund/2014 dated 27.06.2014 had rejected refund of Rs. 2,27,860/- as the difference between the amount of rebate available under the procedure specified in Paragraph 2 of the said Notification and available under the procedure specified in Paragraph 3 of the said Notification was less than 20% in respect of certain Shipping Bills and hence the condition of Paragraph 1(c) of the said Notification was not fulfilled. Similarly, refunds of Rs. 74,833/- and Rs. 1,18,825/- were also rejected vide Orders-In-Original No. 279/ST/Refund/2014 and 280/ST/Refund/2014 both dated 27.06.2014. Refund of Rs. 4,896/- had been rejected by the lower adjudicating authority vide Order-In-Original No.278/ST/REF/2014 dated 27.06.2014 as the invoices issued by the service providers were computer generated and not signed/stamped by the service providers and hence the same were not as per Rule 4A of the Service Tax Rules, 1994.

2.2 Being aggrieved by the said Order, appellant had filed appeals before the then Commissioner (Appeals), who vide Order-In-Appeal No. KCH-EXCUS-000-APP-15 to 17-15-16 dated 09.06.2015 remanded the matter back to the lower adjudicating authority as principles of natural justice were not followed by the lower adjudicating authority, the relevant Paras of which are reproduced below: -

"6.2 On perusal of para 1(c) of the said notification I find that as per conditions as laid down in this para the rebate shall not be eligible where the difference between the amount of rebate claimed in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2. In this case

6.3 The appellant contended that had they filed the refund claim on percentage of FOB value basis they would have been entitled to a greater amount of rebate whereas they have filed the refund claim on actual basis and thus, in fact, were

seeking less amount of refund. I find that even the lower authority has also accepted that all other conditions as laid down under the said notifications are fulfilled and there remains no doubt that the services for which refund has been claimed have been utilized in the export of goods.

I also find that in case the Appellant had filed refund claim as per percentage of FOB value, under para (2) of the said notification, they were eligible for greater amount of rebate as available to them under para (3) of the said notification.

7. The appellant in their statement of facts stated that for considering condition 1(c) of the said notification, in majority of cases the said difference exceeds the twenty percent as mentioned in the condition of the notification. As it being not identifiable in advance that in which consignment of the product the rate may go higher or in which it may go lower than the prescribed rate, the appellant have preferred to file claim as per process of actual for that particular product.

8. The Appellant also presented a calculating table by which they explained that the difference between actual refund and highest prescribed rate of notification is much more than 20%. It is in fact 67%, in totality, the said condition, of difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 to be more than twenty percent, is being satisfied. However, the claims have been considered shipping bill wise, instead of exported product wise. Considering claim in totality, the difference, is much higher than that of twenty percent.

8.1 In this regard I find force in the argument of the Appellant had their claim been considered in totality the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is higher than that of twenty percent as required under Paragraph 1(c) of the Notification.

9. I find that the essence of the said notification is to off-set the incidence of tax on the services exported and therefore, in one or other manner the appellant has to establish that the services and invoices for which they are claiming refund, are co-relatable with the exportation of the service of the goods.

9.1 I also find that even the lower authority has accepted that all other conditions as laid down under the said notification are fulfilled and there remains no doubt that the services for which refund has been claimed have been utilized in the export of goods.

10. The Appellant in the matter of Refund Order No. 278/ST/2014 dated 27.06.2014 argued that the lower authority rejected the amount of rebate of Rs. 4,896/- on the ground that the invoices pertaining to this portion of the claim were computer generated and without stamp and signature as required under Rule 4A of Service Tax Rules, 1994. But the Appellant have stated that now a days generation of invoice under digital controlling system is being increased in general trade practice and the department is also accepting deposition of service tax charged by the assessee on the basis of computer generated invoices. There should never be two yard sticks one for taxing and the other for granting the refund.

10.1 I agree with the contention of the Appellant that there should not be too much insistence of documentary evidence when the payment of service tax and utilization of services in the export of goods is not in doubt. Liberal view has to be taken for the interpretation to reduce the cost of goods exported. Hon'ble Tribunal in the case of CST, Delhi v. Convergys India P. Ltd. – 2009 (16) S.T.R. 198 (T) held that:

> *"The document based verification can be at a latter point of time. In this case, we are concerned only about rebate of credit on input services. The non-observation of procedural condition in this case is of a technical nature and cannot be used to deny the substantive concession. Further, in respect of export, liberal view requires to be taken. The non-fulfillment of the procedure cannot lead to denial of the benefit under the beneficial legislation providing for export benefits."*

10.2 I find that in the above case Hon'ble Tribunal has clarified that the non-observation of procedural condition in any case is of a technical nature and cannot be used to deny the substantive concession, and in respect of export, liberal view requires to be taken. I find that the claim pertaining to this portion of rebate claim may be re-examined in the light of above guide lines issued by Hon'ble Tribunal.

11. It may be stated that the object of interpretation of a statute is to discover the intention of the Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and its context. That intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand.

12. I find the said exemption notification allowing refund of service tax paid in respect of taxable services utilized in the export of goods has been issued with the sole objective of removing the burden of service tax from the export goods. It has been rightly contended by the Appellant that it is the avowed policy of the Government not to export domestic tax along with export goods and to make such goods competitive in the foreign market. Keeping in view the objective of the Government policy to encourage exports and not to burden the export goods with domestic taxes, I am of the view that the impugned refund claim in respect of remaining Shipping Bills should be examined in the spirit and intent of Legislature.

13. Also the Appellant in their grounds of Appeal have stated that the rejection is against law, as the learned Deputy Commissioner had neither raised any query nor given opportunity of explanation to the appellant. In this regard I find that the lower authority before rejection of the rebate claim in respect of particular Shipping Bills should have given a chance to the Appellant to present their defence along with supporting documents to defend their case.

14. In this regard, I am of the view that the 'Principle of Natural Justice' has to be followed in any of the judiciary proceedings to be carried out. Principle of Natural Justice is mainly based on two legal maxims i.e. *"Nemo debet essa judex in propria cause"* which means no one can be judge of his own cause, and another one *"Audit Alteram Partem"* which means opportunity of fair hearing to the other side must be afforded. Thus, before deciding their rebate claims, the show cause notice in the form of query memo should have been issued to the Appellant to present their case along with supporting documents by granting them a fair opportunity to represent themselves.

15. Notwithstanding above, at the outset, the appellant had forcefully contended in their submissions made in the grounds of appeals that the principles of natural justice have not

52

been followed. Therefore, it would also be imperative to address this fundamental plea raised by the appellant. I find that it was incumbent upon the adjudicating authority to have afforded the appellant chance to defend their case after the date of receipt of the rebate claims. I, therefore find that the principles of natural justice have not been observed, and thereby the proceedings had remained only half-backed.

16.......

17. Since, the principles of effective natural justice have been short-circuited in the present proceedings, in light of the recent decision of the CESTAT delivered by learned Justice Ajit Bharihoke, President in the case of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported 2012 (284) ELT 97 (Tri. -Del.), I find it would not be proper to decide the instant cases on merits at this juncture. Accordingly, in light of the aforesaid decision as recorded at para 10 & 11, the case needs to be remanded to the original adjudicating authority. The para 10 & 11 reads as follows: -

"10. ....

11. ....

18.......

19. In view of the above judgments, I am of the considered opinion that since in the instant cases, the opportunity of personal hearing has not been accorded to the appellant and even show cause notice has not been issued, the matter needs to be remitted back to the original adjudicating authority, who shall after granting proper and effective opportunity of personal hearing pass an order afresh."

2.3 The lower adjudicating authority vide impugned order, in de-novo proceedings, has again rejected refund of Rs. 4,26,414/- under the said Notification after affording opportunity of personal hearing to appellant.

3 Being aggrieved by the impugned order, appellant preferred the present appeal, *interalia,* on the following grounds:

(i) There is neither any discussion nor any reason for rejecting submissions of the appellant. The impugned order is mechanical in nature and is issued without considering submissions made by the appellant.

(ii) It is submitted that in majority of the cases, the refund claim filed under Paragraph 3 of the said Notification is less than refund claim available under Paragraph 2 of the said Notification. Since, the difference envisaged in the said Notification should be positive i.e. more than Paragraph 2 amount and not less than Paragraph 2 amount, in the facts of their case, the condition will not be applicable. The effect of non application of this condition would be that had appellant not selected Paragraph 3 procedure, appellant would have been entitled to higher amount of refund as per Paragraph 2. In the present situation, lower of the two amounts i.e. the amount claimed and the amount as per Paragraph 2 procedure, would be admissible.

(iii) In the cases, where appellant's actual claim exceeds Paragraph 2 amount but is short of 20% as per condition, then also lower of the two amounts would be admissible. In other words, in such cases, appellant's claim should be restricted to Paragraph 2 amount and entire rejection cannot be made.

4. Personal hearing in the matter was attended to by Shri Shridev Vyas, Advocate, who reiterated Grounds of Appeal and stated that he has nothing more to submit.

FINDINGS: -

5. I have carefully gone through the facts of the case, impugned order, appeal memorandum and submissions made by the appellant. The issue to be decided is whether in the facts and circumstances of the present case, the impugned order passed by the lower adjudicating authority rejecting refund claim filed under Notification No. 41/2012-ST dated 29.06.2012, is correct or not.

6. I find that the lower adjudicating authority in first round of proceedings vide Refund Orders No. 278/ST/REF/2014 to 280/ST/REF/2014, all dated 27.06.2014, had rejected refund of Rs. 4,21,518/- on the ground that condition of Para 1(c) of the said Notification has not been fulfilled and, that refund of Rs. 4,896/- had been rejected vide Refund Order No. 278/ST/REF/2014 dated 27.06.2014, as the invoices issued by the service providers were computer generated which did not bear stamp/signature of service provider and therefore the invoices were not valid invoices as per Rule 4A of the Service Tax Rules, 1994. Since, the rejection of refund was ordered without issuance of show cause notice and without affording opportunity of personal hearing to the appellant, the appeals filed by the appellant against the said refund orders were decided by the then Commissioner (Appeals-III), Central Excise, Rajkot who vide his order dated 09.06.2015, after discussing merit of the cases and remanded the matter back to the lower adjudicating authority for fresh adjudication after affording fair opportunity of personal hearing to the appellant. The lower adjudicating authority has passed the impugned order in de-novo proceedings, rejecting the refund claim on the same grounds, after granting opportunity of personal hearing to the appellant.

6.1 At the outset, I would like to discuss the plea of the appellant contending that the submissions made by them before the lower adjudicating authority in de-novo proceedings, have not been discussed and the impugned order is passed mechanically without considering submissions made by the appellant. I find ample force in the argument made by the appellant. I find that the lower adjudicating authority has passed the impugned order rejecting refund claim on the grounds discussed in Paragraph 6 above, under pre-decided state of mind and the written submission filed by the appellant before him has not been discussed and taken into consideration and not at all dealt with by him. The orders

like impugned order are against the spirit of adjudication and thus unlawful.

6.2 I would like to reproduce relevant abstract of Notification No. 41/2012-ST dated 29.06.2012, which reads as under: -

In exercise of the powers conferred by section 93A of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 52/2011-Service Tax, dated the 30th December, 2011, published in the Gazette of India, Extraordinary Part II, Section 3, Sub-section (i) vide number G.S.R. 945(E), dated the 30th December, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby grants rebate of service tax paid (hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods, subject to the extent and manner specified herein below, namely :-

Provided that –

(a) ....

Explanation. - ....

(A) .... -

(i) ....;

(ii) ....

(B) ....

(b) ....;

(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;

(d) ....;

(e) ....;

(2) the rebate shall be claimed in the following manner, namely: -

(a) ....;

(b) ....;

(c) ....;

(d) the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that --

(i) the rebate of service tax paid on the specified services is claimed as a percentage of the declared Free On Board (FOB) value of the said goods, on the basis of rate specified in the Schedule;

(ii) ....;

(iii) ....;

(e) service tax paid on the specified services eligible for rebate under this notification, shall be calculated by applying the rate prescribed for goods of a class or description, in the Schedule, as a percentage of the FOB value of the said goods;

(f) ....;

(g) ....;

(h) ....;

(3) the rebate shall be claimed in the following manner, namely:-

(a) rebate may be claimed on the service tax actually paid on any specified service on the basis of duly certified documents;

(Emphasis supplied)

6.3 From the reading of conditions stipulated in the said Notification, it could be seen that rebate of service tax paid on services received by an exporter of goods and used for export of goods is required to be granted. Para 1(c) of the said Notification stipulates that rebate under the procedure specified in paragraph 3 shall not be claimed if 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. It could also be seen that procedure specified in para 2 provides to claim rebate of service tax paid on the specified services as a percentage of FOB value of the goods on the basis of rate specified in the Schedule whereas para 3 provides to claim rebate of service tax paid on the specified services on actual basis.

6.4 I find that the condition 1(c) of the said Notification restricts rebate claims where the difference of rebate as available under Para 2 and Para 3 is less than twenty percent of amount of rebate available under para 2. I find that the intention of the Central Government was for administrative convenience to save time to deal with rebate claims filed by the exporters and to expedite disposal of rebate claim within a given time to promote the exportation of goods to prevent harassment to the genuine exporters. In the instant case, as contended by the appellant that the refund claim filed under Paragraph 3 of the said Notification is less than refund claim available under Paragraph 2 of the said Notification. I do not find any reason to deny refund claim as there is harm to the revenue because rebate amount as per procedure specified in para 2 of the said Notification is higher than those claimed by the appellant on actual basis as per para 3 of the said Notification. The lower adjudicating authority has not taken into consideration this aspect though it was placed before him by the appellant, which is highly improper particularly when the then Commissioner (Appeals) had remanded case duly recording his observations in Order-In-Appeal dated 09.06.2015

passed by him. Accordingly, I find that the impugned order rejecting refund claim in view of Para 1(c) of the said Notification is not correct, legal and proper.

6.5 As regards, rejection of refund claim of Rs. 4,896/- on the ground that the appellant has submitted copy of computer generated invoices which did not contain stamp/signature of service provider and hence is not as per Rule 4A of the Service Tax Rules, 1994, I find that the submission of computer generated invoices issued by the service providers is the procedural requirement, for which the appellant, being service receiver, cannot be held responsible. The facts of availment of taxable services in relation to export of goods, payment of service tax on these services and export of goods, have not been disputed by the department. Therefore, I do not find any reason to deny refund claim of service tax paid on services received by the appellant and used for export of goods as per the said Notification.

7. In view of above legal and factual position, I set aside the impugned order and allow the appeal filed by the appellant.

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

7.1. The appeal filed by the appellant stands disposed off in above terms.

1/11/2017

(कुमार संतोष)
आयुक्त (अपील्स)

By **Regd. Post AD**

To,

M/s. Adani Wilmar Limited, Village Dhrub, Mundra – Kutch - 370421	मे. अदानी विलमर लिमिटेड, विल्लेज - ध्रुब, मुन्द्रा - कच्छ - ३७० ४२१

Copy to:

1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2) The Commissioner, GST & Central Excise Commissionerate, Gandhidham.
3) The Assistant Commissioner, GST & Central Excise Division, Gandhidham-Kutch.
4) Guard File.