



:: प्रधानआयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क ::
O/O THE PRINCIPAL 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: cexappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील / फाइलसंख्या/
Appeal / File No.
V2/95/BVR/2018-19

मूल आदेश सं /
O.I.O. No.
10/REFUND/2018-19

दिनांक/
Date:
4/13/2018

ख अपीलआदेशसंख्या(Order-In-Appeal No.):

BHV-EXCUS-000-APP-077-2019

आदेश का दिनांक /
Date of Order:

11.03.2019

जारी करने की तारीख /
Date of issue:

18.03.2019

कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by ShriKumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवंसेवाकर,
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/ST / GST,
Rajkot/Jamnagar/Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-

Madhu Silica Pvt. Ltd., DU -IV, situated at Plot No.147, Vartej Bhavnagar-364064, .

इस आदेश (अपील) से व्याथत कोई ब्यांके निम्नलोखेत 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 में सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद 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.

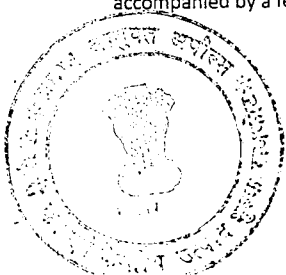
(ii) उपरोक्त परिच्छेद 1(a) में बताया गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 की जानी चाहिए।
To the West regional bench of Customs, Excise & Service Tax Appellate 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) नियमवाली, 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 माँग, ब्याज की माँग 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 रजिस्ट्रार 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 माँग, ब्याज की माँग 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 रजिस्ट्रार 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/



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवली, 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 प्रतियाँ 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.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विनियम 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान विनियम (सं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ों एवं अपील को लागू नहीं होंगे। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) **भारत सरकार कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजन्व 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, जहाँ 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 छूट (रिवेट) 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 क्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं० 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 प्रतियाँ 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 प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साध्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कोई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी 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, 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-I 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-I 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 संबन्धित मामलों को सम्मिलित करने वाले नियमों की और 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, अपीलार्थी 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 ::

M/s Madhu Silica Pvt Ltd, Bhavnagar (*hereinafter referred to as "Appellant"*) filed Appeal No. V2/95/BVR/2018-19 against Order-in-Original No. 10/Refund/2018-19 dated 13.4.2018 (*hereinafter referred to as 'impugned order'*) passed by the Asst. Commissioner, Central GST & Central Excise, Bhavnagar-1 Division, Bhavnagar Commissionerate (*hereinafter referred to as 'lower adjudicating authority'*).

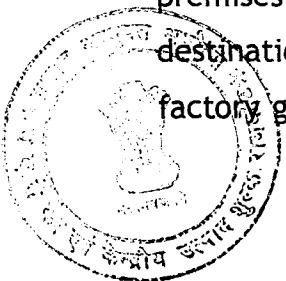
2. The brief facts of the case are that the Appellant was holding Central Excise Registration No. AABCM4381JEM005. During scrutiny of records of the Appellant, it was observed that the Appellant had wrongly availed and utilized Cenvat credit of Service Tax paid on outward transportation of goods used for transportation of finished goods beyond the place of removal. Hence, Show Cause Notices were issued for the period from June, 2011 to July, 2014 and April, 2015 to March, 2016 for recovery of wrongly availed Cenvat credit. The Asst. Commissioner, Central Excise, City Division, Bhavnagar confirmed the demand vide Order-in-Original No. 44 to 48/Excise/Demand/2016-17 dated 27.02.2017.

2.1 Being aggrieved, the Appellant filed Appeals before the Commissioner (Appeals), Rajkot which were decided vide Order-in-Appeal No. BHV-EXCUS-000-APP-111 to 114-2017-18 dated 1.2.2018 in favour of the Appellant.

2.2 Pursuant to aforesaid Order-in-Appeal, the Appellant filed refund claim of Rs. 33,81,559/- before the lower adjudicating authority who sanctioned refund of Rs. 29,44,021/- vide the impugned order but did not sanction refund amount of Rs. 4,37,538/- on the ground that refund for the period January, 2015 to March, 2015 was not covered under Order-in-Appeal *supra* and hence not admissible.

3. Being aggrieved with the impugned order, the Appellant has preferred appeal, *inter-alia*, on the following grounds:-

(i) The Appellant submits that amount of Rs. 4,37,538/- was claimed as refund by relying on the Order-in-Appeal No. BHV-EXCUS-000-APP- 111 to 114-2017-18 dated 02.02.2018 passed in their own case, wherein the Hon'ble Commissioner (Appeals), Rajkot had allowed the Credit of Service Tax paid on the service of outward Transportation of finished Goods from the factory premises to the door step of buyer; as the price of the finished goods were FOR destination and ownership of the goods transferred from seller to buyer at the factory gate of the buyer; hence, the Service Tax paid by the Appellant on GTA



[Handwritten signature]

outward transportation service is available as credit under the provisions of Cenvat Credit Rules, 2004. The Adjudicating Authority has, erred in holding that the period of refund amount is not covered under the aforesaid Order-in-Appeal, for the reason, it appears that the Adjudicating Authority has not examined the admissibility of credit of Service tax paid on the GTA Outward Transportation Service to the Appellant. Therefore, the rejection of refund of Rs. 4,37,538/- is not sustainable in Law.

(ii) The adjudicating authority has not followed the principles of natural justice, as before rejecting any amount of refund claim, the adjudicating authority was required to issue Show Cause Notice and provide reasonable opportunity to the Appellant which has not been done. The impugned order is, therefore, deserved to be set aside.

(iii) That Refund claim of Rs. 4,37,538/-, being Service Tax paid during the period from January,2015 to March,2015, on outward GTA service. The Appellant had availed Cenvat credit of said Service Tax and subsequently reversed under protest from their Cenvat Credit Account vide entry No. 242 dated 8.10.2015, entry No. 243 dated 8.10.2015 and entry No. 217 dated 7.10.2015 duly certified by the Department vide certificate dated 12.5.2017. The Department did not issue any SCN for vacating protest and therefore, the Appellant is eligible for refund of Rs. 4,37,538/- in view of Order-in-Appeal No. BHV-EXCUS-000-APP- 111 to 114-2017-18 dated 02.02.2018.

3.1 In Personal Hearing, Shri R.R. Dave, Consultant appeared on behalf of the Appellant and reiterated the grounds of Appeal and submitted that Rs, 4,37,538/- has been deducted without any basis; that neither SCN was issued nor P.H. notice given to them, thus, principles of natural justice violated; that refund of Rs. 4,37,538/- was to be paid to them as period from January, 2015 to March, 2015 and Commissioner (Appeals) has decided subsequent period from April, 2015 to March, 2016 and law had not changed during January, 2015 to March, 2015; that Cenvat credit of Service Tax on GTA was reversed under protest and hence refund is not time barred; that the case may be remanded.

Findings:-

4. I have carefully gone through the facts of the case, the impugned order, and written submissions made by the Appellant. The issue to be decided in the present appeal is whether the impugned order rejecting refund claim of Rs. 4,37,538/- is correct, legal and proper or not.



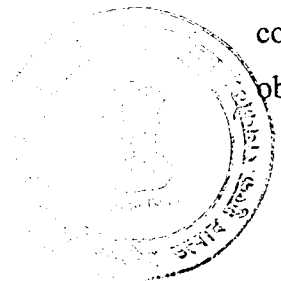
[Handwritten signature]

5. I find that the lower adjudicating authority sanctioned refund claim of Rs. 29,44,021/- but rejected refund of Rs. 4,37,528/- on the ground that refund for the period January, 2015 to March, 2015 was not covered under Order-in-Appeal No. BHV-EXCUS-000-APP-111 to 114-2017-18 dated 1.2.2018. The Appellant has contended that the adjudicating authority has not followed the principles of natural justice, since before rejecting any amount of refund claim, the adjudicating authority was required to issue Show Cause Notice and provide reasonable opportunity to the Appellant which has not been done.

5.1 I find that it is evident from the impugned order that neither show cause notice was issued nor opportunity of personal hearing was granted to the Appellant before rejecting the refund claim of Rs. 4,37,538/-. I find that issuance of Show Cause Notice and granting of personal hearing are obligatory procedure before passing quasi-judicial order. Having failed to do so, the rejection of refund claim has to be considered as violation of the principles of natural justice. I rely on the judgment of the Hon'ble Madras High Court in the case of Vasta Bio-Tech Pvt. Ltd. reported as 2018 (360) E.L.T. 234 (Mad.) wherein it has been held as follows :-

“5. The petitioner's case is that, had a show cause notice been issued to them, they would have explained to the Authority, as regards the discrepancies between the imported goods and the sale invoice, and would have extended full cooperation, and to the said effect, the reply affidavit has been filed to justify their stand. Since the partial rejection of the petitioner's claim for refund results in civil consequence, the principles of natural justice demands that the petitioner be afforded an opportunity. The explanation sought to be given by the respondent, in Para No. 10 of the counter affidavit cannot be countenanced, as the statute does not put a bar for an opportunity being granted, and if statute is silent, then, principles of natural justice has to be read into the statute, so that the assessee has reasonable opportunity to put forth this case.

6. Hence, for the above reasons, the petitioner is directed to treat the impugned order-in-original, insofar as it rejects the petitioner's claim for refund of Rs. 1,85,586/- is concerned, as show cause notice, submit their objections within a period of 30 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the authorized representative of the petitioner and consider the case, as projected by the petitioner and examine as to whether they are entitled for refund of balance amount of Rs. 1,85,586/-. The above direction shall be complied with, within a period of 60 days from the date of receipt of the objections.

7. Accordingly, the Writ Petition stands disposed of. No costs.”

(Emphasis supplied)

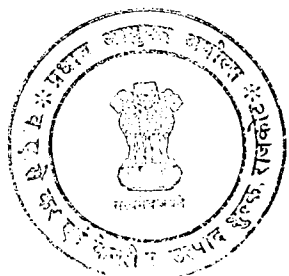
5.2 I also find that lacunae left in observance of principles of natural justice can be cured only by the original authority who flouted it as has been held by the Hon'ble CESTAT in the case of Jagir Singh reported as 1987 (28) ELT 521 (Tri), wherein it has been held that,

“9. A perusal of the said authorities would show that the ratio of all the decisions is that deficiencies of natural justice before trial Tribunal cannot be cured in subsequent proceedings. In other words, if the opportunity to defend is not afforded by the trial Tribunal, the affording of the opportunity to defend by the Appellate Court in subsequent proceedings would not cure the deficiency of natural justice which was not granted by the trial court. There can be no quarrel with the said ratio. On the other hand, all the courts including this Tribunal have cherished the said principle of law as and when occasion arose and whenever it was found that an opportunity to defend was not afforded by the trial Tribunal the case was always remanded to the trial Tribunal itself to decide the case *de novo* after affording the reasonable and proper opportunity, to defend. To quote, in the case of *Rohit Mehra and Others v. Collector of Central Excise and Customs, Chandigarh*, supra the Tribunal in fact remitted back the case to the Collector of Central Excise & Customs for deciding the case in the light of the observations made therein. In the instant case also when the appellant filed his appeal against the order of the lower Appellate Authority, that is to say, the Board's Order No. 65-67 of 1982 dated 8-2-1982 confirming the Order-in-Original No. 7/CUS/81, dated 7-7-1981 and complained that he was not given an opportunity to prove his case regarding the ownership of the contraband gold in question, this Tribunal immediately set aside that part of the order which related to the ownership of the gold and remanded the case to the Adjudicating Authority itself, that is to say, to the Trial Tribunal and not to the lower Appellate Authority. Thus, in our considered opinion the contention raised and the cases cited as aforesaid have no relevancy to the instant case.”

(Emphasis supplied)

5.3 In view of above, it is evident that the deficiency crept in at the stage of lower adjudicating authority cannot be cured or set right by this appellate authority.

6. In view of above, I have no option but to set aside the impugned order and to remand back the matter to the lower adjudicating authority, who shall pass appropriate orders after complying with the principles of natural justice



[Handwritten signature]

and giving reasonable opportunity to the Appellant to explain their case.

7. I, therefore, set aside the impugned order and allow the appeal by way of remand.

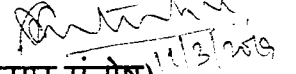
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

8. The appeal filed by the Appellant is disposed off as above.

सत्यापित,



विपुल शाह
अधीक्षक (अपील्स)


(कुमार संतोष) 11/3/2019

प्रधान आयुक्त (अपील्स)

By R.P.A.D.

To,
M/s Madhu Silica Pvt Ltd,
Plot No. 147,
GIDC Vartej,
Bhavnagar.

सेवा में,
मे. मधु सिलिका प्राइवेट लिमिटेड
प्लॉट न. 147, जीआईडीसी वरतेज,
भावनगर।

प्रतिलिपि :-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।





]

