

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/25/GDM/2017	मूल आदेश सं / O.I.O No. ST/608/2016-17	दिनांक / Date 06-02-2017
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ख अपील आदेश संख्या (Order-In-Appeal No.):

KCH-EXCUS-000-APP-107-2017-18

आदेश का दिनांक / Date of Order:	01.12.2017	जारी करने की तारीख / Date of issue:	04.12.2017
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**कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग अगर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम/ द्वारा उपरोक्तित जारी मूल आदेश से सुचित /
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. Gravita India Ltd., "Rankers House" Plot No.18, Sector No. 8, Gandhidham-Kutch**

इस आदेश(अपील) से व्यभिक्त कोई व्यक्ति निम्नलिखित तरीके में 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 अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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) बनीकरण मूल्यांकन से सम्बंधित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद 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 बतलाए गए अपीलों के अलावा सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिक, द्वितीय तल, बहामनी भवन असावा अहमदाबाद- 380006 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhamani Bhawan, Asawa Ahmedabad-380006 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) नियमवली, 2001, के नियम 6 के अन्तर्गत निर्धारित फॉर्म एच-3 की धारा पहिली में दर्जे किये जाते हैं। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि, उपाज की राशि और लगान राशि जुमाना, रूपे 5 लाख या उससे कम, 5 लाख रूपे या 50 लाख रूपे तक अथवा 50 लाख रूपे से अधिक है तो क्रमशः 1,000/- रूपे, 5,000/- रूपे अथवा 10,000/- रूपे का निर्धारित जमा शुल्क की प्रति सलगन करे। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वजिनक बैंक के बैंक दफ्ता 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/- रूपे 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 अन्तर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में धार पहिली में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी है, उसकी प्रति साथ में सलगन करे (जिसमें से एक प्रति प्रमाथित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की राशि, उपाज की राशि और लगान राशि जुमाना, रूपे 5 लाख या उससे कम, 5 लाख रूपे या 50 लाख रूपे तक अथवा 50 लाख रूपे से अधिक है तो क्रमशः 1,000/- रूपे, 5,000/- रूपे अथवा 10,000/- रूपे का निर्धारित जमा शुल्क की प्रति सलगन करे। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वजिनक बैंक के बैंक दफ्ता 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/- रूपे 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 fee 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/-.

(ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दंडों की गयी अपील, सेवाकर निष्कासनी, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की (जिसमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा संलग्न आयुक्त अथवा आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील न्यायाधिकरण को आदेश दंड 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.

(iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सेस्टाट) के प्रति अपील 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 अपील न्यायाधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर राशि के 10 प्रतिशत (10%), जब राशि एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जमा वाली अपेक्षित देय राशि इस कंडीशन 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 गयी गई राशि
 - (iii) सेनवेट जमा निष्कासनी के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपील न्यायाधिकरण के समक्ष विचारधीन स्थान पर अपील एवं अपील को लागू नहीं होगी।

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 Central Credit taken;
 - (iii) amount payable under Rule 6 of the Central 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, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पंक्तिक के अंतर्गत उल्लेखित, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, लॉड 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 ज्ञान के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के परामर्श के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परामर्श 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 समीचीन है। / 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 गयी गई केन्द्रीय 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) वर्गिष्ठित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इंप्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई तारीख अथवा समावृत्ति पर या बाद में पारित किए गए हैं। / 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 प्रथम संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) निष्कासनी, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संर्षण के 3 महीने 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 संबंध 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। / जहां संलग्न रकम एक लाख रुपये या उससे कम है तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 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, उपरोक्त दंड से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिया पट्टी कार्य से बचने के लिए यथास्थिति अपील न्यायाधिकरण को एक अपील या केटीव लेखक 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 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 अपील न्यायाधिकरण (कार्य विधि) निष्कासनी, 1982 में वर्णित एवं अन्य संबंधित 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 अपील न्यायाधिकरण को अपील दर्जित करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपील न्यायाधिकरण 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. Gravita India Ltd., Plot No. 322, Mithirohar Industrial Estate, Mithirohar, Gandhidham (Gujarat) (hereinafter referred to as 'the appellant') has filed the present appeal, against Order-In-Original No. ST/608/2016-17 dated 06.02.2017 (hereinafter referred to as 'the impugned order') issued by the Assistant Commissioner, Service Tax Division, Gandhidham (hereinafter referred to as 'the sanctioning authority').

2. Briefly stated facts of the case are that the appellant had filed refund of service tax paid on various taxable services, which were used for the purpose of export of goods, under Notification No. 41/2012-ST dated 29.06.2012. The sanctioning authority vide Order-in-Original No. ST/173/2014-15 dated 26.03.2015 rejected refund claim on the ground that refund of service tax under Notification No. 41/2012-ST dated 29.06.2012 is available for service tax paid on "specified services" used for export of excisable goods beyond the place of removal and in terms of Board's Circular No.999/6/2015-CX dated 28.02.2015, the place of removal was to be considered as port of export. Aggrieved by the said order, the appellant filed an appeal and the then Commissioner (Appeals), Central Excise, Rajkot vide Order-In-Appeal dated 23.06.2016 remanded the matter back to the sanctioning authority holding that the legal position changed in view of Notification No. 01/2016-ST dated 03.02.2016, which amend Notification No. 41/2012-ST dated 29.06.2012 and the amendment was made applicable with retrospective effect from 01.07.2016 vide clause 160 of the Finance Act, 2016.

2.1 Relevant Paras 3 and 4 of that Order-In-Appeal dated 23.06.2016 are reproduced as under:

"3. *Aggrieved by the impugned order, the appellant filed the present appeal on various grounds, which I do not reproduce for the sake of brevity as the appeal is required to be considered in view of Notification No. 1/2016-ST dated 03.02.2016 amending Notification No. 41/2012-ST dated 29.06.2012 and the said amendment is also made applicable with retrospective effect from 01.07.2012 by way of clause 160 of Finance Act, 2016. Therefore, the grounds taken by the sanctioning authority to reject the refund claim are no more relevant as the legal position has changed. Now, with amendment of Notification No. 41/2012-ST dated 29.06.2012 vide Notification No. 1/2016-ST dated 03.02.2016, and retrospective amendment vide Clause 160 of the Finance Act, 2016, the refund of*

service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods, is to be allowed. I further observe that vide D.O. F. No. 334/8/2016-TRU dated 29.02.2016, it has been clarified as under:

"The said amendment is being given retrospective effect from the date of application of the parent notification, i.e., from 01.07.2012. Time period of one month is proposed to be allowed to the exporters whose claims of refund were earlier rejected in absence of amendment carried out vide notification No. 1/2016-ST dated 3rd February, 2016."

Clause 160 of the Finance Act, 2016 reads as under:

160. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 519(E), dated the 29th June, 2012 issued under section 93A of the Finance Act, 1994 granting rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Tenth Schedule, on and from and up to the corresponding dates specified in column (3) of the Schedule, and accordingly, any action taken or anything done or purported to have taken or done under the said notification as so amended, shall be deemed to be, and always to have been, for all purposes, as validly and effectively taken or done as if the said notification as amended by this sub-section had been in force at all material times.

(2) Rebate of all such service tax shall be granted which has been denied, but which would not have been so denied had the amendment made by sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in the Finance Act, 1994, an application for the claim of rebate of service tax under sub-section (2) shall be made within the period of one month from the date of commencement of the Finance Act, 2016.

Tenth Schedule to the Finance Act, 2016 reads as under;

THE TENTH SCHEDULE
(See section 160)

Notification No.	Amendment	Period of effect of amendment
G.S.R. 519(E),	In the said notification, in the	1st day of July, 2012

MLW

<p><i>dated the 29th June, 2012 [No.41/2012-Service Tax, dated the 29th June, 2012]</i></p>	<p><i>Explanation,— (a) in clause (A), for sub-clause (i), the following sub-clause shall be substituted and shall be deemed to have been substituted, namely:— "i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export;"</i></p> <p><i>(b) clause (B) shall be omitted.</i></p>	<p><i>to 2nd February, 2016 (both days inclusive).</i></p>
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In view of the above legal position, provisions under Notification No. 41/2012 dated 29.06.2013 stand modified w.e.f. 1.07.2012 to 02.02.2016 and subsequently i.e. w.e.f. Notification No. 1/2016-ST dated 03.02.2016, provisions stand amended prospectively.

4. *In light of above, I find that the impugned order is non-est in the eyes of laws and the appellant is now required to file application for claim of rebate of service tax afresh before the sanctioning authority in view of amendment carried out under the Finance Act, 2016. Accordingly, the impugned order is set aside and remanded back to the original authority to decide afresh in view of above observation. Appeal is allowed by way of remand."*

2.2 Consequently, the appellant filed an application for refund claim of service tax of Rs. 79,429/- paid on taxable services used for export of goods during the month of April, 2014 to July, 2014, before the sanctioning authority. In de-novo proceedings, the sanctioning authority vide impugned order rejected refund claim of Rs. 79,429/- on the ground that the appellant did not fall under jurisdiction of Service Tax Division, Gandhidham as the appellant was not registered with Service Tax Division, Gandhidham during the material period.

3. Being aggrieved by the impugned order, the appellant has preferred the present appeal on the grounds as follows:

3.1 That they are registered with Central Excise Department vide Registration No. AAACG6753FEM004 w.e.f 05.12.2012 and also having centralized Service Tax Registration No. AAACG6753FST001 w.e.f. 26.09.2007; that the Assistant Commissioner, Service Tax Division, Gandhidham vide letter F. No. IV/ST/18-

01/Refund/2014-15 dated 02.03.2015 was informed that the appellant had used taxable services for export of goods upto port i.e. place of removal and the appellant entitle to avail cenvat credit thereon upto the place of removal, the appellant had sold goods on F.O.R. destination port basis and therefore, the refund was not admissible; that in response to letter dated 02.03.2015, the appellant vide letter dated 05.03.2015 had requested the Assistant Commissioner, Service Tax Division, Gandhidham to pass order for taking cenvat credit of service tax paid on services as per their refund claim and return their original invoice submitted with refund claim; that the appellant was shocked and surprised on receipt of OIO No. ST/173/2014-15 dated 26.03.2015 that the sanctioning authority had rejected their refund claim ex-parte, without considering their reply dated 05.03.2015; that on being aggrieved by the said OIO, the appellant filed appeal before the Commissioner (Appeals), Rajkot; that the Commissioner (Appeals), Rajkot vide OIA No. KCH-EXCUS-000-APP-008-16-17 dated 23.06.2016 passed order to file application for claim of rebate of service tax afresh before the sanctioning authority in view of amendment carried out under the Finance Act, 2016 and thus remanded the case back to the sanctioning authority; that consequent to the Order-In-Appeal dated 23.06.2016 the appellant filed application for rebate of service tax paid on specified services used in export of goods beyond the place of removal; that the sanctioning authority vide impugned order has again passed ex-parte order and rejected the refund claim totally on different ground that the appellant was not registered with Service Tax Division, Gandhidham during material period and the appellant did not fall under the jurisdiction of Service Tax Division, Gandhidham and hence refund claim made under Notification No. 41/2012-ST dated 29.06.2012 was not admissible to the appellant.

3.2 They are having Centralized Service Tax Registration No. AAACG6753FST001 since 26.09.2007, last amended on 18.03.2013 covering their all locations including Gandhidham unit and hence they are entitled to refund claim at Service Tax Division, Gandhidham; that refund claim cannot be rejected due to different jurisdiction. The appellant relied upon following case laws:

- (i) Devasthan Vibhag reported as 2008 (10) STR 415 (Tri.Delhi);
- (ii) Fujitsu Consulting Pvt. Ltd. reported as 2015-TIOL-2646-CESTAT-MUM;
- (iii) Manipal Advertising Services Pvt. Ltd. reported as 2010 (19) STR 506 (Tri. Bang);
- (iv) Raaj Khosla & Co. Pvt. Ltd. reported as 2008 (12) STR 627 (Tri. Del);
- (v) Eveready Industries (I) Ltd. reported as 1998 (103) ELT 672 (Tri. Del);
- (vi) Gujarat Heavy Chemicals Ltd. reported as 2005 (192) ELT 658 (Tri. Mum)

3.3 The appellant further submitted that clause 3(c) of the Notification No. 41/2012-ST dated 29.06.2012 clearly defined the jurisdiction of the sanctioning

authority as "the manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall file a claim for rebate of service tax paid on the taxable service used for export of goods to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture in Form A-1."

The appellant was holding Central Excise Registration Certification No. AAACG6753FEM004 with Central Excise Division, Gandhidham; that if claim sanctioning authority was Assistant Commissioner/Deputy Commissioner, Central Excise Division, Gandhidham than instead of rejection of the claim, the Assistant Commissioner, Gandhidham was requiring to send the claim to the Assistant Commissioner/Deputy Commissioner, Central Excise Division, Gandhidham.

3.4 The appellant filed rebate claims for earlier period before the Assistant Commissioner/Deputy Commissioner, Central Excise Division, Gandhidham, as at that time there was no separate division for service tax and the rebate claims were entertained by them and sanctioned the rebate claims.

3.5 The appellant also submitted that principle of natural justice was not followed while adjudicating these cases; that no show cause notice has been issued by the department which is violation of Chapter-13, Part-I of Central Excise Manual of instructions read with Section 33A of Central Excise Act; that no opportunity of hearing has been granted to them; that ex-parte order was passed contrary to facts on record and legal provisions of law. The appellant relied upon following case laws:

- (i) Sakthi Industries reported as 1998 (98) ELT;
- (ii) Akshar Fabrics Pvt. Ltd. reported as 2012 (277) E.L.T. 364 (Tri. - Ahmd.);
- (iii) Jindal Waterways Ltd. reported as 2009 (247) E.L.T. 715 (Tri. -Mumbai).

3.6 The appellant also submitted that refund claim cannot be rejected from by taking recourse to the doctrine of narrow interpretation simplicitor. In fact, it is now a trite law that the procedural infraction of Notification/circulars etc., is to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. The appellant, in support claim relied upon following case laws:

- (i) Coftab Exports reported as 2006 (205) ELT 1027 (GOI);
- (ii) A.V. Narasimhalu reported as 1983 (13) ELT 1534 (SC);
- (iii) Formika India reported as 1995 (77) ELT 511 (S.C.);
- (iv) Mangalore Chemicals and Fertilizers Ltd reported as 1991 (55) ELT 437 (SC).

4. Personal hearing in the matter was attended by Shri Raj Kumar, Assistant

General Manager, who reiterated the grounds of appeal and emphasized that they very much registered with their jurisdiction as per registration of ST-2; that the order passed is not correct and also ex-parte without giving any opportunity of personal hearing and rejecting the refund whereas this division only had sanctioned refund of Rs. 1,24,650/- and Rs. 1,15,312/- on 05.12.2014 only.

Findings:

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submissions of the appellant including at the time of personal hearing. The issue to be decided in the present appeal is that in the facts of this case whether the impugned order rejecting refund claim is correct or not.

6. I find that the earlier refund claim filed under Notification No. 41/2012-ST dated 29.06.2012 was initially rejected by the then sanctioning authority vide Order-In-Original No. ST/173/2014-15 dated 26.03.2015 on the ground that refund of service tax under Notification No. 41/2012-ST dated 29.06.2012 is available for service tax paid on "specified services" used for export of excisable goods beyond the place of removal and in terms of Board's Circular No.999/6/2015-CX dated 28.02.2015, the place of removal was to be considered as port of export. The then sanctioning authority in his Order-In-Original dated 26.03.2015 had held that the appellant is registered as manufacturer in the jurisdiction of his division and entitle to file refund claim to his office. Being aggrieved with the said Order-In-Original, the appellant had preferred appeal before the then Commissioner (Appeals), Central Excise, Rajkot, who vide his Order dated 23.06.2016 clearly held that the grounds taken by the sanctioning authority to reject the refund claim are no more relevant as the legal position has changed in view of retrospective amendment of Notification No. 41/2012-ST dated 29.06.2012 vide clause 160 of Finance Act, 2016 which *inter alia*, provides that refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of said goods, for export of said goods, is to be allowed. Clause 160 of the Finance Act, 2016 reads as under:

160. (1)The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 519(E), dated the 29th June, 2012 issued under section 93A of the Finance Act, 1994 granting rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Tenth Schedule, on and from and up to the corresponding dates specified in column (3) of the Schedule, and accordingly, any action taken or anything done or purported to have taken

or done under the said notification as so amended, shall be deemed to be, and always to have been, for all purposes, as validly and effectively taken or done as if the said notification as amended by this sub-section had been in force at all material times.

(2) Rebate of all such service tax shall be granted which has been denied, but which would not have been so denied had the amendment made by sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in the Finance Act, 1994, an application for the claim of rebate of service tax under sub-section (2) shall be made within the period of one month from the date of commencement of the Finance Act, 2016.

Tenth Schedule to the Finance Act, 2016 reads as under:

THE TENTH SCHEDULE
(See section 160)

Notification No	Amendment	Period of effect of amendment
G.S.R. 519(E), dated the 29th June, 2012 [No.41/2012-Service Tax, dated the 29th June, 2012]	In the said notification, in the Explanation,— (a) in clause (A), for sub-clause (i), the following sub-clause shall be substituted and shall be deemed to have been substituted, namely:— “(i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export;”; (b) clause (B) shall be omitted.	1st day of July, 2012 to 2nd February, 2016 (both days inclusive).

6.1 Accordingly, the then Commissioner (Appeals) had set aside the said Order-In-Original and had remanded back the matter with direction to the appellant to file fresh refund claim and to the sanctioning authority to decide the refund claim afresh in view of his observations in the said Orde-in-Appeal. I find that the present sanctioning authority has not followed the directions contained in the said remand order and passed the impugned order denying the refund claim on a separate ground that the appellant was not registered with Service Tax Division.

7. The appellant has vehemently contended that the sanctioning authority has not followed the principles of natural justice and has rejected the refund claim without granting any opportunity of personal hearing. I find ample force in this

argument of the appellant. I find that the sanctioning authority has passed the impugned order in a very irresponsible manner ignoring the Order-In-Appeal dated 23.06.2016 passed by the then Commissioner (Appeals), Central Excise, Rajkot and the refund claim has been rejected on a completely different ground and no P.H. notices were issued to the appellant so as to provide fair and reasonable opportunities to them to explain their case. Therefore, I find that impugned order is not tenable as the principles of natural justice have not been followed by the sanctioning authority.

8. In view of above, I set aside the impugned order and allow the appeal by way of remand to the present jurisdictional Divisional AC/DC of Gandhidham and to pass speaking and reasoned order within 4 months of receipt of this order giving fair and reasonable opportunities to the appellant to explain their case.

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

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

(Handwritten Signature)
 (कुमार संतोष)
 आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Gravita India Ltd., Plot No. 322, Mithirohar Industrial Estate, Mithirohar, Gandhidham (Gujarat)	मे. ग्रेवीटा इंडिया लि., प्लॉट नं. ३२२, मिठीरोहर इंडस्ट्रियल इस्टेट, मिठीरोहर, गांधीधाम (गुजरात).
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Copy to:

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