

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

दवितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road.



राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142

Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

अपील / फाइल संख्या / Appeal / File No.

V2/25/RAJ/2017

मून आदेश स / OLO, No.

रिसाम /

Date

164/ST/REF/2016

30,11,2016

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

RAJ-EXCUS-000-APP-199-2017-18

आदेश का दिलांक / Date of Order:

30.01.2018

जारी करने की तारीख/

Date of issue:

31.01.2018

कुमार संतोष, आयुक्त (अपील्स), राजकोट दवारा पारित / Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

अपर आयुक्ता संयुक्त आयुक्ता उपायुक्ता सहायक आयुक्त, केन्द्रीय उत्पाद शुस्का सेवाकर, राजकोट । जासनगर । गांधीधास। दक्षरा उपरक्षिकित कारी वा मूल अवदेश से सुजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :-EI 1.M/s. Alak Healthcare Pvt. Ltd., Survey No. 81, Plot No. 16-17, Jungadh Road, Near Lion's School, Jetpur - 360 370,

इस आदेश(अपीज) से व्यक्ति कोई व्यक्ति जिम्लिसिज तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपीज दायर कर सकता है।/ Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

सीमा शुरूक ,केन्द्रीय उत्पाद शुरूक एवं संवाकर अपीत्रीय न्यायाधिकरण के प्रति अपीत, केन्द्रीय उत्पाद शुरूक अधिनियम ,1944 की धारा ७58 के अंतर्गत एवं विकास अधिनियम, 1994 की धारा 86 के अंतर्गत निम्मतिविध+त जरुड़ की जा सकती है ।/ (A)

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 358 of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:

वर्गीकरण सृत्यांकर से सम्बन्धित सभी सामने तीमा गुल्क, केन्द्रीय उत्पादन कुल्क एवं सेवाकर अपीतीय स्वायाधिकरण की विशेष पीठ, वेस्ट भ्लॉक न 2. आर. के. पुरस, नई दिल्ली, को की जानी पाहिए ए (6)

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

उपरांकत परिच्छेद १(a) में बताए गए अपीलों के अलावा शेष तभी अपीले सीमा शुरूक, केंद्रीय उत्पाद शुरूक एवं संशाकर अपीलीय स्वायाधिकाण (शिस्टेट) की पश्चिम शेवीय पीठिकर, . द्वितीय तस, बहुमानी मधन असार्थ अहमदाबाद- ३८००१६ को की जानी पाहिए ए (9)

nch 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

अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पद्ध शुक्त (अपील) निवमावाती, 2001, के नियम 6 के अलगेल निर्धारित किए गये प्रपत्न EA-3 को जार पतियों में दर्ज किया जाना जाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पद्ध शुक्त की मॉन ,क्याज की मॉन और लगाया गया जुम्मेना, क्षण 5 लाख या उससे कम, 5 लाख क्षण या 50 लाख क्षण तक अध्या 50 लाख क्षण से अधिक है तो बनावा 1,000/-क्षणे, 5,000/- क्षणे अथवा 10,000/- क्षणे का निर्धारित जमा शुक्त की प्रति सलक करें। निर्धारित शुक्त का मुगतान, अविधित अपीलीय स्थायाधिकरण की शाखा के महायक रिजेन्टार के नाम से किसी भी साथिजनक क्षेत्र के देक द्वारा जारी रेखांकित केंक शुक्त द्वारा किया जाना थाहिए। सर्वाधिक शुक्त का मुगतान, केंक की उस शाखा में होना थाहिए जल सर्वाधित अपीलीय स्थायाधिकरण की शाखा निर्मा है। स्थानन आदेश (सर्ट ओईर) के (iii) जिए आवेदन-पर के साथ 500/- स्पए का निर्धारित शुस्क जमा करना होगा ४

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Hule 5 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/-

अपोलीय न्यायाधिकाल के समक्ष अपोल, दिला अधिनियम, 1994 की धारा 86(1) के अंतर्गत संवाकर नियमवाही, 1994, के नियम 9(1) के तहत निर्धापित चपत्र S.I.-S में धार प्रतिधों में की जा सकेशी एवं उसके साथ जिल आदेश के विश्व अधील की सभी हो, उसकी पति साथ में सलस्त को (उनमें से एक पति प्रमाणित होगी धाहिए) और इसमें में कम से कम एक पति के साथ, अहां मेंबाकर की साँग, अध्या की साथ और असाधा नंधा तुमील, १९ए 5 तथा या उससे कम 5 तथा पत्र पर था 50 लाख स्पए तक अध्या 50 लाख स्पए है मियक है तो कमक: 1,000/- स्पये, 5,090/-रुपये अध्या 10,000/- श्यये का निर्धापित जमा शुक्त की पति संस्थन करें। लिसीलित शुक्त का मुख्याल, संबंधित अधीलीय स्थायाधिकरण की साखा के सहायक रिजेटार के लाम से किसी भी सार्वजिनक बीच के बैंक दयारा जारी रेखांकित बैंक इस्टर द्वारा किया जाना चाहिए। संबंधित द्वारट का गुम्ताल, बैंक की उस शाखा में होना धाहिए जहां संबंधित अनीलीय स्थायाधिकरण की साखा स्थित है। स्थानत आदेश (मेर्ट अवेडर) के लिए आवेदन-पत्र के साथ 500/- स्थए का निर्धापित शुक्त जना करता होता प्र (8)

The appeal under sub-section (1) of Section 85 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 takes 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 benich of nominated Public Sector Bank of the place where the benich of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-

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- 0) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतरीत दर्ज की गयी अपील, सेवाकर जियमवाली, 1994, के लियल 9(2) एवं 9(2A) के तहत निर्धारित प्रयप 5.7.-7 में की जा सकेगी एवं उसके साथ आयुक्त केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अफैल), केन्द्रीय आयुक्त श्राह्म दवारा पारित आदेश की पतियाँ संतरन को (उनमें से एक पति प्रशाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुक्कर सेवाकर, को अपीलीय न्यासाधिकरण को आदेदन दने करने का निर्देश देने वाले आदेश की प्रति भी लाथ से समस्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुन्क, वेन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीतीय प्राधिकरण (संस्टेंट) के प्रति अपीती के सामन्ते में वेन्द्रीय उत्पाद शुल्क अधिनियम 1944 की विकास पुरस्त के अंतर्गत, जो की जिल्लीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है. इस आदेश के प्रति अधिनियम प्राचित्रपा में अभीन करते समय उत्पाद शुल्करपेया कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुमांना विवादित है, या जुमांना, जब केवल जुमांना विवादित है, का मुमाना किया जाए, बहर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अधिक्षित देव राशि दस करोड़ क्याए से अधिक स हो।

केंग्सीम उत्पाद शुल्क एवं सेवाकर के अतरीत "जान किए नए शुल्का" से जिस्त शासित है

धारा 11 हो 🕸 अंतर्गत राजा

रोनवेट जमा की जी गई गजरा राशि

संगदेर जमा नियमावती के जिस्स 6 के अतर्गत देश रकम 690

- बचर्ते यह कि इस घारा 🛎 प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अधीनीय पाधिकारी के समक्ष विधाराधीन स्थानन अजी एवं अपील करे लागू नहीं होगे।/

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;

tio. amount of erroneous Cenvat Credit taken;

(10) 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.

आरत सरकार की प्रतीक्षण आवेदन : (C)

Revision application to Government of India: इस आदेश की पुनिक्षण वाशिका जिल्लाविकत मामलों में, केटीय उत्पाद शुरूक अधिनियल, 1994 की धारा 35EE के प्रथम परतुक के अंतर्गत अवर संधिय, मानत मुक्तिर, पुनिक्षण आवेदल ईकाई, विरत मंत्रालय, शाजस्य विभाग, घौथी मजिल, जीवन टीप मानत, ससद मार्ग, नई दिल्ली-110001, को किया जाभा सामिए। /

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 liest

यदि मान के किसी नुकसान के नामने में, जहां नुकसान किसी मान को किसी कारखाने हो मंद्रार गृह के पार्गमन के दौरान या किसी अन्य कारखाने या किर किसी एक मंद्रार गृह में दूसरे मंद्रार गृह पार्गमन के दौरान, या किसी मंद्रार गृह में या मंद्रारण में मान के प्रसन्करण के दौरान, किसी कारखाने या किसी मंद्रार गृह में मान के मुकसान के मामने 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 (1)

warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a

- आरत के बाहर किसी राष्ट्र या क्षेत्र की जियोज कर रहे आत के वितिमीण में प्रयुक्त करये मान पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामने में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को जियोज की गयी है। / (ii) 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.
- गाँद उत्पाद शुल्क का भूगताज किए बिजा भारत के बाहर, संपान या मूटान को मान नियाँत किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- सुनिधित उत्पाद के उत्पादन मुख्य के भूगतान के निए जो इब्दी केडीट इस अधिनियम एवं इसके विभिन्न प्राथधानों के तहत मान्य की नई है और ऐसे आदेश जो आयुक्त (अधीन) के द्वारा वित्त अधिनियम (स. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद से पारित किए गए हैं।/ (iv)

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 in passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act. 1998.

उपरोक्त आवेदन की दो प्रतियां प्रपष्ट संस्था EA-8 में, जो की केन्द्रीय उत्पादन शुनक (अपीत) नियमावधी, 2001, के नियम 9 के आनंत विनिर्दिष्ट है, इस आदेश के संपेषण के 3 माह के अनर्गत की जन्ती चाहिए। उपरोक्त आवेदन के लाग मृह आदेश व आगत आदेश की दो प्रतिया ललक की जनी चाहिए। साथ ही केन्द्रीय उत्पाद शुन्क अपिनियम, 1944 की घारा 35-EE के तहत निर्धारित शुन्क की अद्यापी के संक्ष्य के तीर पर TR-6 की प्रति ललक की जानी चाहिए। / (v)

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.

- पुनिक्षण आवेदन के लाथ जिस्लालिकेत जिल्लीरित शतक की अदायशी की आजी धाहिए। अहीं संजयन रकम एक लाख क्यारी या उससे कम ही तो कार्य 200/- का मुगलान किया। जाए और यदि संतरन रकम एक लाख कार्य से ज्यादा हो तो क्यार्य 1000 -/ का शुक्रतान किया जाए। (vi) 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.
- मंदि इस आदेश में कई मूल आदेशों का समाजेश हैं तो पत्र्येक मूल आदेश के लिए शुक्त कर भुगताल, उपयुक्त इस से किया जाना चाहियी। इस तथ्य के होते हुए भी की किया परि करने से कफों के लिए राचारियांत अभीतीय लगायिकाण की एक अभीत या केहींय साकार को एक आवेदल किया जाता है। / in case, if the order covers various numbers of order- in Original, fee for each O.L.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 filled to avoid scriptoria work if excising Rs. 1 lisks fee of Rs. 100/- for each. (D)
- यथासंशोधित न्यायालय शुरूक अधिनियम, 1975, के अनुसूधी-। के अनुसार मूल आदेश एवं स्थगन आदेश की पति पर निर्धारित 6.50 रुपये कर (E) न्यासामय कुन्क दिक्ट लेग होता सहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act.1975, as amended.
- तीमा बुल्क, केन्द्रीय उत्पाद शुल्क एवं तेवाका अपीतीय स्थायाधिकाण (कार्य विधि) नियमावती. 1982 में वर्णित एवं अस्य सकन्धित मामानी को सन्धितित करने वाले नियमों की और भी स्थान आकर्षित किया जाता है। / (F) 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.
- उदय अचीलीय प्राधिकारी को अपील दाखिल करने से संबंधित स्वापक, विस्तृत और संबेशतलम प्रावधानी के लिए, अपीलाधी विभागीय वेबसाइट (G) www.cbec.gov.in 制 改建 初納 表 1 / 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. Alak Healthcare Pvt. Ltd., Survey No. 81, Plot No. 16-17, Junagadh Road, Jetpur-360370 (hereinafter referred to as 'the appellant') filed appeal against Order-In-Original No. 164/ST/REF/2016 dated 30.11.2016 (hereinafter referred to as 'impugned order'), passed by the Assistant Commissioner, Service Tax Division, Rajkot (hereinafter referred to as "the lower adjudicating authority"):



- 2. The brief facts of the case are that the appellant having Service Tax Registration No. AAMCA3375KSD001 engaged in export of healthcare products to various countries filed refund claim for Rs. 1,48,619/- on 20.09.2016 under Notification No. 41/2012-Service Tax dated 29.06.2012, however, vide letter dated 30.09.2016, withdrew claim of Rs. 9,840/- and requested to sanction refund of Rs. 1,38,779/-.
- The lower adjudicating authority vide letter F. No. V/18-3. 109/ST/REF/2016-17 dated 25.10.2016 raised discrepancies in respect of Freight Charges, inland haulage charges, payment in foreign currency and to provide ledger account and contract for the export of the goods. The appellant failed to produce the required details and Show Cause Notice F. No. V/18-109/ST/REF/2016-17 dated 11.11.2016 was issued to them wherein it was proposed to reject refund claim since they failed to produce (a) the copy of details of services received from M/s. MKS Global Logistics India Pvt. Ltd. (b) The contract/agreement for the export of the goods for various Shipping Bills (c) Freight charges for the services received in India (d) Inland Haulage Charges for the services received in India (e) charges in relation to the empty container. The said Show Cause Notice was decided by the lower adjudicating authority vide the impugned order wherein he rejected refund for non submission of documents as well as for service tax paid for the services used beyond the place of removal.
- 4. Being aggrieved with the impugned order, the appellant filed the appeal on the following grounds:
 - a. The lower adjudicating authority erred in rejecting refund claim of Rs. 1,38,779/- for the services pertaining to export of goods.
 - b. The lower adjudicating authority erred in failing to appreciate true import of the submissions filed by them.

5. Personal hearing was attended by Shri Gaurang Sanghavi wherein he reiterated grounds of appeal and also submitted that there is no dispute on export of goods, utilization of services for the export of goods but only that inland haulage charges was being paid for / at the port outside India; that service provider is India, service recipient is in India, Service Tax has been paid, goods have been exported, hence refund of Service Tax paid should

be allowed.

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- 5.1 The appellant submitted further written submission wherein they submitted that they had exported the goods in question and that the expenses incurred pertain to taxable services that have been rendered in connection with the export transactions and hence they filed refund claim; that with effect from 01.07.2012, the negative list has been brought into the statute and services specific classification of services has been done away with in terms of Section 65B(44) of the Finance Act, 1994, as amended; that Notification No. 41/2012 lists down definition of specified services for which refund of Service Tax paid on services used beyond the place of removal; that definition of specified services is very wide and the said services have to be used beyond the lace of removal for the export of the said goods; that it is not the case that the services in question are not specified services or fall within the ambit of excluded services and further have not been used beyond the place of removal.
- 5.2 They contended that they have submitted all the necessary documents vide their letter dated 20.09.2016 as prescribed in Notification No. 41/2012. In their submission dated 08.11.2016, they submitted that there was no export agreement entered into by them with the buyer and that the export order was executed as a part of normal business commercial transaction; that there is no requirement in Notification No. 41/2012 that the export transaction must be preceded by an export agreement; that production of BRC is not mandatory and cannot be insisted upon. The lower adjudicating authority has inserted additional words in the definition of specified services in Notification No. 41/2012; that the Invoice of MKS Global Logistics India Pvt. Ltd. contained the breakup of various taxable services involved along with the Service Tax that had been charged by service provider and invoice clearly specified the Service Tax registration number of the said service provider; that the service provider and service receiver are located in India.

- 5.3 The inland haulage charges of Rs. 9,07,803/- charged by MKS Global Logistics India Pvt. Ltd. pertained to transportation of three 40 feet containers weighing almost 84 tones from Cotonou port to Niamey (Niger) by road; that the lower adjudicating authority has contended that since this particular service has been executed out of India, the same cannot be eligible for refund. The lower adjudicating authority failed to realize that taxable services relating to export would involve execution outside the coastal waters of India, since the same would not even qualify as an export if the services were to be rendered within the geographical boundaries of India. The service provider is located in India who had levied Service Tax on the taxable service, which the appellant had paid. These facts are not in dispute and falls within the ambit of Notification No. 41/2012.
- 5.3 The purpose of Notification No. 41/2012 is to ensure that exporters do not get hit by Service Tax on taxable services rendered with regard to exports subject to the exclusion clause and the services rendered by MKS Global Logistics India Pvt. Ltd. do not fall within that exclusion clause since the same is related to the export consignment and further they had paid Service Tax on the same which is legally justified in terms of Notification No. 41/2012. They place reliance on the following case-laws:
 - 1. KEI Industries Ltd 2017 (11) TMI 01
 - 2. Ganesh Polytex Ltd 2017 (8) TMI 791 CESAT Allahabad
 - 3. Polyplex Corporation Ltd 2015 (38) STR 821

They also submitted that higher appellate forums in various decisions have held that in case of provisions which are beneficial to the assessee, interpretation should be liberally done and such claims should not be denied on technical grounds and they rely on the following judgments:

- Naga Hills Tea Co. Ltd. 89 ITR 236, 240 (SC)
- Kanakasabai 89 ITR 251, 257 (SC)
- Bajaj Tempo Ltd. 196 ITR 188 (SC)
- Poddar Cement P Ltd 1997 226 ITR 625 (SC)
- Shaan Finance P. Ltd.. 1998 231 ITR 308 (SC)
- 6. Vegetable Products Ltd 1973 88 ITR 192

FINDINGS:

I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made during personal hearing. I find 100

that the issue to be decided in the present appeal is as to whether the Service Tax paid by the appellant for services utilized even after port of export is eligible for refund under Notification No. 41/2012-ST dated 29.06.2012 or not?

- I find that Notification No. 41/2012-ST dated 29.06.2012 allows refund of service tax paid on the "Specified Services", which means:
 - (i) in the case of excisable goods, taxable service that have been used beyond the place of removal, for the export of said goods.
 - (ii) in the case of goods other that (i) above, taxable services used for the export of said goods.
- 7.1 I find that appellant has claimed rebate of service tax paid on "Inland haulage charges" up to the port of destination. The appellant has not submitted purchase order of overseas buyer and also not submitted copy of agreement specifying the terms and conditions of export. In absence of these vital documents, it is not possible to decide the veracity of the conditions of export. CBEC has clarified the issue vide Circular No. 999/6/2015-CX dated 28.02.2015 that the refund of Service Tax paid on Services used upto the port of India where from goods exported is allowed. In the present case, it is established that the services received by the appellant are upto the port of destination; that MKS Global Logistics India Pvt. Ltd. has charged Service Tax on amount which pertained to transportation of three 40 feet containers weighing almost 84 tones from Cotonou port to Niamey (Niger) by road as admitted by the appellant also.
- 7.2 I find that the appellant placed reliance on the cases of KEI Industries Ltd. reported as 2017(11) TMI 91-CESTAT NEW DELHI, Ganesh Polytex Ltd reported as 2017 (8) TMI 791- CESTAT ALLAHABAD and Polyplex Corporation Ltd. reported as 2015 (038) STR 821 (Tri.Delhi), wherein, it is held that refund of service tax paid on various services upto port from where only export is allowed and service tax paid on handling charges, inland haulage charges and other documentation charges incurred at the port are allowed. I find that above judgments have disallowed Notification No. 41/2007 dated 06.10.2007 and Notification No. 17-2009-S.T. dated 07.07.2009, and does not discuss Notification No. 41/2012-S.T. dated 29.06.2012 at all and hence not applicable in this case, which involves Notification No. 41/2012 dated 29.06.2012.

- In view of the above facts, I uphold the impugned order and reject the appeal.
- ९.१ अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 9.1 The appeal filed by the appellant is disposed off in above terms.

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(कुमार संतोष) आयुक्त (अपील्स

By Speed Post

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10,	
M/s. Alak Healthcare Pvt. Ltd., Survey No. 81, Plot No. 16-17, Junagadh Road,	मे। अलक हैल्थकेर प्राइवेट लिमिटेड, सर्वे नंबर
	८९, प्लॉट संख्या १६-१७, जूनागढ़ रोड, जेतपुर-
Jetpur-360370	38,0360

Copy for information and necessary action to:

- The Chief Commissioner, GST & Central Excise, Ahmedabad zone, Ahmedabad for his kind information.
- The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
- The Assistant Commissioner, GST & Central Excise Division-II, Rajkot.
- The Superintendent, GST & Central Excise, Range-Gondal.
- 5) Guard File.