



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



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

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952-2441142 Email: cesappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या Appeal / File No.	मूल आदेश नं / O.O. No.	दिनांक / Date
	V2/244/RAJ/2016,	100/ST/Ref/2016,	31.08.2016
	V2/246/RAJ/2016,	124/ST/Ref/2016,	30.09.2016
	V2/247/RAJ/2016 ,	122/ST/Ref/2016,	28.09.2016
	V2/40/RAJ/2017 ,	173/ST/Ref/2016,	28.12.2016
	V2/94/RAJ/2017,	52/ST/Ref/2017,	13.02.2017
	V2/95/RAJ/2017,	51/ST/Ref/2017,	13.02.2017
	V2/245/RAJ/2017,	83/ST/Ref/2017,	29.03.2017
	V2/337/RAJ/2017	120/ST/Ref/2017	06.06.2017

26

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

RAJ-EXCUS-000-APP-057-TO-64 -2017-18

आदेश का दिनांक / जारी करने की तारीख
Date of Order: **18.09.2017** Date of issue: **18.09.2017**

कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /

Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग उपर आदुक्त/अदुक्त/अनुदुक्त/सहायक/अदुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जमनगर / गान्धीधाम) द्वारा उपरोक्तित जारी मूल आदेश से सुटित /
Arising out of above mentioned O/O issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellant & Respondent :-
M/s. Raviraj Plastics Pvt. Ltd., 309/310, Shivam Complex, Dr. Yagnik Road,Rajkot 360 001

इस आदेश(आपील) से व्यक्तित्व कोई व्यक्तित्व निम्नलिखित तरीके से उपरोक्त प्राधिकारी / प्राधिकरण के समक्ष अपील द्वारा 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 अपील/अपील/अपारिधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अपील/विभाग 1944 की धारा 35B के अन्तर्गत एवं "दिल अपील/विभाग" 1994 की धारा 86 के अन्तर्गत निम्नलिखित जगह की जा सकती है।
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to-

(i) इलाहाबाद मुख्यालय में सम्बन्धित सभी मामलों सीमा शुल्क/केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील/अपील/अपारिधिकरण की विशेष पीठ, ईस्ट ब्लॉक नं 2 आर के पुरम, नई दिल्ली, को की जाती 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(i) में बतलाया गया अपील के अलावा सभी अपील सीमा शुल्क/केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील/अपील/अपारिधिकरण (सिस्टम) की पश्चिम क्षेत्रीय पीठ/दक्षिणी तल, बृहन्माली भवन अशाही अहमदाबाद, 360016 को की जाती चाहिए।
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhaumik Bhawan, Aarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(i) above

(iii) अपील/अपील/अपारिधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) विधिसूची, 2001 के विधिसूची 6 के अन्तर्गत निर्धारित किए गये फॉर्म EA-3 को धारा परिचय में दान किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि, आयाज की राशि और जल्दया तथा जुर्माना, सेवा 5 लाख या उससे कम, 5 लाख तथा या 50 लाख तथा तक अथवा 50 लाख तथा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति लगाना करे। निर्धारित शुल्क का अभाव, संबंधित अपील/अपील/अपारिधिकरण की शिका के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉर्ड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील/अपील/अपारिधिकरण की शिका स्थित है। अथवा आदेश (स्टे ऑर्डर) के लिए आदेश-पत्र के साथ 500/- रुपये 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) अपील/अपील/अपारिधिकरण के समक्ष अपील, दिल अपील/विभाग 1994 की धारा 86(1) के अन्तर्गत सेवाकर विधिसूची, 1994 के विधिसूची 9(1) के तहत निर्धारित फॉर्म S.T-5 में धारा परिचय में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में लगाना करे (उपर्युक्त से एक प्रति पश्चिम क्षेत्रीय पीठ) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की राशि, आयाज की राशि और जल्दया तथा जुर्माना, सेवा 5 लाख या उससे कम, 5 लाख तथा या 50 लाख तथा तक अथवा 50 लाख तथा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति लगाना करे। निर्धारित शुल्क का अभाव, संबंधित अपील/अपील/अपारिधिकरण की शिका के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉर्ड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील/अपील/अपारिधिकरण की शिका स्थित है। अथवा आदेश (स्टे ऑर्डर) के लिए आदेश-पत्र के साथ 500/- रुपये 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 5 of the Central Excise (Appeal) Rules, 2001 and shall be accompanied by a copy of the order appealed against (one of which shall be Demand Draft) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is upto 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 Branch of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-



(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धारा (2) एवं (2A) के अंतर्गत दाये की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म ST-7 में की जा सकती है। उसके साथ अनुमति, केन्द्रीय उत्पाद शुल्क अध्याय अधुबल (अपील), केन्द्रीय उत्पाद शुल्क अध्याय अधुबल अधुबल की प्रतियाँ संलग्न करे (उपरोक्त में 74-वर्षीय प्रमाणित प्रती चाहिए) और अनुमति द्वारा प्रदायक अनुमति अध्याय अधुबल, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील प्रस्ताविकाओं को अर्पित 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 of the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) बीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील प्रस्ताविका (सेक्टर) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील प्रस्ताविका में अपील करने समय उत्पाद शुल्क/सेवाकर का मूल्य के 10 प्रतिशत (10%), जब मूल्य 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 अपील टैक्स रॉसि टैक्स कलेक्टर द्वारा से अधिक न हो।

- (i) केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मूल्य विवाद' का शुल्क में निम्न शामिल है
 - (ii) धारा 11 डी के अंतर्गत रकम
 - (iii) सेक्टर जमा की गई गई रकम रॉसि
 - (iv) सेक्टर जमा नियमवली के नियम 6 के अंतर्गत टैक्स रकम
- बशर्त कि इस धारा के अंतर्गत वित्तीय (अ. 2) अधिनियम 2014 के अंतर्गत से दिये गये किसी अपील प्रस्ताविका के तहत विवादित मूल्य मूल्य अपील को लागू नहीं होगी।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

- Under Central Excise and Service Tax, "Duty Demanded" shall include
- (i) amount determined under Section 11 D;
 - (ii) amount of erroneous Central Credit taken;
 - (iii) amount payable under Rule 6 of the Central Credit Rules;
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act 2014.

(C) **सरकार को पुनरीक्षण आदेशन :**
Revision application to Government of India.
 इस आदेश की पुनरीक्षण प्रक्रिया निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35EE के प्रथम पठन के अंतर्गत अर्पित होगी, भारत सरकार, पुनरीक्षण आदेशन इकाई, वित्त विभाग, राजस्व विभाग, एपी जंजिर, जेठम टॉप भवन, संसद भवन, 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 cases: 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 बरखा में से माल गृह के प्रारम्भ के दौरान या किसी अन्य कारखाने या किसी एक अर्ध गृह से दूसरे अर्ध गृह प्रारम्भ के दौरान, या किसी अर्ध गृह से या अर्ध गृह में माल के प्रारम्भ के दौरान, किसी कारखाने या किसी अर्ध गृह में माल के नुकसान के अंतर्गत हो। / 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 बचते माल पर लगे हुए केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छा केन्द्रित इस अधिनियम एवं इसके विभिन्न धाराओं के तहत माल की गई है और ऐसे आदेश जो अनुमति (अपील) के द्वारा दिये अधिनियम (अ. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीका अथवा प्रस्ताविका पर का बट में दिये 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 आदेशन की दो प्रतियां फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत निर्दिष्ट है, इस आदेश के अंतर्गत के 3 महीने के अंतर्गत की जानी चाहिए। उपरोक्त आदेशन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 15-EE के तहत निर्धारित शुल्क की अदायगी के अर्थ में और 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 Chalan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आदेशन 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 दाय से किया जाना चाहिए। इस लक्ष्य के होते हुए भी की विधि नहीं करने से अर्पित के लिए स्क्रिप्टरिया अपील प्रस्ताविकाओं को एक अपील या केन्द्रीय सरकार को एक आदेशन 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 of excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) परामर्शपूर्ण न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं अपील 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) बीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील प्रस्ताविका (सेक्टर) नियमवली, 1982 में वर्णित एवं अन्य सम्बंधित 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 अपील प्रस्ताविका को अपील दायन करने से संबंधित विवरणों के लिए और नवीनतम धाराओं के लिए, अपील प्रस्ताविका वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in



:: ORDER – IN – APPEAL ::

M/s. Raviraj Plastics Pvt. Ltd., 309/310, Shivam Complex, Dr. Yagnik Road, Rajkot - 360001 (hereinafter referred to as the "appellant") has filed the present eight appeals as detailed in Table- A below, against respective Order-in-Original (hereinafter referred to as the 'impugned orders') passed by the Assistant Commissioner, Service Tax Division, Rajkot (hereinafter referred to as the 'lower adjudicating authority'). Since, the issue involved is common in nature, I proceed to decide the said appeals through common order.

Table- A

Sr. No.	Appeal No.	OIO No. & Dt.	Amt. of refund rejected (in Rs.)
1	244/2016	100/ST/REF/2016 – 31.08.2016	62453
2	246/2016	124/ST/REF/2016 – 30.09.2016	43777
3	247/2016	122/ST/REF/2016 – 28.09.2016	19029
4	40/2017	173/ST/REF/2016 – 28.12.2016	57036
5	94/2017	52/ST/REF/2017 – 13.02.2017	29584
6	95/2017	51/ST/REF/2017 – 13.02.2017	31934
7	245/2017	83/ST/REF/2017 – 29.03.2017	28975
8	337/2017	120/ST/REF/2017 – 06.06.2017	41500

2. The facts of the case are that the appellant had filed refund claims under Notification No. 41/2012-ST dated 29.06.2012 for service tax paid by them on taxable services used for export of goods. The lower adjudicating authority had partially rejected the refund claims on the ground that the service tax borne on transportation and lift on & lift off of empty containers are services availed before removal of export of goods, as these charges are not covered under the said notification as per Explanation to Notification *ibid*, that services relating to transportation and lift on & lift off of empty containers are not covered under the purview of the specified services as the same are used beyond place of removal for export of goods.

3. Being aggrieved with the impugned orders, the appellant preferred appeals, *interalia*, on the following grounds:

3.1 The findings of the lower adjudicating authority that services of transportation and lift on & lift off of empty containers are not covered under the purview of the specified services as the same are used beyond place of removal for export of goods, are not correct.

3.2 The said notification grants rebate of service tax paid on taxable services which are used for export of goods subject to the extent and manner specified in the said notification; that the rebate shall be granted by way of refund of service tax paid on the specified services as per the Clause (a) of Notification *ibid* and specified services



has been categorized in two parts - first part relates to goods cleared from the factory i.e. place of removal and second part relates to goods other than goods cleared from the factory i.e. from place of removal for export of goods and the appellant being merchant exporter falls under second category and hence the services received and used for export of goods are entitled to claim rebate of service tax on specified services; that the services related to containers are essential services for export of goods; that the appellant has not used the services related to containers for manufacturing of excisable goods and has also not received any input services for manufacturing of excisable goods; that the appellant had booked the containers for goods meant for export only and services related to the said containers used for export of goods; that as per the said notification any service used for export of goods is eligible for rebate of service tax paid on the said service; that the services used by the appellant for export of goods does not fall under the excluded category as mentioned in sub-clause (A), (B), (BA) and (C) of clause (I) of Rule (2) of the CCR, 2004; accordingly the rejection of refund claim by the lower adjudicating authority is not correct, legal and proper. In support of their argument, the appellant relied on the following case laws:

- (i) Balkrishna Industries Ltd. reported as 2011 (24) STR 433 (Tri. Mumbai);
- (ii) Garware Polyester Ltd. reported as 2012 (27) STR 288 (Tri. Mumbai);
- (iii) Tata Coffee Ltd. reported as 2011 (21) STR 546 (Tri. Chennai)

4. Personal hearing in the matter was attended to by Shri Rushi Upadhyay, Chartered Accountant on behalf of the appellant who reiterated ground of appeals and submitted that refund of service tax paid on services of transportation and lift on & lift off of empty containers from CFS to place of factory where the containers are stuffed has been not allowed whereas these are allowable as because without this, export of goods will not take place and these are essential services for effecting export of goods; that the case laws cited by them are very relevant and directly applicable to the cases at the hand.

Findings:

5. I have carefully gone through the impugned orders, appeal memorandums and submissions made at the time of personal hearing. The issue to be decided in the present eight appeals is whether the appellant is eligible for the rebate of service tax paid on services for transportation and lift on & lift off of empty containers used before removal of goods meant for export, under Notification No. 41/2012-ST dated 29.06.2012 or not.

6. The lower adjudicating authority has rejected refund of service tax paid on transportation charges and lift on & lift off charges of empty containers on the ground



that service tax was borne by them for such services before removal of export of goods from factory gate and these charges are not covered under Notification *ibid* as per Explanation (a)(A)(i) to Notification No. 41/2012-ST; that the services relating to transportation and lift on & lift off of empty containers are not covered under the purview of the specified services as the same are used beyond place of removal for export of goods. I find that the appellant has claimed refund of service tax paid on export of Ceramic Floor Tiles which is excisable goods. Therefore, the refund claims filed by the appellant would be governed under Explanation (a)(A)(i) of the Notification *ibid*. For better understanding, the relevant abstract of Notification No. 41/2012-ST dated 29.6.2012 is reproduced hereunder:-

(a) the rebate shall be granted by way of refund of service tax paid on the specified services.

Explanation. - For the purposes of this notification, -

(A) "specified services" means -

(i) in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;

(ii) in the case of goods other than (i) above, taxable services used for the export of said goods;

but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (1) of rule (2) of the CENVAT Credit Rules, 2004;

(B) "place of removal" shall have the meaning assigned to it in section 4 of the Central Excise Act, 1944 (1 of 1944);

6.1. I find that in case of excisable goods, Notification No. 41/2012-ST stipulates to grant refund of service tax paid on specified services that have been used for export of excisable goods beyond the place of removal as defined in Section 4 of the Central Excise Act, 1944. I also find that Explanation (a)(A)(i) stipulated in Notification No. 41/2012-ST dated 29.06.2012 has been substituted vide Notification No. 1/2016-ST dated 03.02.2016 as under:-

(I) In clause (A), for sub-clause (i), the following sub-clause shall be substituted, namely :-

"(i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export;"

(II) clause (B) shall be omitted;



(Emphasis supplied)

22

6.2 The said amendment has been made applicable with retrospective effect from 01.07.2012 vide Section 160 of the Finance Act, 2016. Section 160 of the Finance Act, 2016 is reproduced as under:-

"160. Amendment of notification issued under section 93A of Finance Act, 1994. —

(1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 519(E), dated the 29th June, 2012 issued under section 93A of the Finance Act, 1994 (32 of 1994) granting rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Tenth Schedule, on and from and up to the corresponding dates specified in column (3) of the Schedule, and accordingly, any action taken or anything done or purported to have taken or done under the said notification as so amended, shall be deemed to be, and always to have been, for all purposes, as validly and effectively taken or done as if the said notification as amended by this sub-section had been in force at all material times."

6.3 From the above facts, it is very evident that refund of service tax paid on the services used beyond factory or any other place or premises of manufacture of excisable goods, for their export is admissible as per explanation substituted vide Notification No. 1/2016-ST dated 03.02.2016 and made applicable retrospectively from 01.07.2012 by virtue of Section 160 of Finance Act, 2016. Hence, the findings of the lower adjudicating authority that the services relating to transportation and lift on & lift off of empty containers are not covered under the purview of the specified services as the same are not covered in the taxable services as used beyond the place of removal for the export of goods does not hold good and is not tenable. I find that the lower adjudicating authority has not taken into consideration the amendment to Notification No. 41/2012-ST dated 29.06.2012 vide Notification No. 1/2016-ST dated 03.02.2016 made applicable retrospectively from 01.07.2012 by virtue of Section 160 of Finance Act, 2016 even when he has passed Order-in-Original in August, 2016!

6.4 The appellant argued that the services of transportation and lift on & lift off of empty containers are essential, without which, the goods could not have been exported. I find force in this argument of the appellant that the service of transportation and lift on & lift off of empty containers from CFS to the premises of the manufacturer is essential before actual exportation of the goods. The containerized cargo can be stuffed in containers, for export, only if the empty containers reach at the premises of the manufacturer/exporter. The activity of transporting export goods in container covers the entire transportation charges including lift on & lift off charges. The avilment of services, payment of service tax on services used for export of goods

Handwritten signature/initials



and export of goods have not been disputed by the department at any stage. The Notification *ibid* stipulates that the refund of service tax paid on the specified services which are received by an exporter of goods and used for export of goods and in the instant issue, it is a fact that the said services of transportation and lift on & lift off of empty containers were received by the appellant and used for export of goods. Hence, the refund of service tax paid on services of transportation of empty containers and its associated activities, cannot be denied. Therefore, I am of the considered view that procurement of empty container and the charges involved therein was required to be paid along with service tax by the exporter, as is in the present case, which is nothing but the services used for export of goods. Hence, refund of service tax paid towards procurement of empty containers for stuffing of goods meant for export is admissible under Notification No. 41/2012-ST dated 29.06.2012.

7. In view of above facts and legal position, I set aside the impugned orders denying refund of service tax paid on transportation and lift on/lift off of the empty containers used for the export of the goods and allow appeals filed by the appellant.

उ.१. अपीलकर्ता द्वारा दर्ज की गई अपीलस का निपटारा उपरोक्त तरीके से किया जाता है।

7.1. The appeals filed by the appellant stand disposed off in above terms.

सत्यापित,

आर. एन. मोघा

अधीक्षक (अपील)

(कुमार संतोष)
आयुक्त (अपीलस)

By Speed Post

To

M/s. Raviraj Plastics Pvt. Ltd.,
309/310, Shivam Complex,
Dr. Yagnik Road,
Rajkot - 360001.

मे. रविराज प्लास्टिक्स प्रा. लि.,
309/310, शिवम कॉम्प्लेक्स,
डॉ. याग्निक रोड,
राजकोट - 360001.

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise Commissionerate, Rajkot.
- 3) The Assistant Commissioner, GST & Central Excise Division-I, Rajkot.
- 4) Guard File.
- 5) Appeal F. No. V2/246/RAJ/2016
- 6) Appeal F. No. V2/247/RAJ/2016
- 7) Appeal F. No. V2/40/RAJ/2017
- 8) Appeal F. No. V2/94/RAJ/2017
- 9) Appeal F. No. V2/95/RAJ/2017
- 10) Appeal F. No. V2/245/RAJ/2017
- 11) Appeal F. No. V2/337/RAJ/2017

