



::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 / 2nd Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /
Appeal / File No.
V2/123/GDM/2010

मूल आदेश सं /
O.L.O. No.
100/ST/Refund/2009

दिनांक /
Date
31.12.2009

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

KCH-EXCUS-000-APP-207-2017-18

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 पढ़े बड़े 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 १९९४ 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 व्यक्ति 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 अपीलों 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, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर 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 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 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, बशर्त 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

- धारा 11 डी के अंतर्गत रकम
- सेनवैट जमा की ली गई गलत राशि
- सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त 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 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 :

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules.

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

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

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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

- (iii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय 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 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 इयूटी 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.

- (iv) 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 O.I.O 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, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थित अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय 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-1 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 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 अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलाधी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER-IN-APPEAL ::

Being aggrieved with the Refund Order No. 100/ST/Refund/2009 dated 31.12.2009 (**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 28.11.2008, filed an application seeking refund of Rs. 54,953/- being the Service Tax paid on the services used for the export during the quarter July, 2008 to September, 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 21.05.2009 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. Lower Adjudicating Authority vide his impugned order held that:

- (i) refund of Service Tax on the invoice dated 27.05.2008 of M/s. SGS India Private Limited is not admissible on the grounds that:
- (a) the said invoice is not pertaining to period covered under claim period;
 - (b) the payment shown in the ledger account does not tally with the invoice amount;
 - (c) the proof of payment given in the form of Ledger Account cannot be treated as payment;
 - (d) as per invoice the services rendered were sampling supervision, shipment composite analysis, draft survey and analysis however the Notification No: 41/2007-Service Tax dated 06.10.2007, as amended envisages grant of refund of Service Tax paid on the services relating to testing and analysis of the goods exported.



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- (ii) refund of Service Tax paid on the GTA services is not admissible
- (a) as the invoices issued by M/s. Akshay Transport, M/s. Kalpataru Transport and M/s. Shiv Logistics were in the name of M/s. Terapanth Foods Private Limited, Hospet who are not the claimant;
 - (b) as the invoices issued by M/s. Akshay Transport are relating to the services provided in the month of March, 2008 and the export has taken place in the month of July, 2008;
 - (c) as there is nothing in invoices of M/s. Akshay Transport which indicates that the goods were meant for export;
 - (d) details, as required under Notification No: 3/2008-Service Tax dated 19.02.2008 are not appearing in the invoice issued by M/s. Akshay Transport, M/s. Kalpataru Transport and M/s. Shiv Logistics;
 - (e) since rubber stamp showing details of exporter's name, invoice number & date, vessels name etc was put on the later date therefore it cannot be treated as part of the invoices issued by M/s. Akshay Transport;
 - (f) as there is no co-relation with transport and export in the case of invoices issued by M/s. Kalpataru Transport and M/s. Shiv Logistics;
 - (g) destination of transport is now shown as port in the case of invoices issued by M/s. Kalpataru Transport and M/s. Shiv Logistics.

3. Being aggrieved with the impugned order, rejecting their refund, appellant have filed the present appeal on the grounds that they have filed refund claim only after making the payment of Service Tax to the service provider; that they have submitted Ledger Account to that effect; that the invoices were issued to their Hospet Branch and they have paid the Service Tax liability of their branch under the registration number allotted by the Service Tax authorities of Gandhidham/Rajkot; that as regards to the observations that services were rendered in the month of March and the goods were exported in the month of July, they stated that it might be possible that the goods may have entered into port in the period of March whereas the same may have been exported somewhere in the month of July; that there is no requirement for details mentioned in Notification No. 3/2008-Service Tax dated 19.02.2008.



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Earlier personal hearing:

4. Personal hearing in the matter was held before Commissioner (Appeals), Customs and Central Excise, Rajkot on 29.07.2010 which was attended by Shri Arvind V. Joshi, Director of the appellant firm along with Shri Manish Vora, Chartered Accountant during which they reiterated the submissions made in their appeal and sought a week's time to make additional submission, which was granted.

Additional submission:

5.1 The appellant vide their letter dated 03.08.2010 filed additional submissions wherein they submitted that vide Notification No. 32/2008-Service Tax dated 18.11.2008 the time limit for filing claim has been extended from 60 days to 6 months and issue stands clarified vide Circular dated 12.03.2009 therefore claim is filed within time limit.

5.2 In regard to proof of payment of Service Tax, the appellant stated that as per clause 1(c) of Notification No: 41/2007-Service Tax dated 06.10.2007, as amended, stipulates that the exporter claiming the exemption has actually paid the Service Tax on the specified services to its provider and nowhere it states that they have to submit the proof of payment; that it is a duty cast upon the applicant to see that they have made payment of Service Tax to the provider; that they placed reliance on Circular No. 106/9/2008-Service Tax dated 11.12.2008 which supports their contention; that they have submitted Ledger of Accounts of M/s. SGS India Private Limited from their Books of Accounts, which is running account; that they have paid on 05.08.2008 amounts in respect of all the invoices received by them from M/s. SGS India Private Limited till 31.07.2008.

5.3 As regards to denial of refund claim on the grounds that services rendered were shown as sample supervision, shipment composite analysis, draft survey and analysis whereas the Notification envisages refund for testing and analysis of the goods and inspection and certification thereof, the appellant submitted that except the service of draft survey all other services like sampling analysis were carried out and therefore they are eligible for refund since the said services would fall under Technical Testing and Analysis; that they produced the copies of Letter of Credit, invoices, certificates issued by M/s. SGS India Private



Limited, copy of ledger, copy of Notification No. 32/2008, Circular No. 106 & 112 and an undertaking.

5.4 As regards to the finding that the invoices of GTA are not in the name of the appellant, the appellant stated that the invoices were issued to their Hospet Branch and all transactions of their branch are consolidated in Registered Office situated at Gandhidham; that even the Service Tax liability of the Hospet Branch are paid from Gandhidham; that the invoices reflect about the transportation of the iron ore from mine to Mangalore Port and it is not necessary that the goods should be exported immediately after it arrives at port; that the fact of transportation of goods in the month of March, 2008 and its exportation in July, 2008 cannot be made a reason for denial of refund; that there is mention in the notification that invoices should contain the indication that the goods were meant for export; that all details required by Notification No. 3/2008-Service Tax are already there in the invoices; that there is no requirement under the notification that all the details should be pre-printed; that the details contained in rubber stamp also suffices the purpose; that notification nowhere stipulates about correlation however they confirmed that whatever amount is claimed by them is pertaining to export; that the invoices contains the destination of the respective port, however, word "Port" has not been written after the city; that as regards to non-production of certificate of availment of CENVAT credit, the appellant stated that nowhere in the notification it has been mentioned that the appellants are required to produce the same.

6. 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.

7. 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 submitted a written submission wherein they produced the documents pertaining to export done through M. V. Moon Dance - II and M. V. Yong



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Men to prove that the exports were made through Karwar & Mangalore Port respectively; that the testing and inspection was carried out as per the conditions contained in Letter of Credit (L.C.); that they have exported 21060 MTs. of goods from New Mangalore Port whereas they have sought refund of Service Tax paid on transportation of 1049.21 MTs. only. Similarly they have exported 53750 MTs. of goods from New Mangalore Port whereas they have sought refund of Service Tax paid on transportation of 34.46 MTs. only.

Discussions & Findings:

8. I have carefully gone through the case papers including the Appeal Memorandum, various written submissions filed by the appellants and oral submissions made by the authorized person of the Appellants 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.

9. I find that refund has been rejected by the Lower Adjudicating Authority vide his impugned order on the grounds as detailed under Para 2 above.

10.1 As regards to rejection of refund on the grounds that the invoice is not pertaining to period covered under claim period, I find that the services were received during the month of May, 2008 and vide Notification No. 32/2008-Service Tax dated 18.11.2008 the time limit for filing refund claim has been extended from 60 days to six months i.e. now as per amended para 2 (e) of Notification No. 41/2007-ST dated 06.10.2007, as amended the refund for the quarter ending June, 2008 can be filed uptill 31.12.2008. In this case the refund has been filed on 01.12.2008, thus the same is within time limit and the same stands clarified by the Board vide its Circular No. 112/06/2009-Service Tax dated 12.03.2009 issued from F. No. 137/84/2008-CX.4.

10.2 As regards to the payment shown in the ledger account not tallying with the invoice amount, I find that the said invoice has been raised on the appellant's office situated at Gandhidham and from the copy of the ledger of M/s. SGS India Private Limited maintained by the



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appellant in their books of account I find that same amount has been credited. Therefore, I find that there is no disagreement between the two amounts.

10.3 As regards to findings that proof of payment given in the form of ledger cannot be treated as payment, I find that when exact amount is being shown as credit in the ledger of the service provider maintained by the appellant and further from the said ledger I find that the SGS India Private Limited, Goa i.e. service provider has been paid on 05.08.2008 through Bank Payment. Thus, I find that there is no legal backing in the findings of the Lower Adjudicating Authority that proof of payment given in the form of ledger cannot be treated as payment. I further find that Notification No. 41/2007-ST dated 06.10.2007, as amended, only provides that the "the exporter claiming the exemption has actually paid the Service Tax on the specified services". I find that from the ledger the said condition is fulfilled. Hence, refund is admissible on this count.

10.4.1 I find that another ground for rejection of refund claim is that as per invoice the services rendered were sampling supervision, shipment composite analysis, draft survey and analysis however the Notification No: 41/2007-Service Tax dated 06.10.2007, as amended envisages grant for refund of Service Tax for the services relating to testing and analysis of the goods exported. I find that appellant has also agreed to the fact that the said invoice contains the service of Draft Survey. I find that services of draft survey cannot be in any case treated as testing and analysis services. I further find that the requirement of remaining services were clearly spelt out by the buyers in Letter of Credit No. 728A08BB001126 dated 05.08.2008 on Page No. 3 at Point 46A(3). Thus, the appellant is eligible for refund of Service Tax for all service except service of Draft Survey.

10.4.2 However, I find that the letter of credit No. 728A08BB001126 dated 05.08.2008 has been issued by M/s. Link Wide International Investment (HK) Limited whereas the Shipping Bill and Export Invoice does not contain the name of M/s. Link Wide International Investment (HK) Limited but it contains the instructions to notify M/s. Express Well



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International Limited, Hong Kong. I also find that appellant has nowhere clarified the reasons thereof.

10.4.3 Therefore, I find that it is necessary to remand the matter back to the Lower Adjudicating Authority who shall after satisfying himself with the compliance given by the appellants to the observations given above, sanction the refund of Service Tax for all service except service of Draft Survey.

11.1.1 As regards to denial of refund of Service Tax paid on GTA services by holding that the invoices were issued in the name of M/s. Terapanth Foods Private Limited, Hospet by M/s. Akshay Transport, M/s. Kalpataru Transport and M/s. Shiv Logistics who are not the claimant. I find that the appellant has argued that all the transactions of Hospet Branch are being consolidated at their registered office located at Gandhidham for which they have already taken registration.

11.1.2 I find Rule 4(2) of the Service Tax Rules, 1994 provides that when a person, liable for paying service tax on a taxable service, (i) provides such service from more than one premises or offices; or (ii) receives such service in more than one premises or offices; or (iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax, and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing or centralised accounting systems are located. I find that the appellant are registered with Service Tax authorities at Gandhidham. Therefore, though the services have been received by their Hospet Branch but as the accounting is centralized at Gandhidham the appellant can make a claim of refund from their centralized registered premises of Gandhidham.

11.2. Before I proceed to decide other grounds of denial put forth by the Lower Adjudicating Authority, I think it is necessary to reproduce Sl. No. 11 of the table annexed to Notification No. 41/2007-ST dated 06.10.2007, as amended.



11.	section 65(105)(zzp)	Services provided to an exporter in relation to transport of export goods directly from the place of removal, to inland container depot or port or airport, as the case may be, from where the goods are exported.	<p>(i) export goods are transported directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported,</p> <p>(ii) invoice issued by the exporter in relation to export goods shall indicate the name of the inland container depot or port or airport from where the goods are exported,</p> <p>(iii) details of exporter's invoice relating to export goods are specifically mentioned in the lorry receipt and the corresponding shipping bill,</p> <p>(iv) exporter shall declare in the refund claim indicating whether such service has been received from the said service provider for purposes other than for export.</p>
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11.3 I find that Notification No. 41/2007-ST dated 06.10.2007, as amended, nowhere specifies the time limit for export of the goods. Therefore, I find that refund claim in the case of invoice of M/s. Akshay Transport is admissible, on this count, as the condition (i) of Sl. No. 11 of the table annexed to Notification No. 41/2007-ST dated 06.10.2007, as amended stands complied with. However, before granting refund Lower Adjudicating Authority shall ensure that lorry receipts are produced before him wherein lorry receipts containing the details of the exporter's invoice for the goods transported in the month of March, 2008 are available since as per the instant notification, lorry receipt is vital document. Thus, by producing the original lorry receipts the appellant would be able to comply with the observations of the Lower Adjudicating Authority that there is nothing in invoice of M/s. Akshay Transport which indicates that the goods were meant for export.

11.4 I further find that Notification No. 41/2007-ST dated 06.10.2007, as amended nowhere specifies that the declaration under Notification No. 3/2008-Service Tax dated 19.02.2008 is required to be produced since the same would be applicable when the appellants claim the CENVAT credit of Service Tax. Whereas, in the instant case the appellant is seeking refund of Service Tax. Therefore, I find no force in the argument of the Lower Adjudicating Authority.



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11.5 As regards to observation that since rubber stamp showing details of exporter's name, invoice number & date, vessels name etc was put on the later date therefore it cannot be treated as part of the invoice of M/s. Akshay Transport. I find that condition (iii) of Sl. No. 11 of the table annexed to Notification No. 41/2007-ST dated 06.10.2007, as amended clearly spells out the requirement of lorry receipt therefore whether stamps are there or not on the invoice of the transport is immaterial. Therefore, if the lorry receipts are bearing stipulated details then refund is admissible.

11.6 Likewise in the case of denial of refund sought on the invoices of M/s. Kalpataru Transport and M/s. Shiv Logistics on the grounds that there is no co-relation with transport and export of goods. I find that appellants shall produce the relevant lorry receipts before the Lower Adjudicating Authority containing all the details stipulated in condition (iii) of Sl. No. 11 of the table annexed to Notification No. 41/2007-ST dated 06.10.2007, as amended and if they are matching then the refund thereof is admissible on this count.

11.7 As regards to the denial of the refund on the grounds that destination is not written in the invoice, I find that if all the lorry receipts are containing the details stipulated at condition (iii) of Sl. No. 11 of the table annexed to Notification No. 41/2007-ST dated 06.10.2007, as amended, then it can be safely presumed that destination would be port and such error being of typographical/technical in nature is condonable.

12. 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)**, remand the matter back to Lower Adjudicating Authority with a direction to the appellants to produce the documents before the Lower Adjudicating Authority who after verifying the documents provided by the appellant shall decide the matter afresh on merits by following principles of natural justice.

13. 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 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



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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.

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

F. N. V.2/123/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.