



::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE.



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

रेस कोर्स रिंग रोड, / Race Course Ring Road,

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /  
Appeal / File No.  
V2/543/GDM/2010

मूल आदेश सं /  
O.I.O. No.  
46/ST/Refund/2010

दिनांक /  
Date  
30.04.2010

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

**KCH-EXCUS-000-APP-206-2017-18**

आदेश का दिनांक /  
Date of Order: 27.03.2018

जारी करने की तारीख /  
Date of issue:

05.04.2018

Passed by **Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पड़े बॉर्डे ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री ललित प्रसाद, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क, राजकोट को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्जे की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

- 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 Appellants & Respondent :-**  
**M/s Terapanth Foods Ltd., plot No. 160, Maitri Bhavan, Plot No 18, Sector-8, Gandhidham,**

इस आदेश(अपील) से द्ययित 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:-
- (ii) 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.
- (iii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय 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, 2<sup>nd</sup> 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 नियमवाली, 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/-.

(ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 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 प्रतियों 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.

(iii) 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 अर्जों एवं अपील को लागू नहीं होगा।/

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 की 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 पैरतक 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 छुट (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 an 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) सनिश्चित 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 समायाविधि 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 प्रपत्र संख्या EA-8 में, जो की केंद्रीय 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 केंद्रीय 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 हो 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 पेड़ी कार्य से बचने के लिए यथास्थिति अपीलिय 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, notwithstanding 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, केंद्रीय 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](http://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](http://www.cbec.gov.in)



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

Being aggrieved with the Refund Order No. 46/Service Tax/Refund/2010 dated 30.04.2010 (**hereinafter referred to as the "impugned order"**) passed by the then the Assistant Commissioner, Service Tax Division, Rajkot (**hereinafter referred to as "the Lower Adjudicating Authority"**) M/s. Terapanth Foods Limited, Maitri Bhavan, Plot No: 18, Sector 8, Gandhidham 370 201 (Kutch) (**hereinafter referred to as "the appellants"**) have filed the present appeal.

2.1 The appellant, on 30.06.2009, filed an application seeking refund of Rs. 6,65,542/- being the Service Tax paid on the services used for the export during the quarter September, 2008 to December, 2008 under Notification No: 41/2007-Service Tax dated 06.10.2007, as amended, with the Lower Adjudicating Authority. The Lower Adjudicating Authority issued Show Cause Notice dated 01.02.2010 wherein it was proposed to reject the claim of refund on the grounds that they have not fulfilled the conditions prescribed under Notification No: 41/2007-Service Tax dated 06.10.2007, as amended.

2.2 The appellant neither replied to Show Cause Notice nor appeared for personal hearing before Lower Adjudicating Authority therefore Lower Adjudicating Authority vide his impugned order held that:

- (i) refund of Service Tax on the invoice dated 25.08.2008 of M/s. SGS India Private Limited is not admissible on the grounds that the appellant has not produced the copy of the agreement with the buyer's regarding goods requiring such tests also they have not produced any authority under which they were required to do so;
- (ii) refund of Service Tax paid to M/s. Aspinwall & Co for Shipping Dues and CHA Documentation charges are not admissible as the same are not specified under Notification No. 41/2007-ST dated 06.10.2007, as amended. Further, the claim has been made on the basis of debit note which is not a valid document under Rule 4A of Service Tax Rules, 1994;



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- (iii) refund on the invoices of M/s. Alvares & Thomas, Mangalore for Port and documentation charges is not admissible since the said service is not specified under Notification No. 41/2007-ST dated 06.10.2007, as amended;
- (iv) invoice of M/s. Cochin Shipping Company for Port Bills is not serially numbered and also the service is not a valid service under Notification No. 41/2007-ST dated 06.10.2007, as amended, therefore refund is not admissible;
- (v) invoice of M/s. Delta Marine Services for professional survey fee is not serially numbered and also the service is not a valid service under Notification No. 41/2007-ST dated 06.10.2007, as amended, therefore refund is not admissible;
- (vi) refund in respect of Shipping Bill Nos. 1031162 dated 22.07.2008 and 549 dated 07.05.2008 is not admissible since it has been filed after 60 days from the end of relevant quarter;
- (vii) the appellants have not produced the declaration regarding non-availment of CENVAT credit and non-availment of drawback benefit;
- (viii) the appellants have not submitted proof of payment of Service Tax on the specified services for which refund claim is filed as per para 2(f) of Notification No. 41/2007-ST dated 06.10.2007, as amended.

**3.1** Being aggrieved with the impugned order, rejecting their refund, appellant have filed the present appeal on the grounds that they had enclosed copy of Letter of Credit (L. C.) along with refund application wherein terms and conditions between the buyer's and seller's have been spelt out; that in pursuance of that terms and conditions they have carried out inspection / analysis / fumigation / disinfection of goods exported.

**3.2** As regards to rejection of the refund on the debit note of M/s. Aspinwall & Co they submitted that it was issued by M/s. Aspinwall & Co on the basis of export application filed by them with Port



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Officer, New Mangalore Port Trust; that the export application clearly shows the name of the appellants and on the basis of such application the Port decides the amount of shipping dues and Service Tax required to be paid by the exporter i.e. appellant; that the same is being collected from M/s. Aspinwall & Co giving reference to the Vessel for which it is being collected; that since the Port details with the exporter / imported through its registered agent only therefore the receipt was issued in the name of M/s. Aspinwall & Co; that the said services are port services and hence eligible for refund under Notification No. 41/2007-ST dated 06.10.2007, as amended; further the refund claim on the basis of invoices of M/s. Aspinwall & Co are admissible since the services are in relation to Cargo Handling Service or Custom House Agent Services, which are valid services under Notification No. 41/2007-ST dated 06.10.2007, as amended.

**3.3** Further, the refund on the invoices of M/s. Alvares & Thomas, Mangalore is admissible since the services rendered are Customs House Agent Services; that they have availed services like Pilotage, Anchorage, Berth Hiring & Tug hiring from Karwar Port who have collected the said charges through M/s. Cochin Shipping Co. therefore the services are port services and hence refund thereof is admissible.

**3.4** Appellant further stated that nowhere Notification No. 41/2007-ST dated 06.10.2007, as amended stipulates about filing of declaration of non availment of CENVAT credit therefore they have not filed the same. Likewise, as regards to finding that they have not produced the proof of payment of Service Tax the appellants stated that the same stands clarified by the Board vide its Circular No. 106/9/2008-Service Tax dated 11.12.2008.

**4.** The Central Board of Excise and Customs vide Notification No: 26/2017-Cx(NT) dated 17.10.2017 read with Order No: 05/2017-Service Tax dated 16.11.2017, has appointed undersigned as Appellate Authority under Section 85 of the Finance Act, 1994 for the purpose of passing orders in this appeal.



5. Accordingly, personal hearing in the matter was held on 20.03.2018 which was attended by Shri Manish Vora, Chartered Accountant on behalf of the appellant. During the personal hearing, authorized representative reiterated submissions made earlier and filed additional written submissions.

**Additional Submission:**

6. The additional submissions filed at the time of personal hearing is repetition of the grounds already mentioned in appeal memorandum and further they have provided the copies of the required documents in support of their contentions.

**Discussions & Findings:**

7. I have gone through the case papers and the various written submissions filed by the appellants and oral submissions made during the personal hearing. I find that since the issue involved is rejection of refund therefore there is no requirement for compliance to provisions of Section 35F(i) of the Central Excise Act, 1944, made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994.

8. I find that refund has been rejected by the Lower Adjudicating Authority vide his impugned order on the grounds appearing at Para 2.2 above.


9.1 As regards to rejection of refund of Service Tax on the invoice dated 25.08.2008 of M/s. SGS India Private Limited on the grounds that the appellant has not produced the copy of the agreement with the buyer's of the goods requiring such tests and also they have not produced any evidence to show that they were required to get the goods tested. I find that that appellants have placed on records the copies of the Letter of Credit dated 26.07.2008 of State Bank of India and Letter of Credit No: 728A08BB01126 dated 05.06.2008 of HSBC. Upon its perusal I find that in both the letters of credit buyers have mentioned about requirement of certificate of quality and quantity. Since the entire set of refund documents are not placed before me therefore it is not possible for me to correlate the Letter of Credit with the Bills, therefore, I remand the matter back to the Lower Adjudicating Authority who after correlating the goods exported with the Letters of Credit already submitted by the appellant shall decide the refund claim on merit.



**9.2.1** As regards to denial of refund of Service Tax paid to M/s. Aspinwall & Co for Shipping Dues and CHA Documentation charges are not admissible as the same are not specified under Notification No. 41/2007-ST dated 06.10.2007, as amended and further the claim has been made on the basis of debit note which is not a valid document under Rule 4A of Service Tax Rules, 1994. Upon perusal of copy of the Debit Note No. CNF/ACTUAL/105/08-09 dated 28.07.2008 of M/s. Aspinwall & Co. Ltd. and export application filed before New Mangalore Port Trust, I find that M/s. Aspinwall has paid the port charges to Port authorities on behalf of appellant for which they have raised debit note. Thus, the services received are Port Services and hence refund is admissible on this count.

**9.2.2** The Lower Adjudicating Authority has further held that the said debit note is not a proper document under Rule 4A of the Service Tax Rules, 1994 which stipulates that document shall contain the (i) the name, address and the registration number of such person, (ii) the name and address of the person receiving taxable service, (iii) description, classification and value of taxable service provided or to be provided; and (iv) the service tax payable thereon. Though I concur with the appellants arguments that debit note is a valid document, however, I find that this debit note in particular does not contain the Service Tax registration number of M/s. Aspinwall & Co. Further, I also find that debit note does not clearly bifurcate the value of the taxable service and the Service Tax payable thereon. Thus, the debit note under reference cannot be equated with a valid document under Rule 4A of Service Tax Rules, 1994. Thus, I find that refund of Service Tax on the basis of Debit Note No. CNF/ACTUAL/105/08-09 dated 28.07.2008 of M/s. Aspinwall & Co. Ltd. is not admissible.

**9.3.1** As regards to denial of refund of Service Tax claimed on the Debit Note No. CNF/98/2008-2009 dated 28.07.2008 of M/s. Aspinwall & Co. Ltd. wherein total amount of Rs. 29,25,000/- has been shown as value of the services relating to **“CHA, Documentation & Cargo Handling Charges for....”** I find that it does not contain the bifurcation of the value of the different services provided, which is a mandatory requirement under Rule 4A of the Service Tax Rules, 1994. Thus refund thereon is not admissible on this count.





**9.3.2** Further, I find that Custom House Agent's services are specified services under Notification No. 41/2007-ST dated 06.10.2007, as amended, however, the cargo handling services classifiable under Section 65 (105) (zr) of the Finance Act, 1994 is not a specified services eligible for refund.

**9.3.3** Apart from above, I find that Sl. No. 13 of the table annexed to Notification No. 41/2007-ST dated 06.10.2007, as amended clearly stipulates that invoice issued by Custom House Agent shall specify (a)number and date of shipping bill, (b)description of export goods, (c)number and date of the invoice issued by the exporter relating to export goods and (d) details of all charges, whether or not reimbursible, collected by the Custom House Agent from exporter in relation to export of goods. I find that said debit note dated 28.07.2008 does not contain (a)number and date of shipping bill, (b)number and date of the invoice issued by the exporter relating to export goods and (c)details of all charges, whether or nor reimbursible, collected by the Custom House Agent from exporter in relation to export of goods. Thus, I hold that refund is not admissible on the basis of Debit Note No. CNF/98/2008-2009 dated 28.07.2008 of M/s. Aspinwall & Co. Ltd.

**9.4** As regards to denial of refund of Service Tax on the Bill No: AT/101/2008.09 dated 20.05.2008, I find that only reason for its denial is that the services are not specified under Notification No. 41/2007-ST dated 06.10.2007, as amended. I find that services in the nature of Port & Customs documentation are provided to the appellant which are classifiable as taxable services under Section 65 (105)(zn) and Section 65 (105) (h) of the Finance Act, 1994 respectively. Since both the services are included in the Notification No. 41/2007-ST dated 06.10.2007, as amended therefore I hold that refund thereof is admissible.

**9.5.1** I find that refund of Service Tax on the invoice dated 21.06.2008 of M/s. Cochin Shipping Company has been denied on the grounds that the invoice is not serially numbered and the services are not valid service under Notification No. 41/2007-ST dated 06.10.2007, as amended. I find that the appellants have stated that they have sought refund of Rs. 1,25,277/- being the amount of Service Tax charged by Port Authorities and Service Tax of Rs. 4,219/- on the agency fees



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charged. I further find that appellants have stated that the invoices on which Service Tax has been paid are serially numbered. Further, the services are covered under Notification No. 41/2007-ST dated 06.10.2007, as amended.

**9.5.2** I find that document dated 21.06.2008 of M/s. Cochin Shipping Company for total Rs. 14,56,241/- is a type of list containing details of all the bills forwarded. Therefore, it cannot be treated as invoice. I also find that appellant has not claimed the refund of Service Tax included in the amount of Rs. 14,56,241/- but have claimed a portion thereof. Thus, I find that there is no requirement of serial number on the document dated 21.06.2008 of M/s. Cochin Shipping Company.

**9.5.3** I find that refund of Rs. 1,25,277/- has been sought on the basis of receipt of Port Officer, Karwar which I find is serially numbered. Likewise, refund of Rs. 4,219/- has been sought on the basis of the Invoice No. CSC/12/2008.09 dated 18.06.2008 of M/s. Cochin Shipping Company which is serially numbered. Thus, there is no substance left in the Lower Adjudicating Authority's observations of missing serial numbers.

**9.5.4** As regards to eligibility of the services for refund, I find that refund of Rs. 1,25,277/- is admissible since it is a Port Service which is valid service under Notification No. 41/2007-ST dated 06.10.2007, as amended. As regards to refund of Rs. 4,219/- the appellant has stated that the services are in the nature of Custom House Agent Services. However, I find that they are pertaining to Agency Fees which have no relevance with Custom House Agent Services. Therefore, I find that same is not eligible for refund under Notification No. 41/2007-ST dated 06.10.2007, as amended. Thus, I hold that refund of Rs. 1,25,277/- is admissible on this count.

**9.6** In the case of invoice of M/s. Delta Marine Services, I find that Lower Adjudicating Authority has rejected the refund by holding that the invoice is not serially numbered and the services are not valid services. Upon perusal of the copy of the said invoice, I find that serial number are clearly printed on the invoice and also the services are in



relation to technical inspection and certification which is a valid service under Notification No. 41/2007-ST dated 06.10.2007, as amended. Accordingly, I hold that refund thereon is admissible.

**9.7.1** I find that Lower Adjudicating Authority has held that refund in the case of Shipping Bill No. 1031162 dated 22.07.2008 and 549 dated 07.05.2008 is not admissible since they were filed after 60 days from the end of quarter. The appellant in their submission have relied upon the Notification No. 17/2009-Service Tax dated 07.07.2009 and stated that time limit of 1 year is available.

**9.7.2** I find that Notification No. 17/2009-Service Tax dated 07.07.2009 supersedes Notification No. 41/2007-ST dated 06.10.2007, as amended. Therefore, its provisions cannot be made applicable in the present claim which is filed under Notification No. 41/2007-ST dated 06.10.2007, as amended. I find that appellants have placed reliance on the case law of **JVMD Apparels - 2017 (4) G.S.T.L. 237 (Tri. - Chan.)** and upon its perusal I find that though it has been held that time-limit having been extended to one year in terms of Notification No. 17/2009-S.T then the claim should have been filed under Notification No. 17/2009-Service Tax dated 07.07.2009 whereas in the instant case the claim has been filed under Notification No. 41/2007-ST dated 06.10.2007, as amended. Therefore, I find that the same is not applicable in the present case. Likewise I also find that case law of **K. N. Resources Private Limited - 2017 (47) S.T.R. 303 (Tri. - Del.)**, **Versatile Enterprises Private Limited - 2017 (3) GSTL - 441 (Tri. Chan)** and **Gran Overseas Limited- 2017 (52) S.T.R. 286 (Tri. - Del.)** are not applicable since they are pertaining to the claim filed under Notification No. 17/2009-Service Tax dated 07.07.2009. I find that my views are supported by the Board Instruction No: 354/256/2009-TRU dated 01.01.2010 which is reproduced for ready reference:

*" It may be recalled that the refund based service tax exemption scheme available to the exporters vide Notification No. 41/2007-S.T., dated 6-10-2007 was replaced during Budget 2009 by Notification No. 17/2009-S.T., dated 7-7-2009. One of the conditions appearing in clause (f) of para 2 of Notification No. 17/2009-S.T. is that "claim for refund shall be availed within one year from the date of export of the said goods". Doubts have been expressed whether the applicability of this notification would be only with respect to such exports*



which have taken place after the issuance of this notification or would apply also to exports prior to 7-7-2009.

2. The matter has been examined by the Board. In this regard, I am directed to state that though Notification No. 17/2009-S.T., dated 7-7-2009 simplifies the refund scheme; the nature of benefit given to the exporters remains as it was under Notification No. 41/2007-S.T. Further, the new notification does not bar its applicability to exports that have taken place prior to its issuance. **Therefore, the scheme prescribed under Notification No. 17/2009-S.T. would be applicable even for such exports subject to conditions that (a) refund claims are filed within the stipulated period of one year; and (b) no previous refund claim has already been filed under the previous notification.**

(emphasis supplied)

9.8 I find that last ground for rejection of the refund was that the declaration of non availment of CENVAT credit and non availment of drawback of Service Tax has not been furnished by the appellant before Lower Adjudicating Authority at the time of filing refund. I find that appellant in their submission have placed the undertaking to that effect. Thus, there exist no grounds for denial of refund on this count.

10. Before concluding the order, it is made clear that claims for Shipping Bill Nos. 549 dated 07.05.2008 and 1031162 dated 22.07.2008 has been held inadmissible being time barred. Since the whole working of the refund and the documents are not placed before me therefore it is not possible to conclude that any other claims discussed above which have been allowed or which have been allowed subject to verification by Lower Adjudicating Authority are not covered under the above two shipping bills. **Therefore, the Lower Adjudicating Authority while deciding the claims in denovo proceedings shall ensure that the allowed claims are not covered under the above two shipping bills.**

11. Therefore, to meet the ends of justice, I set aside the impugned order of the Lower Adjudicating Authority and in light of the decision in the case of **Singh Alloys (P) Ltd - 2012 (284) ELT 97 (Tri. Delhi)**, and remand the matter back to Lower Adjudicating Authority to process the refund as per directions given in the above paragraphs after following the principals of natural justice.

12. In holding this, I also rely upon the case law of **Honda Sell Power Products Ltd.- 2013 (287) ELT 353 (Tri. Del.)** wherein a similar





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view has been taken as regard inherent power of the appellate authority to remit back the matters under the provisions of Section 35A(3) of the Central Excise Act, 1944. Further, **Hon'ble Gujarat High Court**, in **Tax Appeal No. 276 of 2014**, in the case of **Associated Hotels Ltd.** has held that even after amendment in Section 35A ibid after 10-05-2011, made applicable in Service Tax vide Section 83 of the Finance Act, 1994, the Commissioner of Central Excise would retain the powers of remand.

13. The appeal filed by the appellants is decided in above terms.

F. N. V.2/543/RAJ/2010

Place: Rajkot.

Dated: 27.03.2018



**(LALIT PRASAD)**

COMMISSIONER, CGST & CEX, RAJKOT/  
COMMISSIONER (APPEALS),  
CGST & CEX, RAJKOT

**By Speed Post**

To,

M/s. Terapanth Foods Private Limited,

Maitri Bhavan,

Plot No: 18, Sector 8,

**Gandhidham 370 201 (Kutch)**

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Kutch.
- 3) The Commissioner, GST & Central Excise, Rajkot.
- 4) The Assistant Commissioner, GST & CEX, Gandhidham Urban.
- 5) Guard File.