::आयुक्त (अपील्स) 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 / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/284/RAJ/2010	8/ST/Refund/2010	08.02.2010

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

KCH-EXCUS-000-APP-150-2017-18

आदेश का दिनांक / Date of Order: **22.01.2018** जारी करने की तारीख / Date of issue: **25.01.2018**

कुमार संतोष, आयुक्त (अपील्स), 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 उपरलिखित 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 :-

1.M/s. Gokul Overseas,, Plot no 349 to 352, 368 to 376, 436 , KASEZ, Gandhidham - 370 230

इस आदेश(अपील) से व्यथित 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 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 सम्बन्धित 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 असावा 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 माँग ,ब्याज की माँग 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 रजिस्ट्रार 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 माँग ,ब्याज की माँग 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 रजिस्ट्रार 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 मामलो 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 दी माल के विनिर्माण में प्रयुक्त करचे माल पर भरी 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट 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 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, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण की 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 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 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 ओर 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 है । /
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

This appeal has been filed by M/s. Gokul Overseas, Plot No. 349 to 352, 368 to 376, 436, KASEZ, Gandhidham 370230 (hereinafter referred to as 'the appellant') against Order-in-Original No. 730/ST/REFUND/2010 dated 30.12.2010 (hereinafter referred to as 'the impugned order') passed by the Deputy/Assistant Commissioner, Service Tax Division, Rajkot (hereinafter referred to as 'the lower Adjudicating Authority'), the details of which are as under:

Sr. No.	Appeal File No.	Order-in Original & Date	SCN No. & date	Refund Amount disallowed	Services
01	V2/284/RAJ/2010	08/ST/REFUND/2010 dt. 08.02.2010	V/18-10/ST/Ref/09-10 dt. 27.05.2009	1,79,558	Terminal Handling Charge 65(105)(zn), Banking and Other Financial Services 65(105)(zm), Storage and Warehouse Service 65 (105) (zza)

2. This appeal was transferred to Call Book in 2010 but retrieved for being decided. The brief facts of the case, are that the appellant had filed refund claims under Notification No. 41/2007-ST dated 06.10.2007 as amended, for service tax paid on various services utilized for export, namely, Port Services [Section 65(105)(zn)] of Rs.64,282/-, Custom House Agent Service [Section 65(105)(h)], Banking and other Financial services [Section 65 (105)(zm)] of Rs. 29,562/-, Technical Inspection and Analysis [Section 65 (105)(zzh)] and Storage and Warehouse services [Section 65 (105)(zza)] of Rs. 85,714/- etc. The lower adjudicating authority on examining the invoices/bills, rejected the refund claim on the ground that the documents fail to meet the requirements prescribed under Rule 4A of the Service Tax Rules, 1994; the refund had been claimed on the basis of debit note and the debit note is not a valid document under Rule 4A(1) of Service Tax Rules, 1994 for availing service tax credit or refund of service tax; that the services like terminal handling charges, Bill of lading charges, documentation charges, Managing logistics and related jobs including labour, customs documentation charges are not specified services under Notification No. 41/2007-ST dated 06.10.2007.

22/1/2018

3. Being aggrieved with the impugned order, the appellant has preferred the present appeal on various grounds as detailed in the finding of this order.

4. The personal hearing in the matter was held on 06.11.2017 when Shri R Subramanya, Advocate and Apeksha Subramanya, Consultant reiterated grounds of appeal; submitted that the issue has already been covered by decisions of CESTAT in the cases of Lupin Ltd 2017 (50) STR 185 (Tri.-Del.), K. Prashant Enterprises 2016 (42) STR 149 (Tri.-Mum.), Galaxy Exports (Trading) 2017 (52) STR 383 (Tri.-Del.), Tristar International 2016 (46) STR 406 (Tri.-Mumbai).

FINDINGS:

5. I have carefully gone through the Show Cause Notice, impugned order, appeal memorandum and submissions made orally during the personal hearing. The issue to be decided in this appeal is whether the impugned order is correct in the facts and circumstances of the case or not.

6. I find that the appellant is a unit operating in Kandla SEZ and the period of refund sought is January, 2009 to March, 2009. I find that the refund claim has been rejected by the lower adjudicating authority vide impugned order on the various grounds, against which appellant has made various submissions.

7. The appellant claim for refund of Rs. 64,282/- on services like Terminal Handling Charges, Bill of Lading fees, documentation charges, haulage charges, DDC etc has been rejected on the ground that the said services are not port services. As per definition given in Section 65(82) of Finance Act, 1994 (hereinafter referred to as "the Act") as it stood at the relevant time "port service" means any service rendered by a port or other port or any person authorized by such port or other port, in any manner, in relation to a vessel or goods and the taxable port service as defined under Section 65 (105) (zn) of the Act means services to any person, by a port or any other authoirsed by the port, in relation to port services, in any manner.

7.1 In this regard, the appellant has placed reliance on the decision of the Commissioner (Appeals) in the case of GPL Polyfills Limited reported at 2009 (14) S.T.R. 557 which is inapplicable in as much as the definition clearly says that any service to be considered as port service should have been provided by a port of any person authorized by the port. Whereas in the present case, since the appellant has not produced the copies of the invoices it cannot be decided

whether the refund which is sought by them is on the basis of the invoices issued by the port or a person authorized by the port.

7.1.1 However, I find that CBEC vide Circular No. Circular No. 112/06/2009 - ST dated 12.09.2009 had clarified the issue as under:

Circular No. 112/06/2009 - ST

F.No.137/84/2008-CX.4
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)
****

New Delhi, dated the 12th March, 09

Sub:- Filing of claim for refund of service tax paid under notification No. 41/2007-ST dated 6/10/2007 - reg.

Notification No. 41/2007-ST, dated 6/10/2007 allows refund of service tax paid on specified services used for export of goods. To resolve the procedural difficulties arising in implementation of this refund scheme the Board has earlier issued circulars No. 101/4/2008-ST, dated 12.5.2008 and No. 106/9/2008-ST dated 11.12.2008.

2. The Board has received further references from field formations and trade seeking clarification on other procedural issues. These issues and the clarification are discussed in the following Table.

TABLE

S. No.	Issue Raised	Clarification
VII	The service provider providing services to the exporter provides various services. But he has registration of only one service. The refund is being denied on the grounds that the taxable services that are not covered under the registration are not eligible for such refunds.	Notification No. 41/2007 ST provides exemption by way of refund from specified taxable services used for export of goods. Granting refund to exporters, on taxable services that he receives and uses for export do not require verification of registration certificate of the supplier of service. Therefore, refund should be granted in such cases, if otherwise in order. The procedural violations by the service provider need to be dealt separately, independent of the process of refund.

7.1.2 I also find that CBEC vide circular No. 106/9/2008-Service Tax dated 11.12.2008 had also clarified the issue as under:

Circular No. 106 /9 /2008-ST

F.No.137/84/2008-CX.4
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)
****

New Delhi, dated the 11th December, 08

Sub:- Filing of claim for refund of service tax paid under notification No. 41/2007-ST dated 6/10/2007 - reg.

Notification No. 41/2007-ST, dated 6/10/2007 allows refund of service tax paid on specified services used for export of goods. The Board has from time to time examined the procedural difficulties arising in implementation of this refund scheme. In this context, a circular (No. 101/4/2008-ST, dated 12.5.2008) was issued earlier whereby the procedural difficulties that were being faced by the merchant exporters and the exporters having multi location offices were resolved. Subsequently, notification No. 32/2008-ST, dated 18.11.2008 has also been issued to (i) extend the period of filing of refund claim by the exporter from 60 days to six month and from the end of the quarter to which such refund claim pertains; and (ii) allow refund on testing service, without any copy of agreement with the buyer of goods, if such testing and analysis is statutorily stipulated by domestic rules and regulations.

2. The Board has received further references from field formations and trade seeking clarification on other procedural issues. Trade has also reported delays in sanction of refund claims. These issues and the clarification for streamlining of procedures are discussed below.

4. **ISSUE NO. II:** One of the conditions of the notification is that the exporter claiming exemption has actually paid the service tax on the specified services [para 1(c) of the notification]. The other condition is that the refund claim shall be accompanied by document evidencing payment of service tax [para 2(f) (ii) of the notification]. In this regard the following issues have been raised.

(i) Whether the invoices/bills/challan issued by the service provider, showing service tax amount could be treated as evidence that the exporter has paid the service tax.

(ii) The invoices produced by the exporters are at times not complete (i.e. does not have STC code of service provider)

(iii) One to one correlation between payment of ST and invoice is difficult in many cases.

CLARIFICATION: The invoices/challans/bills issued by supplier of taxable service, in conformity with rule 4A of the Service Tax Rules, 1994, are reasonable evidence that the services on which refund is being sought are taxable service. The compliance of condition that exporter has actually paid the service tax rests with the exporter claiming refund. Therefore, in so far as this condition is concerned, the refund claim should be processed based on furnishing of appropriate invoices/ bills/ challan by the person claiming refund and undertaking to the effect of payment of service tax by

him. For the purposes of compliance verification, random checks should be carried out independently and where the refund amount is significant, post refund audit may also be carried out.

As regards incomplete invoices/bills etc., rule 4A of the Service Tax Rules, 1994 prescribes the statutory requirement. Compliance of this rule requires that the invoices/challan/bills should be complete in all respect. Therefore, the exporter claiming refund of service tax under notification No. 41/2007-ST should ensure in their own interest that invoices/bills/challan should contain requisite details (name, address and registration No. of service provider, S. No. and date of invoice, name and address of service receiver, description, classification and value of taxable service and the service tax payable thereon). Refund claim cannot be allowed on the basis of invoices not having complete details as required verification cannot be carried out by the department on the basis of incomplete invoices.

7.1.3 The above circulars issued by the CBEC clarifies that even if some services are not specified in Notification No. 41/2007, refund of Service Tax of Rs. 64,282/- paid on Terminal Handling Charges, Bill of Lading fees, documentation charges etc. needs to be allowed as these services are used for export of goods, except for the Invoice No. E8199B dated 16.03.2009 issued by M/s. Narendra Logistics Pvt Ltd.

7.1.4 The appellant has claimed refund on the Invoice No. E8199B dated 16.03.2009 issued by M/s. Narendra Logistics Pvt Ltd towards wharfage charges. On this, the appellant has not produced any documents authorizing M/s. Narendra Logistics Pvt Ltd to collect wharfage charges on behalf of port. Since M/s. Narendra Logistics Pvt Ltd is not authorized by Port, the appellant is not eligible for refund under Port Services.

7.2.1 Another contention is that refund of Rs. 85,714/- on the services like storage and warehousing charges are not admissible since (i) the documents are not in prescribed proforma mentioned under Rule 4A(1) of the Rules (ii) the invoice does not bear the Service Tax Registration number (iii) there is no mention of the goods being export related and (iv) there is no mention that the place is approved by the competent authority and the place is exclusively used for the purpose of storage and warehousing of export goods and no documents has been produced in this aspect.

7.2.2 As regard to the lower adjudicating authority's holding that invoice is not in proforma, I find that nowhere in the Rules, the proforma has been prescribed however, the invoice shall contain all the details referred at Rule 4A(1) of the Rules, and therefore, I find no force in the findings of the lower adjudicating authority.

7.2.3 With regard to findings recorded by the lower adjudicating authority that (i) the invoice does not bear the Service Tax Registration number (ii) there is no mention of the goods being export related, I find that this details are very much required by Rule 4A(1) of the Rules and accordingly, I find no reason to interfere with it.

7.2.4 Another ground for rejection of refund is that there is no mention that the place is approved by the competent authority and the place is exclusively used for the purpose of storage and warehousing of export goods and no documents has been produced in this aspect, I find that this is the prime requirement of the Notification No. 41/2007, which is re-produced below for ready reference, and hence I find no reason to interfere with it:

Sr. No.	Taxable Services		Conditions
	Classification under Finance Act, 1994	Description	
(1)	(2)	(3)	(4)
9	Section 65(105)(zza)	Services provided for storage and warehousing of said goods	(i) the said goods are stored in a storage or warehouse which is approved by the competent authority; and (ii) the storage or warehouse is exclusively used for the purpose of storage or warehousing of export goods."

7.2.5 I find that the intention of the government is to grant the refund of Service Tax paid on the warehousing of the goods in the storage or warehouse approved by the competent authority to store the export goods. The warehouse in relation to storage of the goods meant for export would be one appointed under the provisions of Customs Act, 1962 and I find that the appellant has not placed on record any evidence to support that the condition (i) and (ii) of the Sr. No. 9 of the Schedule to Notification No. 41/2007-Service Tax dated 06.10.2007, as amended, has been satisfied. Accordingly, I find no reason to interfere with the impugned order to that extent.

7.3.1 The appellant sought refund of Service Tax of Rs. 29,562/- on commission and services on collection of export bills and export LC falling under the category of banking and other financial services under Section 65(105)(zm) of the Act since the provider has provided the service of processing the documents relating to export.

7.3.2 I find that as per definition of Service given at Section 65 (105) (zm) of the Act, the taxable service means provided to any person by a banking company or a financial institution including a non-banking financial company, or any other body corporate in relation to banking and other financial services. Further Section 65 (10) ibid stipulates that 'banking' has the meaning assigned to it in clause (b) of Section 5 of the Banking Regulation Act, 1949 (10 to 1949) and the definition given at Section 65(11) ibid stipulates that banking company has the meaning assigned to it in clause (a) of Section 45A of the Reserve Bank of India Act, 1934 (2 to 1934).

7.3.3 Further, as per Section 65 (12) ibid, 'banking and other financial service' means services like (i) financial leasing services including equipment leasing and hire-purchase (ii) merchant banking services (iii) securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing (iv) asset management including portfolio management, all forms of fund management (v) pension fund management, custodial, depository and trust services (vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy (vii) provision and transfer of information and data processing (viii) banker to an issue services (ix) other financial services, namely lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe valuts, operation of bank accounts and (x) foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or an authorized dealer in foreign exchange or an authorized money changer.

7.3.4 I find that the processing of export documents does not fall under the above definition. Moreover, the lower adjudicating authority at length discussed the discrepancies viz. (i) Development Credit Bank Ltd., Ahmedabad has not shown the charges recoverable as Service Tax charges. (ii) the appellant has produced the copy of relevant commercial invoices in respect of which B/L are issued before removal of goods (iii) Bills issued for forward exchange contract booking advice which does not fall under the category specified under the Notification No. 41/2007-Service Tax (iv) the appellant has

not produce the evidence to link the use of the services i.e. no B/L, Invoice, Shipping Bill. (v) None of the printed invoices issued by M/s. Development Credit Bank Ltd., Ahmedabad & M/s. Bank of India, Bhadra Branch, Ahmedabad have shown the charges recoverable as Service Tax charges. I find that the appellant has not spelt out any arguments with regard to these discrepancies recorded by the lower adjudicating authority and therefore, I find no reason to interfere with the impugned order.

7.4.1 Refund on Custom House Agent's invoices for composite services like managing logistics and related job including labor, customs documentation charges etc. provided by Custom House Agent are required to be allowed even if these services are not specified under Notification No. 41/2007-Service Tax dated 06.10.2007, as amended, for reasons detailed below.

7.4.2 As per definition given in Section 65 (35) of the Act, "Custom House Agent" means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of Section 146 of the Customs Act, 1962 (52 to 1962) and the taxable services provided by Custom House Agent as per Section 65 (105) (h) of the Act means service in relation to the entry or departure of conveyances or the import & export of goods. Further, Custom House Agent as per definition given in Rule 2(c) of Custom House Agent Licensing Regulations, 2004 means a person licensed to act as agent for the transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station.

7.4.3 In view of the above clear definition of the Custom House Agent, the composite charge for managing logistics and related job including labor, customs documentation charges etc are nothing but services provided by the Custom House Agent in relation to export of goods. Therefore, I find that the appellant is entitled for the refund and accordingly, the impugned order in this regard.

7.5 I find that some portion of the refund has been rejected on the grounds that refund has been claimed on the basis of debit note and the debit note is not a valid document under Rule 4A(1) of the Rules. On perusal of Rule 4A(1) of the Rules, I find that it refers to invoice, a bill or, as the case may be, a challan. Nowhere in the rule it has been mentioned that debit note is also a valid document. In common trade parlance also the debit notes are issued for

adjusting the accounts and not for provision of services. Therefore, I uphold the impugned order in this regard.

8. The appeal for Rs. 64,282/- is allowed as held in Para 7 to 7.1.4 whereas appeal for Rs. 85,714/- and Rs. 29,562/- not allowed as held in para 7.2.1 to 7.2.5 and para 7.3.1 to 7.3.4 respectively. The details are as under:

Sr. No.	Name of Service	Amount of Refund (Rs.)	Allowed/ Not allowed
1	Port Services (Terminal handling charges and documentation charges	64,282/-	Allowed (Except debit notes and Invoice No. E8199B dated 16.03.2009 of Narendra Logistics)
2	Banking and Other Financial Services	29,562/-	Not allowed
3	Storage and Warehousing services	85,714/-	Not allowed

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

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

सत्यापित,

आर. एल. जोरोंचा
अधीक्षक (अपील्स)

(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Gokul Overseas, Plot No. 349 to 352, 368 to 376, 436, KASEZ, Gandhidham 370230.	मे. गोकुल ओवरसीस, प्लॉट न. ३४९-३५२, ३६८-३७६, ४३६, कासेज, गांधीधाम ३७०२३०.

Copy for information and necessary action to:

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for favour of kind information.
2. The Commissioner, GST & Central Excise, Gandhidham Commissionerate, Gandhidham.
3. The Assistant Commissioner, GST & Central Excise, Division - Gandhidham.
4. The Superintendent, GST & Central Excise, Range - Gandhidham.
6. Guard File.