:: प्रधानआयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर 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.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date:
	V2/100/BVR/2018-19	BHV-EXCUS-000-JC-062-2017-18	3/25/2018

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

BHV-EXCUS-000-APP-103-2019

आदेश का दिनांक / Date of Order:	09.04.2019	जारी करने की तारीख / Date of issue:	09.04.2019

श्री कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Kumar 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 :-
M/s Ultratech Cement, P.O. Kovaya, Tal: Rajula Dist: Amreli-365560 Sihor, Bhavnagar-364240.

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) वर्गीकरणमूल्यांकनसेसम्बन्धितसभीमामलेसीमाशुल्क,केन्द्रीयउत्पादनशुल्कएवंसेवाकरअपीलीयन्यायाधिकरणकीविशेषपीठ,वेस्टब्लॉकनं2,आर.के. पुरम,नईदिल्ली,कोकीजानीचाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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 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 क्रमश: 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 सार्वजिनक 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 dutydemand/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,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में 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 क्रमश: 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 सार्वजिनक 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 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 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 Commissionerauthorizing 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 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, बशर्ते 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" मे 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 वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लाग 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 मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए! /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में!/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(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 (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट 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 है!/
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 ।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 आदेशो 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 नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है ! / In case, if the order covers variousnumbers 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 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 टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-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 आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, 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 Ultratech Cement Ltd, Kovaya, Taluka Rajula, District Amreli (*hereinafter referred to as* "Appellant") filed Appeal No. V2/100/BVR/2018-19 against Order-in-Original No. BHV/EXCUS/000-JC-062-2017-18 dated 25.3.2018 (*hereinafter referred to as* 'impugned order') passed by the Joint Commissioner, Central GST & Central Excise, Bhavnagar (*hereinafter referred to as* 'lower adjudicating authority').

2. The brief facts of the case are that the Appellant was engaged in manufacture of Cement and Cement Clinker and holding Central Excise Registration No. AAACL6442LXM007 and Service Tax Registration No. AAACL6442LST010. The Appellant had filed claim for Service Tax refund of Rs. 69,93,112/- under Notification No. 41/2012-ST dated 29.6.2012 in respect of services used for export of goods during the period from July, 2013 to September, 2013. The Dy. Commissioner, Service Tax Division, Bhavnagar sanctioned refund of Rs. 69,81,062/- and rejected refund of Rs. 12,050/- vide Order-in-Original No. R/78/2013 dated 31.12.2013.

2.1 The Department felt that refund sanctioned vide Order-in-Original *supra* was not admissible to the Appellant inasmuch as services for which refund was claimed were not utilized beyond the place of removal and refund was not sanctioned in compliance with the provisions of clause 3(b) of Notification No. 41/2012-ST dated 29.6.2012 and hence, Show Cause Notice No. V/Adj-28/Stax/Div/2015-16 dated 16.5.2015 was issued to the Appellant calling them to show cause as to why refund of Rs. 69,93,112/- sanctioned erroneously to them should not be held inadmissible and recovered from them under the provisions of Section 73 of the Finance Act, 1994 (hereinafter referred to as "Act") along with interest under Section 75 of the Act.

2.2 The Show Cause Notice was adjudicated vide the impugned order which held that refund was not admissible in view of clause 3(b) of Notification No. 41/2012-ST dated 29.6.2012 and hence, liable to be recovered under Section 73 of the Act along with interest under Section 75 of the Act.

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

(i) The impugned order is a non speaking order as the adjudicating authority has overlooked written as well as oral submissions made by them.

(ii) The SCN dated 16.6.2015 proposing recovery of refund sanctioned earlier was issued without challenging Order-in-Original No. R/78/2013 dated

31.12.2013 granting the refund to them and hence, the impugned order is not sustainable in view of the principles of *res judicata*. As the Department had not challenged Order-in-Original dated 31.12.2013 in higher appellate forum, it attained finality and therefore, the Department cannot reopen the concluded proceedings and relied upon following case laws:

(a) Madurai Power Corporation (P) Ltd - 2008(229) ELT 521
(b) Eveready Industries Ltd - 2016(337) ELT 189
(c) Panyam Cement and Minerals Ltd - 2016 (331) ELT 206

(iii) The adjudicating authority has erred in interpreting clause 3(b) of Notification No. 41/2012-ST dated 29.6.2012. If the interpretation of the adjudicating authority is sustained then very purpose of the Notification to grant rebate of service tax paid on the taxable services received by the exporter and used for export would fail and exporter will not get benefit of this Notification; that such an interpretation would deny refund in all such cases where exporter has paid service tax on reverse charge basis which cannot be intention of the Notification and relied upon case law of Bharat Heavy Electricals Ltd - 2016 (11) TMI 1350 -CESTAT New Delhi.

(iv) An interpretation which leads to redundancy of a portion of statute cannot be accepted. The Notification's opening words provide that rebate shall be granted to services received by the exporter and used for export of goods; that clause 3(b) is not applicable to rebate under clause 1(b);that Appellant could have availed Cenvat credit of service tax paid instead of claiming refund of service tax paid on reverse charge basis and only because they exercised latter option, they cannot be denied substantive benefit.

(v) The exemption notification is required to be construed strictly at the stage of determination whether the assessee falls within its terms or not and once the provisions are applicable, full effect must be given.It is not disputed that the services for which the Appellant had claimed refund of service tax under notification ibid was used for export of goods. Hence, the Appellant falls within the gamut of Notification ibid whose stated purpose is to grant refund of service tax on services used for export and relied upon case law of Wood Papers Ltd - 1990 (47) ELT 500.

3.1 In Personal Hearing, Shri Chitrartha Gupta, Advocate appeared on behalf of the Appellant and reiterated the grounds of Appeal and submitted compilation of case laws to say that the goods have been exported and that the services have been used for export of these goods; the payment of service tax by them under reverse charge mechanism has also not been disputed by the Department; that in such case, the refund should be allowed to them but

rejected on technical grounds; that any reading of notification in such a way to deny the benefit and to make notification redundant cannot be allowed as held by the Apex Court in many cases including 2012(286) ELT 485 (SC); that Hon'ble Madras High Court has also held that instead of issuing demand notice under Section 11A, the Department is required to follow Section 35E i.e. to file appeal against the order; that this appeal should be allowed in view of facts of the case and as per existing case laws.

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 case is whether the Appellant is eligible for refund under Notification No. 41/2012-ST dated 29.6.2012 or not.

5. On going through the records, I find that the claim filed by the Appellant under Notification No. 41/2012-ST dated 29.6.2012 for refund of service tax paid on services utilized for export of goods was sanctioned on 31.12.2013 but subsequently, the lower adjudicating authority held vide the impugned order that since the Appellant had discharged service tax on reverse charge mechanism, the Appellant is not eligible for refund in view of clause 3(b) of Notification *ibid* and ordered for recovery of sanctioned refund under Section 73 of the Act.

6. I find that it is not disputed that the Appellant had availed and utilized services for export of goods and discharged service tax on reverse charge mechanism. The Appellant has been held ineligible for refund under Notification No. 41/2012-ST dated 29.6.2012 by virtue of clause 3(b) of Notification ibid. I find it is pertinent to examine clause 3(b) of Notification No. 41/2012-ST dated 29.6.2012, which is reproduced as under:

> "(b) the person liable to pay service tax under section 68 of the said Act on the taxable service provided to the exporter for export of goods shall not be eligible to claim rebate under this notification;"

6.1 The above provisions debars service provider to claim rebate under Notification *ibid*. In the present case, the Appellant was recipient of the services who utilized said services for export of goods. The Appellant paid Service Tax on reverse charge mechanism under Section 68(2) of the Act. The Appellant has not provided any services for export of goods. Hence, the phrase *"the person liable to pay service tax under section 68 of the said Act on the taxable service provided to the exporter for export of goods"* contained in clause 3(b) above

does not cover the Appellant. In my considered view, the lower adjudicating authority has erred in covering the Appellant under clause 3(b) when it is on record that the Appellant has not provided any services. Merely because the Appellant was liable to pay service tax under Section 68(2) of the Act, being recipient of service, their case would not get covered under clause 3(b). Such an interpretation would make Notification *ibid* redundant. I find that the very purpose of issuance of Notification No. 41/2012-ST dated 29.6.2012 is to grant rebate of service tax paid on the services availed and utilized for export of goods. The intention of the legislature is very aptly reflected in the opening paragraph of Notification *ibid*, which is reproduced as under:

> " ... the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby grants rebate of service tax paid (hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods ... ..."
>
> (Emphasis supplied)

6.2 I rely on the order passed by the Hon'ble CESTAT, New Delhi in the case of Bharat Heavy Electricals Ltd reported as 2017 (49) S.T.R. 81 (Tri. - Del.), wherein it has been held that,

> "9. The present dispute is with reference to the claim of refund made by the appellant under Notification No. 41/2012-S.T., dated 29-6-2012. The claims stand rejected for the service tax paid on GTA, used by the appellant for the transport of export goods from the factory to the port of export. The rejection by the authority below is on the basis of the Clause 3(b) reads as follows :
> "3. the rebate shall be claimed in the following manner, namely :-
> (a) ....
> (b) the person liable to pay service tax under Section 68 of the said Act on the taxable service provided to the exporter for export of goods shall not be eligible to claim rebate under this notification;"
>
> 10. The appellant being the receiver of the GTA service was required to pay the service tax on reverse charge basis. In terms of Clause 3(b) since the appellant is the person liable to pay the service tax, in this case, the view taken is that claim of rebate of such service tax is not admissible. The argument of the appellant is that the rebate should be paid inasmuch as the service of GTA has been used for export of goods by the appellant even though condition of 3(b) is against them. Their submission is that the exemption notification is required to be construed strictly at the stage of determination whether assessee falls within its terms. But once the provision is applicable to him, full effect must be given to it. They have relied upon the following decisions of the Hon'ble Supreme Court to support the argument :-
> 1. UOI v. Wood Papers Ltd. [1990 (47) E.L.T. 500 (S.C.)];
> 2. Novapan India Ltd. v. CCE [1994 (73) E.L.T. 769 (S.C.)];
> 3. CCE v. Malwa Industries [2009 (235) E.L.T. 214 (S.C.)].
>
> 11. It is also their submission that the notification gives two options for claiming the rebate for service tax on services used for export. In the option available at Clause 1(b) the rebate is payable on the basis of Schedule A annexed to the notification. It is to be noted that the condition specified in Clause 3(b) is not applicable to the rebate under Clause 1(b). This brings about the situation in which the appellant themselves could have claimed a lesser amount of refund under Clause 1(b). They could have also availed the Cenvat

credit of the service tax paid on GTA. However, they chose to make their claim under Clause 3(b) which stands denied.

12. The Notification No. 41/2012-S.T. has been issued in terms of Section 93A of the Finance Act, 1994. The notification provides for grant of rebate by way of refund of the service tax paid on the specified services used for export of goods. It is nobody's case that the GTA services for which the appellant has claimed rebate of service tax under the notification has not been used for export of goods. Consequently, there is no doubt that the appellant falls within the gamut of the notification whose stated purpose is to grant refund of service tax on services used for export. In terms of the decisions of the Hon'ble Supreme Court cited above, once it is determined by strict means that the appellant will be eligible for the benefit of the notification, it is necessary to interpret the wording of the notification so as to achieve the purpose and object for which the notification has been issued. Apex Court in the case of CCE v. Malwa Industries (supra) has held as under :

"20. We, as noticed hereinbefore, have no quarrel with the proposition that exemption notification should be construed strictly which means that benefit thereof should not be granted to one, who is not entitled therefor. But it is also true that those who are entitled to the benefit cannot be deprived therefrom by taking recourse to the doctrine of narrow interpretation simplicitor, although the purpose and object thereof would be defeated thereby."

If the view taken by the authorities below were to be upheld, the person such as the appellant, who has exported the goods and used certain services for the same, and for whose benefit the Notification No. 41/2012-S.T. has been issued in the first place, will not get the benefit. A literal interpretation of Clause 3(b) would deny such refunds, in all those cases where the exporter has paid service tax on reverse charge basis. Such an interpretation would also render the notification to be useless in all such reverse charge cases. Clearly this cannot be the intention of the Govt. in issuing the notification.

13. It is not in dispute that the service tax was paid by the appellant and such services have been used for export of the goods by the appellant. Consequently, I am of the view that rebate under Notification No. 41/2012-S.T. is required to be paid to the appellants.

14. In line with the above discussion, I set aside the impugned order with consequential relief to the appellant."

(Emphasis supplied)

7. In view of the above, I hold that the Appellant's case is not covered under clause 3(b) of Notification *ibid* and the Appellant is eligible for refund of service tax paid on services used for export of goods under Notification No. 41/2012-ST dated 29.6.2012.

8. I, therefore, set aside the impugned order and allow this appeal.

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

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

सत्यापित,

विपुल शाह
अधीक्षक (अपील्स)

(कुमार संतोष)
प्रधान आयुक्त (अपील्स)

By R.P.A.D.

To, M/s Ultratech Cement Ltd, Village: Kovaya, Taluka: Rajula, District: Amreli.	सेवा में, मे॰ अल्ट्राटेक सीमेंट लिमिटेड, कोवाया, तालुका राजुला, जिल्ला अमरेली।

प्रति:-

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) सयुंक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।