



::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

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील / फाइलसंख्या/
Appeal / File No.
V2/126/BVR/2018-19

मूल आदेश सं /
O.I.O. No.
R/01/2018-19

दिनांक/
Date:
8/5/2018

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

BHV-EXCUS-000-APP-106-2019

आदेश का दिनांक /
Date of Order:

03.05.2019

जारी करने की तारीख /
Date of issue:

06.05.2019

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 एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

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

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

M/s Reliance Naval and Engineering Ltd., Pipavav Port., Post: Uchhaiya, Via: Rajula Bhavnagar.

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण, मूल्यंकन से 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 बताए गए अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 का की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii)

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of 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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/

- (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 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) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेम्पेट) 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 जमाने वाले अर्द्धित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "दुता किरा गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की गयी रकम राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान विन्तीय (नं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। /
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 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 कोपनरीक्षण 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, 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 टिनिभाण में प्रयुक्त कच्चे माल पर भरी गई 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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्यूटीट 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 समयावधि पर या बाद में पारित किए गए हैं। /
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में 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 पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-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 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 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.

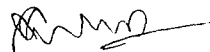
:: ORDER IN APPEAL ::

M/s .Reliance Naval and Engineering Ltd (earlier known as Reliance Defence and Engineering Ltd, Pipavav Port, Post – Ucchaiya, Via – Rajula Dist:- Amreli, PIN 365560 (hereinafter referred to as “the appellant”) have filed the appeal against the Order-in-Original No. R/01/2018 dated 8.5.2018 (hereinafter referred to as “the impugned order”), passed by the Assistant Commissioner, Central GST Division, Bhavnagar-III (Amreli), Bhavnagar (hereinafter referred to as “the lower adjudicating authority”).

2. Brief facts of the case are that the appellant, filed refund claim under Notification No. 12/2013-ST dated 01.07.2013 (hereinafter referred to as “the said notification”) for the service tax paid to service providers for the specified services used in authorized operations of Special Economic Zone established under the Special Economic Zone Act,2005 for the period from April, 2016 to September,2016. The Assistant Commissioner, Service Tax Division, Bhavnagar vide refund order dated 24.3.2017 rejected refund of Rs.47,42,664/- on various grounds. The appellant preferred appeal against this order dated 24.3.2017, which was decided vide Order-in-Appeal No.BHV-EXCUS-000-APP-105-2017-18 dated 30.1.2018 wherein matter of refund of Rs.13,80,362/- was remanded back for decision on merits and refund of Rs.31,05,620/- was allowed. The lower adjudicating authority vide the impugned order sanctioned refund of Rs.31,05,620/- (Rs.28,91,503/- +Rs.2,14,117/-) but rejected refund of Rs.13,80,362/-.

3. Being aggrieved, the appellant has preferred the present appeal against the impugned order for rejection of refund of Rs.13,80,362/- on the following grounds:-

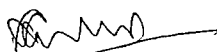
(i) Refund of Rs.10,03,453/- in respect of Query Sr No. 21 to 23, 25,27,,37 to 49, 52 to 54, 60 to 65, 74 to 76, 73A, 75A, 76A, 79, 80,88 of Query table is not time barred as because the appellant had made payments in instalments to service providers that too with lump sum amount for the invoices and considered last payments as payment of service tax so as to fulfill other conditions including time limit of one year from the date of payment of service taxa as per the clause (e) of Paragraph 3 (iii) of the said notification; that that department raised query for such payments vide letter dated 17.2.2017 but failed to take note of the provisions of Notification No.12/2013-St dated 1.7.2013 as amended especially clause (d) (e) and (f) of Para 3III; that as per



clause (d), the amount indicated in invoice including the service tax payable thereon shall have been paid to the person liable to pay the service tax thereon; that as per clause (e), the refund claim shall be filed within one year from the end of the month in which actual payment of service tax was made to the service provider and as per clause (f), the SEZ unit shall submit only one claim of refund under this notification for every quarter; that in the business, practically it was impossible to fulfil all the three procedure and conditions; that payments are made to service provider on lumpsum basis; that in cases of continuous services, payments are made without referring specific invoice; that for this very reason in clause € it is provided that AC/DC shall permit to file refund claim beyond one year within extended time; that if the interpretation made by the lower adjudicating authority is considered as true then provisions of other become redundant.

(iii) As regards Refund of Rs.3,76,909/- in respect of query No. 18,24,28 to 36, 50,51,55 to 57,77, 82 to 87 and 105 of site claim, Appellant submitted that actual claim of Refund of Rs.15,450/- in respect of Query Sr No. 105 and not Rs.1,54,450/- and hence rejected refund claim of 3,76,909/- is in fact rejection of Rs.2,37,909/- and hence, total refund claim rejected is 12,41,362/- as against 13,80,363/-; that time limit of one year is not statutory time limit like Section 11B of the Central Excise Act, 1944 but Assistant Commissioner has power to grant the extension under the clause (e) of Para 3 of the Notification No.12/2013-St dated 1.7.2013; that as per Para III-3(e) the assistant commissioner is duty bound to permit filing of refund claim beyond one year as the word "shall" is used before the word "permit"; that appellant has requested for condonation of delay to the lower adjudicating authority vide their letters dated 27.2.2017 and 15.3.2018 on the ground that same was cause due to change of management from M/s. Pipavav defense to M/s. Reliance defense and hence documents could not be traced out on this transition period. that even if he was not satisfied with the explanation of the appellant, he ought to have issued SCN in the interest of justice before rejecting the claim.; that the lower adjudicating authority should have permitted the request of condonation of delay in respect of refund of Rs.12,41,362/-. Appellant relied upon order of the Hon'ble CESTAT in the case of M/s. APK Identification reported as 2012 (27)STR 20 (Tri-Del) .

4. Personal hearing in the matter was attended to by Shri P.D. Rachchh, Advocate, on behalf of the Appellant, and reiterated the grounds of appeal and stated that the lower adjudicating authority is not even considering their request and just simply rejecting the refund; that the impugned order is illegal and has



been issued without application of mind.

FINDINGS

5. I have carefully gone through the facts of the case, the impugned order, the grounds of appeal and written as well oral submissions during personal hearing. The issue to be decided is whether the impugned order is correct in rejecting the refund of Rs.12,41,362/- during *de novo* proceedings or not?

6. The appellant has pointed out that matter was remanded back by the Commissioner (Appeals), Rajkot vide OIA dated 30.01.2018 to the lower adjudicating authority to decide refund of Rs.12,41,362/- (Rs.10,03,453/- + Rs.2,37,909/-) on time bar issue. I find that the direction given at Para 8.3 of the OIA. The direction at Para 8.3 was given in continuation of findings at Para 8 to 8.2 in general and Para 8.2 in specific. For the ease of reference and proper understanding Para 8 to 8.3 of the said OIA are reproduced as below:-

"8. The appellant has contended rejection of Refund of Rs.13,80,362/- as time barred on the ground that the time limit of one year can be extended. They heavily relied upon the terminology of the notification, which uses the word 'shall' in respect of powers of extension of time limit delegated to the Assistant Commissioner or Deputy Commissioner. The appellant stated that Refund claim is not time barred as they have made the payment in two or more installments to the service provider; that they made lump sum payment in parts and payment is not made invoice wise at one go and refund was claimed considering the last and final installment. The appellant also submitted that due to change in management and transfer of statutory records/ document / invoice from M/s. Pipavav defense and Offshore Engineering Company Limited to M/s. Reliance Defense Engineering Limited they could not file refund claim in time and had requested the adjudicating authority for condonation of delay. I observe that the appellant, while accepting the delay, has contended that the benefit should not be denied in absence of substantial grounds. I find that the adjudicating authority has summarily rejected the request for condonation of delay without assigning any reasons. The adjudicating authority has summarily rejected the request for condonation of delay without assigning any reasons. The adjudicating authority has not recorded any valid reason for rejecting the request. I find that Para 3(e) of the Notification 12/2013-ST reads as under:-

"(e)the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central excise, as the case may be, shall permit;"

(emphasis supplied)

8.1 It can be seen from above that the Assistant Commissioner or Deputy Commissioner 'shall' permit the period of extension to file the claim. Thus, discretion vested is made compulsive in nature by using word "shall" and exercise of power is desired and it also implies that reasons have to be recorded for any decision. I also find that the decision in the matter of M/s. APK Identification reported as 2012 (27) STR 20 (Tri-Delhi) relied upon by the appellant is identical and is in favour of the



appellant wherein Hon'ble CESTAT has, inter-alia, held that adjudicating authority was expected to exercise that power unless there is a reason for not exercising such power. Relevant portion of the judgment is reproduced as under:-

"4. Considered the arguments of both sides. I do not agree with the argument that the time-limit under Notification dated 1-3-2011 cannot be made applicable to the claims filed before that date and pending on that date. I also consider the fact that even under the earlier notification, the Deputy Commissioner had power to condone the delay. The delay involved was only 17 days and when a public authority is given any power, he is expected to exercise it unless there is a reason for not exercising such power. No reason has been recorded in the impugned order. In the facts and circumstances of the case, I consider that this a case where he should have considered the claim as per the proviso of Notification No. 17/2011-S.T, dated 1-3-2011 which was in force on the date when he issued the order. I hold that the claims are not time-barred and the matter is remanded to the adjudicating authority to decide the case afresh, on the merits of the claim."

(Emphasis supplied)

8.2 The adjudicating authority in his order did not attribute any reason for rejecting the refund of the appellant. I find considerable force in the appellant's claim in absence of any recorded reasons in the impugned order where refund claim is otherwise admissible to the appellant in relation to the different set of services used for manufacture of exported goods. I am of considered view that the appellant can not be deprived of their legitimate benefit of refund for the payments made where export of goods, utilization of services and payment of tax are not disputed. I rely order of the Joint Secretary (RA), Government of India in the case of M/s. Modern Process Printers reported as 2006 (204) ELT 0632 wherein it was inter-alia held that:-

"6.3...

..... In fact, as regards rebate specifically, it is now a trite law that the procedural infraction of Notification/Circulars etc, are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned.

....."

8.3 I, therefore, hold that the adjudicating authority needs to re-examine the facts on record to arrive at the decision and hence, I remand the matter of refund of Rs.13,80,362/- back to the jurisdictional adjudicating authority who will consider all facts of this part of the refund claim and decide on merits afresh.

...

...

...


11. In view of the above facts and circumstances, I allow appeal for refund of, refund of Rs.13,80,362/- by way of remand to be decided afresh as per Para 8 to 8.3, refund of"

7. I find that the lower adjudicating authority has given emphasis on Para 8 to 8.3 but did not consider the direction given at Para 11 that matter is remanded to decide the matter afresh as per Para 8 to 8.3 and has rejected

refund of Rs.13,80362/-. Vide 8.3, the lower adjudicating authority was directed for decision on merits after condonation of delay as held at Para 8.2 of the OIA wherein it was held that the lower adjudicating authority was required to exercise power vested at Para 3 (e) of the said notification to condone delay in filing of refund claims. I find that the condonation of delay in this case is required to be essentially granted as per Clause (e) of Para 3 of Notification No. 12/2013-ST dated 1.7.2013. I, therefore, find merit in the appellant's argument that the lower adjudicating authority has erred in interpreting and implementing the directions of the OIA. I, thus, hold that the delay in filing refund is required to be condoned in terms of Para 3(e) of the said notification. Accordingly, I hold that refund of Rs. Rs.12,41,362/- was required to be sanctioned after condonation of delay in filing refund.

8. Thus, I set aside the impugned order and allow the present appeal for refund of Rs.12,41,362/- with consequential relief, if any.

९. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal of the appellant is disposed off in above terms.


31/5/2019
(कुमार संतोष)
प्रधान आयुक्त (अपील्स)

पंजीकृत डाक द्वारा
सेवामे,

M/s Reliance Naval and Engineering Ltd (Earlier M/s.Reliance Defence and Engineering Ltd) Post:- Uchhaiya, Via- Rajula, Dis: Amreli 365560.	मे रिलायंस नेवल एण्ड इंजिनेरिंग कंपनी ली। पोस्ट :- उछिया वाया - राजुला जिला :- अमरेली ३६५५६०
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प्रति,

- १ प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- २ आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु ।
३. सहायक आयुक्त, केन्द्रीय वस्तु एवं सेवा कर मंडल भावनगर -III, भावनगर को तुरंत आवश्यक कार्यवाही हेतु।
४. गार्ड फाइल

11

