



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
Tele Fax No. 0281 - 2477952/2441142

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/122/GDM/2010	मूल आदेश सं / O.I.O. No. 101/ST/Refund/2009	दिनांक / Date 31.12.2009
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

KCH-EXCUS-000-APP-208-2017-18

आदेश का दिनांक / Date of Order:	27.03.2018	जारी करने की तारीख / Date of issue:	05.04.2018
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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 बोर्ड 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 दर्ज की गई अपील 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 Friends & Friends Shipping Pvt. Ltd., Maitri Bhavan, Plot No 18, Sector-8 ,Gandhidham,

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 न 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 अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की परिषद क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- ३८००१६ को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of any 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 प्रतियां 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 (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 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

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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (स. 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, 1994 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules

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

(C) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिवेंट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा 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 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। जहां 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 पेटी कार्य से बचने के लिए यथास्थिति 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, 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-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-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 ओर भी ध्यान आकषित 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. 101/ST/Refund/2009 dated 31.12.2009 (**hereinafter referred to as the "impugned order"**) passed by the then Assistant Commissioner, Service Tax Division, Rajkot (**hereinafter referred to as "the Lower Adjudicating Authority"**) M/s. Friends & Friends Shipping Private 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 issue involved in the matter, in brief, is that the appellants filed an application on 01-12-2008 seeking refund of Rs. 9,162/- 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 19.03.2009 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 appellants neither filed reply to Show Cause Notice nor appeared for personal hearing before Lower Adjudicating Authority. The Lower Adjudicating Authority vide his impugned order rejected the refund claim of the appellants and held that:

- (i) since the exports have been made under claim of drawback scheme therefore as per proviso (e) to clause (1) of the Notification No: 41/2007-Service Tax dated 06.10.2007, as amended, refund is not admissible;
- (ii) refund of Service Tax paid on the services for weight and quality survey, classifiable as "Technical Inspection and Certification services" under Section 65 (105) (zzi) of the Finance Act, 1994, received from M/s. SGS India Private Limited vide their invoices dated 09.07.2008 and 13.05.2008 is not admissible since no written agreement entered by the appellant with buyers of the goods or regulations stipulating tests of such exported goods have been produced;



- (iii) refund of Service Tax paid on the two invoices, both dated 28.06.2008 of M/s. AVB Contractor is not admissible as the service provider is registered under "Manpower Recruitment Agency services" and rendered the services of manpower supply therefore the services provided are in the nature of Manpower Recruitment & Supply Agency which is not specified services for refund under Notification No: 41/2007-Service Tax dated 06.10.2007, as amended;
- (iv) regarding proof of payment to Service Tax the appellants have submitted journal entries, without any documentary evidence, cannot be considered as valid proof of payment of Service Tax.

3. Being aggrieved with the impugned order, the appellants have filed the present appeal on the grounds that they have availed drawback of the Customs duty levied on the goods exported and have not availed drawback of the Service Tax; that they have enclosed the copy of the Letter of Credit (L.C.) along with refund application wherein terms and conditions were stipulated between the buyers and seller and according to that they have carried out testing and analysis; that the services of AVB Contractors have provided the wharf cleaning services at port in respect of the goods exported and thus the said services falls under "port services" and the same is eligible for refund.

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 appellants 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 submissions, which was granted.

Additional submission:

5.1 The appellant vide their letter dated 03.08.2010 filed additional submissions wherein they submitted that they have not availed drawback of Service Tax; that they placed reliance on the Para 6 of the Notification No. 103/2008-Customs (NT) dated 29.08.2008



wherein it has been stated that if the rate indicated is the same in both the columns, it shall mean that the same pertains only to customs component and is available irrespective of whether the exporter has availed CENVAT credit or not and stated that as per drawback schedule for Soyabean meal given in Chapter 23 the drawback is specified @ 1% of FOB in both the columns and hence the drawback is only for customs component and question of claiming drawback of Service Tax component does not arise.

5.2 As regards to denial of refund claim on the grounds of non-submission of contracts between buyers and seller appellants stated that they have placed on records the copies of Letter of Credit issued by buyer's bankers containing various terms and conditions for purchase of the goods; that it is a written agreement between buyers and seller of the goods; that as per agreement only they have got goods tested and analyzed from M/s. SGS India Private Limited.

5.3 As regards 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 no where it states that they have to submit the proof of payment; that it is a duty casted 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 charges on 02.08.2008 in respect of all the invoices received by them from M/s. SGS India Private Limited till 31.07.2008.

5.4 With reference to denial of refund on the grounds that services rendered were shown as weight and quality survey, the appellant stated that said narration is prefixed in the invoice; that M/s. SGS India Private Limited have rendered the service of Inspection and Certification to the goods as can be seen from the copy of Certificate of Quality issued; that the Testing, Inspection and Certificate services falls under Section 65(105)(zzb) of the Finance Act, 1994, which is an eligible service; that they placed the copies of letter of credit and/or contract, relevant invoice



along with certificate of quality issued by SGS India Private Limited and copy of circular.

5.5 On the point of denial of refund claim on the invoices of M/s. AVB Contractor the appellant stated that they have received the services in relation to cleaning of wharf at Port which was in relation to export cargo for which they have been charged on per metric ton basis and not on the basis of number of man power / laborers; that therefore the said service would either fall under Port Services or under Cargo Handling Service and not under Man Power Supply and Recruitment Agency; that Board vide its Circular No. 112/6/2009-Service Tax dated 12.03.2009 has at Para No. VIII clarified the issue and therefore the refund is admissible.

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 35 of Central Excise Act, 1944 for the purpose of passing orders in this appeal.

7.1 Accordingly, personal hearing in the matter was held on 20.02.2018 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

7.2 In the written submission given at the time of personal hearing, appellant sought to correct the mistake at Page No. 28 of their earlier submission dated 03.08.2010 and they placed reliance on the case law of Santosh P. Deshmukh - 2018 (8) GSTL - 224 (Tri. Mumbai).

Discussions & Findings:

8. I have gone through the case papers and the various written submissions filed by the appellants and oral submissions made during the personal hearing by the authorized person of the appellants. 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 following grounds that:

- (i) since the exports have been made under claim of drawback scheme therefore as per proviso (e) to clause (1) of the Notification No: 41/2007-Service Tax dated 06.10.2007, as amended refund is not admissible;
- (ii) refund of Service Tax paid on the services for weight and quality survey, classifiable as Technical Inspection and Certification services under Section 65 (105) (zzi) of the Finance Act, 1994, received from M/s. SGS India Private Limited vide their invoices dated 09.07.2008 and 13.05.2008 is not admissible since no written agreement entered by the appellant with buyers of the goods or regulations stipulating tests of such exported goods have been produced;
- (iii) refund of Service Tax paid on the two invoices, both dated 28.06.2008 of M/s. AVB Contractor is not admissible as the service provider is registered as supplier of Manpower Recruitment Agency services therefore the services provided are in the nature of Manpower Recruitment Agency which is not specified services for refund under Notification No: 41/2007-Service Tax dated 06.10.2007, as amended;
- (iv) journal entries, without any documentary evidence, cannot be considered as valid proof of payment to the supplier of the services.

10.1 As regards to rejection of the claim on the grounds that since the exports have been made under claim of drawback scheme therefore as per proviso (e) to clause (1) of the Notification No: 41/2007-Service Tax dated 06.10.2007, as amended refund is not admissible. I find that said clause clearly stipulates that no drawback of Service Tax should have been claimed.

10.2 I find that appellant in their submissions have stated that they have exported Soyabean Meal, falling under Chapter 26 of the drawback schedule wherein the rate of drawback is specified @1% of the



FOB value in both the column and therefore as per Para 6 of the Notification No. 103/2008-Cus (NT) dated 29.08.2008 it should be considered as drawback for customs portion only.

10.3 Prima face I find that there is enough force in the argument of the appellant however they have not placed on records the copies of shipping bills. I find that the appellants whole set of argument is based on the clarification given at Para 6 of the Notification No. 103/2008-Cus (NT) dated 29.08.2008 which is effective from 01.09.2008. However, in the instant case the Shipping Bills are dated 02.04.2008, 05.05.2008, 07.06.2008, 27.06.2008 and 03.07.2008. Thus, there is no legal force in the argument of the appellants and accordingly I find no infirmity with the findings of the Lower Adjudicating Authority.

11. Since the appellants have not been able to fulfill the conditions set out at proviso (e) to clause (1) of the Notification No: 41/2007-Service Tax dated 06.10.2007, as amended, therefore without going into the merits / demerits of the other findings of the Lower Adjudicating Authority, I reject the appeal of the appellants and uphold the impugned order of the Lower Adjudicating Authority.

F. N. V.2/122/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. Friends & Friends Shipping 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.