

(i) विन अधिनियम, 1994 की धारा 36 की उप-धाराओं (2) एवं (2A) के अंतर्गत वस्तु की गयी अपील, सेवाकर विनियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.O.-7 में की जा सकने वाले अन्य मामलों, अर्थात् उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियां संलग्न कर (जिनमें से एक प्रति अनुसूचित क्षेत्रीय अधिकारी) और आयुक्त द्वारा महायुक्त आयुक्त अथवा उप-युक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन करने के लिए प्रेषित करने वाले आदेश की प्रती की साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 36 of the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise / Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (संलग्न) के प्रावधानों के माध्यम से 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 करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब तक कि अनुसूचित क्षेत्रों में निर्धारित है, या जहां, जब तक कि अनुसूचित क्षेत्रों में निर्धारित है, का भुगतान किया जाए, वरन् कि इस धारा के अंतर्गत जमा की जाने वाली अतिरिक्त देय राशि का भुगतान इस प्रकार के अधिकतम राशि के अंतर्गत किया जाए, वरन् कि इस धारा के अंतर्गत "समाहित उत्पाद शुल्क" में निम्न शामिल है

- (i) धारा 11 की अंतर्गत रकम
- (ii) सेलवेट जमा की गई रकम राशि
- (iii) सेलवेट जमा नियमावली के नियम 3 के अंतर्गत देय रकम

- वरन् कि इस धारा के अंतर्गत विनियम (नं. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन अथवा अज्ञात 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 (b);
- (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 कोपरीक्षण आवेदन :
Revision application to Government of India:

इस आदेश की कोपरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के अंतर्गत नए आवेदन पत्र, भारत सरकार, कोपरीक्षण आवेदन एकाई, विन मंत्रालय, गणराज्य भवन, नया दिल्ली, भारत, जहां नया भवन, संसद भवन, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1994 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 से 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 द्विनिर्माण 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 कस्टोम ब्रॉडर इस अधिनियम एवं इसके द्विभिन्न प्रावधानों के तहत माल्य की गई है और जिसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई गयीय अथवा नमायादिष्टि 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 द्विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल 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 साथ-साथ TR-6 की प्रती 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.

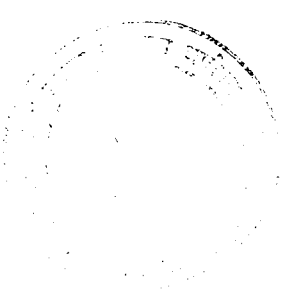
(vi) कोपरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहां सेलवेट रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि सेलवेट रकम एक लाख रुपये से अधिक हो तो रुपये 1000 -/ का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त दृश्य में किया जाना चाहिए। इस साथ के होते हुए भी की लिखा पढी कार्य में वचन के लिए कथानिश्चि अपीलीय न्यायाधिकरण को एक अपील के केन्द्रीय सरकार को एक आवेदन किया जाना 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scrippitonic work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश पर स्वयं आदेश की प्रती पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा जाना 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 बर्णित एवं अन्य संबंधित 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 in the Customs, Excise and Service Appellate Tribunal (Procedural) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित अधिकार, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलीय विस्तारों वेबसाइट www.cbcc.gov.in का देखें नाला है। / 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.cbcc.gov.in



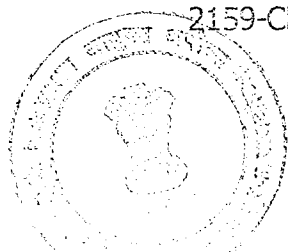
ORDER-IN-APPEAL

M/s. Saurashtra Calcine Bauxite & Allied Ind Ltd, "Shreeji Chambers", 3rd Floor, P.O. Box No. 55, Opp. MEM School, Porbandar (hereinafter referred to as "the Appellant") have filed below mentioned two appeals against the Orders-In-Original (hereinafter referred to as "the impugned orders") passed by the Assistant Commissioner, Central GST Division, Junagadh (hereinafter referred to as "the lower adjudicating authority").

Sr. No.	Appeal No.	Order-in-Original No. & Date	Amount of Refund rejected (Rs.)
1	2	3	4
1	V2/130/BVR/2018-19	REFUND/ 77/AC JND/2017-18 dated 21.3.2018	3,66,219/-
2.	V2/131/BVR/2018-19	REFUND/75/AC JND/ 2017-18 dated 21.3.2018	3,77,410/-

2. The brief facts of the case are that the appellant had filed refund of service tax paid on the taxable services, used for export of goods, under Notification No. 41/2012-ST dated 29.06.2012, as amended. The lower adjudicating authority partially rejected the refund claims as per amount shown in Column (4) of Table above on the ground that it is not established that these services, namely, sorting, sizing and staking of bauxite (lumps) were utilized beyond the factory gate or beyond place of removal and hence, refund was not admissible as per proviso (a)(A)(i) of Notification No. 41/2012-ST dated 29.06.2012.

3. Aggrieved by the impugned orders, the appellants filed the present appeals stating that the adjudicating authority has rejected refund on the ground that the appellant failed to provide any documentary evidences establishing that the services were used beyond factory gate or place / premises manufacture of the said goods, however, he did not mention which document(s) was / were not submitted by the appellant; that these services, namely, sorting, sizing and staking of bauxite have been utilized for export from factory gate until the loading of the goods into vessel at Port; that the exported goods i.e. Calcined Bauxite exported by them were attracting NIL rate of Central Excise duty and hence, they are not eligible for CENVAT credit or Duty Drawback scheme; that they relied on decision in the case of M/s. MSP Ltd (January 20, 2016) and M/s. Afcons Infrastructure Ltd [2016-TIOL-2159-CESTAT-MUM (10-8-2016)] to say that revenue's assumption that sale



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of the goods took place within the factory premises, is not correct as 'place of removal' is 'port of shipment' from where the goods were exported by them and not factory gate; that CBEC vide Circular No. 97/8/2007-ST dated 23.8.2007 has also clarified that the manufacturers can claim that sale take place at the destination point and hence, appellant is entitled to Cenvat Credit on all the input services used for bringing the goods up to the port of shipment; that the said services were utilized for export and hence they are eligible for refund. Appellant produced copies of the invoices submitted by them before the adjudicating authority.

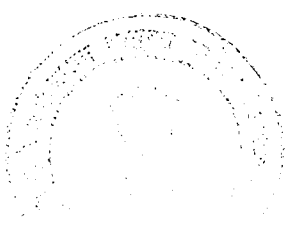
4. Personal hearing in the matter was attended by Shri Mitul A Kanaiya, Advocate who reiterated the grounds of appeals and submitted written submission dated 29.3.2019 and dated 18.4.2019; that the refund of Service Tax on services from their factory gate to the port is need to be granted but has not been granted; that loading and unloading services need to be considered as BAS for the purpose of refund of Service Tax for export of goods; that in a recent Order-in-Appeal No. BHV-EXCUS-000-APP-306-TO-308-2018-19 dated 1.11.2018 also such refund has been allowed.

4.1 The Appellant also submitted written submissions dated 29.3.2019 reiterating the grounds raised in the Appeal Memoranda. The Appellant vide their letter dated 18.4.2019 submitted copy of bills, ledgers and confirmation of Service Tax paid on the bills under consideration.

4.2 Personal hearing notices were sent to the Department, however, no one appeared.

FINDINGS :-

5. I have carefully gone through the facts of the case, the impugned orders, the grounds of appeal of both Appeal Memoranda and submissions made by the Appellant including during personal hearing. I find that the appeals have been filed after delay of 28 days after normal period of admissible 60 days from the date of receipt of the impugned orders. Since delay in filing of the appeals is within limit of further 30 days after normal appeal period of 60 days, I condone the delay and proceed to decide the appeals on merits.



6. I find that the sole ground taken by the lower adjudicating authority for rejection of the said amount is that the appellant could not establish that the services in question were used beyond factory gate or place / premises of production or manufacture of the said goods as stipulated in the said Notification. Appellant has contended that these services have been availed at port of export i.e. beyond the factory or place or any other place.

7. The copies of the invoices issued by the service provider M/s. Titan Enterprise narrated as under:-

Sr. No.	Appeal No.	Invoice No.	Refund Amount (Rs.)	Remarks
1.	V2/131/ BVR/2018-19	022/2017 dtd 20.5.2017 issued by M/s. Titan Enterprise	3,37,410/-	"Charges for services rendered by Heavy Machineries for Sorting, sizing and stacking of bauxite (lumps) at Porbandar Port Plot which appears to be a premises of production of the exported goods"
2.	V2/130/BVR/2018-19	021/2017 dtd 7.4.2017 issued by M/s. Titan Enterprise	3,66,219/-	"Charges for services rendered by Heavy Machineries for Sorting, sizing and stacking of bauxite (lumps) at Porbandar Port Plot which appears to be a premises of production of the exported goods"

7.1 Copy of one Invoice bearing No. 22/2017 dated 20.5.2017 is reproduced below for ease of reference :-

TITAN ENTERPRISE	
LOADING/UNLOADING & LABOUR CONTRACTOR	
GOPNATH PLOT NEAR CHIRAG BUNGLOW PORBANDAR-360575	
H.J. SHIVAL:+91 9825224977	
PAN NO:FGUPS 0075 Q	DATE: 20/05/2017
BILL NO- 22/2017	
M/S. SAURASHTRA CALCINE & BAUXITE ALLIED LTD.	
PORBANDAR.	
PARTICULARS	AMOUNT
BEING CHARGES RENDERED FOR SORTING, SIZING & SCREENING OF YOUR RAW BAUXITE THROUGH HEAVY MACHINERIES AT YOUR PORBANDAR PORT PLOT AREA FOR SHIPMENT. MV AP SLAND. DURATION- 05/04/2017-15/05/2017	
TOTAL MT 27702 @ 87/- PMT	2410074/-
SERVICE TAX 14 %	337410
SWACHH BHARAT CESS 0.5 %	12050
KRISHI KALYAN CESS 0.5 %	12050
TOTAL BILL AMOUNT.	27,71,584.00
IN WORDS - TWENTY SEVEN LACS SEVENTY ONE THOUSAND FIVE HUNDRED AND EIGHTY FOUR ONLY.	
SERVICE TAX NO - FGUPS 0075 QSD001.	
	FOR TITAN ENTERPRISE

SELF ATTESTED
For Saurashtra Calcine Bauxite
& Allied Industries Limited

7.2 From above, it is very evident that the services have been provided in respect of "Charges for services rendered by for Sorting, sizing and stacking of bauxite through heavy machineries at Porbandar Port Plot Area". I find that the adjudicating authority has not looked into this and has given incorrect findings that the services were not provided beyond the factory gate or any other place of production / manufacture. The impugned orders also do not discuss the locations of the registered premises of the appellant and as to why the appellant is not entitled for refund if place of utilization of services is Porbandar Port area. I am of the considered view that when utilization of service towards export of goods and service tax payment by the appellant are not in dispute, the appellant cannot be deprived of legitimate benefit due to them, especially, when it is accepted policy of the government that tax is not to be exported.

8. In view of above, I allow both appeals with consequential relief, if any.

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

9. The appeals filed by the Appellant are disposed off in above terms.

सहायक,
निदेशक, एम.ई.एम. स्कूल
पोरबंदर, गुजरात

(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Saurashtra Calcine Bauxite & Allied Ind. Ltd., "Shree Chambers", 3 rd Floor, P.O. Box No.55, Opp.: M.E.M School, Porbandar.	नेसर्स सौराष्ट्र केलसाईन बोकसाइट एंड अलाइड इण्ड लिमिटेड, श्री चेंबर्स, थर्ड फ्लोर, पोस्ट ऑफिस बॉक्स नं. 55, एम ई एम स्कूल के सामने, पोरबंदर.
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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) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मण्डल- जूनागढ़, भावनगर आयुक्तालय को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।