NATION TAX MARKET

प्रधान आयुक्त (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

रजिस्टर्ड डाक ए.डी. द्वारा :-

	अपील फाइल संख्या / Appeal File No.	मूल आदेश सं / OIO No.	दिनांक / Date
क	V2/243/BVR/2017	06/JC/Ashok/Bhavnagar/2017-18	28-09-2017

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

KCH-EXCUS-000-APP-009-2019

आदेश का दिनांक / Date of Order	24.01.2019	जारी करने की तारीख / Date of issue	28.01.2019

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

ग. [illegible]
Arising out of [illegible] Commissionerate, Central Excise & S.T.
Rajkot / Jamnagar / Gandhidham :

घ. अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :

M/s [illegible] Coated Metals & Industries Ltd., [illegible] Road, Survey No. 890, Village [illegible], [illegible] Gujarat

[illegible]
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) [illegible]
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) [illegible]
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) [illegible]
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, [illegible] Ahmedabad-380016 in case of appeals other than as mentioned in para-(i) above

(iii) [illegible]

[illegible]

(B) [illegible]

[illegible]

(3) [illegible Hindi text]

The [illegible] appeal under sub section (2) and (2A) of the section 35 [illegible] Act 1994 [illegible] 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.

(4) [illegible Hindi text]

(i) [illegible]

(ii) [illegible]

(iii) [illegible]

[illegible Hindi text]

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.

II. [illegible Hindi text]

Revision application to Government of India:

[illegible Hindi text]

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-110 001 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) [illegible Hindi text]

In case of any loss of goods, where the loss occur 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) [illegible Hindi text]

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) [illegible Hindi text]

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) [illegible Hindi text]

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

(1) [illegible Hindi text]

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.

(2) [illegible Hindi text]

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.

(3) [illegible Hindi text]

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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(4) [illegible Hindi text]

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.

(5) [illegible Hindi text]

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.

(6) [illegible Hindi text]

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 Manaksia Coated Metals & Industries Limited, Survey No. 388, Village: Chandiani, Tal: Anjar, Distt: Kutch (hereinafter referred to as "the appellant") filed appeal against the Order-in-Original No. 05/DC/Anjar-Bhachau/2017-18 dated 28.08.2017 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, CGST & C. Ex. Service Tax, Anjar-Bhachau Division, Gandhidham (Kutch) (hereinafter referred to as "the lower adjudicating authority").

2. The brief facts of the case are that during the realization of exports proceeds, the appellant paid Bank Charges/ Commission to foreign bank and received taxable services to the tune of Rs.59,01,248/- during the period 2010-11 to 2014-15. Internal Audit was of the view that the appellant was required to pay service tax of Rs.7,29,397/- on import of taxable services under the category of 'Banking & other financial services' under Section 65 (105) (zm) of the Finance Act, 1994 (hereinafter referred read with Section 66A of the Act and Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 (hereinafter referred to as the "Rules"), which they did not pay. Show Cause Notice dated 15.10.2015 was issued to the Appellant demanding service tax under Section73(1) of the Act, interest under Section 75 of the Act and proposing penalties under Section 76,Section 77 and Section78 of the Act. The lower adjudicating authority vide the impugned order, confirmed demand of service tax amounting to Rs.7,29,397/- under Section 73(1) of the Act, alongwith interest under Section 75 of the Act and also imposed penalty of Rs.10,000/- under Section 77 and Rs.7,29,397/- under Section 78 of the Act.

4. Being aggrieved by the impugned order, the appellant filed the present appeal on the following grounds:

(i) Appellant had no direct contact with various foreign banks, who were involved in remitting the export proceeds from the buyer to their Bankers in India; that no service has been provided by the foreign banks to them; that the service shad been provided by the foreign banks to the foreign importers and not to the appellant; that foreign importers engaged the foreign banks to remit money to the beneficiary in India; that the Indian Banks separately charged them commission along with service tax for delivering foreign currency and its conversion into domestic currency and they have paid service tax on commission to Indian Banks.

(ii) There is no contract or arrangement between the Appellant and foreign banks for realizations of export proceeds; that the amount deducted is in the nature of short payment of export realization at the time of remittance of exports proceeds which had wrongly been considered as consideration for services allegedly provided by the foreign banks. The short recovery of export proceeds is not recoverable form the importer as a trade practise in order to survive in international market. They relied upon Board's Circular no. 180/06/2014 dated 14.10.2014 and Notification No. 10/2015-ST in this regard.

(iii) The SCN is time barred as the same has been issued beyond stipulated time limit by invoking extended period of time; that all transactions are properly accounted for and reported in their books of accounts; that the matter is revenue neutral as service tax payment will be eligible for Cenvat Credit to them and hence, impugned order is required to be set aside.

5. Personal Hearing in the matter was attended by Shri Sudhir Kumar Maheshwari, consultant who reiterated the grounds of appeal and stated that the issue is settled by the Hon'ble CESTAT in the case of M/s Greenply Industries Limited 2015 (38) STR 609 (Tri-Del) & Raymond Limited 2018 (19) G.S.T.L 270 (Tri-Mumbai).

FINDINGS:

6. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made during the personal hearing. The issue to be decided in the present case is as to whether the appellant is required to pay service tax on the amount paid to the foreign bank while realizing the exports proceeds by the appellant or not.

7. I find that the main contention raised by the appellant is that there is no relation with foreign bank for any services however, money was transferred at the instance of foreign buyers who engaged the foreign bank. The appellant also contended that Indian banks charge commission from them along with service tax for delivering money to them. I find that the SCN alleges commission paid to foreign bank towards realization of exports proceeds, however, SCN does not allege any contractual agreement for any service between the foreign banks and

the appellant. Appellant also contends that there is short realization of export proceeds which is not payment made to foreign bank. Thus, facts not in dispute is that no direct nexus is established between the appellant and the foreign banks and hence, the transaction involves money transfer only. I find that CBIC vide Circular No. 163/14/2012-ST dated 10.07.2012 has clarified the issue as under:-

> *"2. The matter has been examined and it is clarified that there is no service tax per se on the amount of foreign currency remitted to India from overseas. In the negative list regime, 'service' has been defined in clause (44) of section 65B of the Finance Act 1994 (as amended), which excludes transaction in money. As the amount of remittance comprises money, the activity does not comprise a 'service' and thus not subjected to service tax.*
>
> *3. In case any fee or conversion charges are levied for sending such money, they are also not liable to service tax as the person sending the money and the company conducting the remittance are located outside India. In terms of the Place of Provision of Services Rules, 2012, such services are deemed to be provided outside India and thus not liable to service tax."*

7.1 CBIC Vide Circular No. 180/06/2014-ST dated 14.10.2014 further clarifies the matter as under:-

> *Subject: Levy of service tax on activities involved in relation to inward remittances from abroad to beneficiaries in India through MTSOs – Regarding.*
>
> *Vide Circular No. 163/14/2012-S.T., dated 10th July, 2012 [2012 (27) S.T.R. C105], on the issue of levy of service tax on the activities involved in the inward remittance, it was clarified that there is no service tax per se on the foreign exchange remitted to India from outside for the reason that money does not constitute a service and that conversion charges or fee levied for sending such money would also not be liable to service tax as the person sending money and the company conducting the remittance are both located outside India. It was also clarified that the Indian bank or financial institution who provides service to the foreign entity or any other entity is not liable to service tax as the place of provision of service shall be the location of the recipient of service. This clarification covers the scenario where the Indian bank or financial institution provides services on principal to principal basis to the foreign beneficiary, on its own account, and thus the service is covered by the general rule, i.e. rule 3 of the Place of Provision of Service Rules, 2012.*
>
> *2. However, subsequently, it has been brought to the notice of the Board that the foreign money transfer service operators (MTSO), conducting remittances to beneficiaries in India, have appointed Indian Banks/financial entities as their agents in India who provide agency/representative service to such MTSO for furtherance of their service to a beneficiary in India. The agents are paid a commission or fee by the MTSO for their services. The entire sequence of transactions in remittance of money from overseas through the MTSO route is as under:*
>
> *Step 1: Remitter located outside India (say 'A') approaches a Money Transfer Service Operator (MTSO)/Bank (say 'B', located outside India) for remitting the money to a beneficiary in India. 'B' charges a fee from 'A'.*
> *Step 2: 'B' avails the services of an Indian entity (agent, say 'C') for delivery of money to the ultimate recipient of money in India (say 'E'). 'C' is paid a commission/fee by 'B'.*
> *Step 3: 'C' may avail service of a sub-agent (D). 'D' charges fee/commission from 'C'.*
> *Step 4: 'C' or 'D', as the case may be, delivers the money to 'E' and may charge a fee from 'E'.*

3. Clarifications have been sought as to whether such agents (referred in step 2 above) would fall in the category of intermediary, and if so, whether service tax would be leviable on the commission/fee amount charged by such agents. Clarifications have also been sought as to whether the services provided by sub agent (referred in step 3 & 4 above) are leviable to service tax and on certain other related issues.

4. The issues discussed above have been examined and are clarified as follows -

S. No.	Issues	Clarification
1	Whether service tax is payable on remittance received in India from abroad?	No service tax is payable, so far as the amount of foreign currency remitted to India from overseas is concerned. As the transaction comprises money, it does not, in itself constitute any service in terms of the definition of 'service' as contained in clause (44) of section 65B of the Finance Act, 1994.
2	Whether the service of an agent or the representative service provided by an Indian entity/bank to a foreign money transfer service operator (MTSO) in relation to money transfer falls in the category of intermediary service?	Yes. The Indian bank or other entity acting as an agent to MTSO in relation to money transfer, facilitates in the delivery of the remittance to the beneficiary in India. In performing this service, the Indian bank/entity facilitates the provision of money transfer service by the MTSO to a beneficiary in India. For their service agent receives commission or fee. Hence, the agent falls in the category of intermediary as defined in rule 2(f) of the Place of Provision of Service Rules, 2012.
3	Whether service tax is leviable on the service provided, as mentioned in point 2 above, by an intermediary/agent located in India (in taxable territory) to MTSOs located outside India?	Service provided by an intermediary is covered by rule 9 (c) of the Place of Provision of Service Rules, 2012. As per this rule, the place of provision of service is the location of service provider. Hence service provided by an agent located in India (in taxable territory) to MTSO is liable to service tax. The value of intermediary service provided by the agent to MTSO is the commission or fee or any similar amount, by whatever name called, received by it from MTSO and service tax is payable on such commission or fee.
4	Whether service tax would apply on the amount charged separately, if any, by the Indian bank/entity/agent/sub agent from the person who receives remittance in the taxable territory, for the service provided by such Indian bank/entity/agent/sub-agent?	Yes. As the service is provided by Indian bank/entity/agent/sub-agent to a person located in taxable territory, the Place of Provision, is in the taxable territory. Therefore, service tax is payable on amount charged separately, if any.
5	Whether service tax would apply on the services provided by way of currency conversion by a bank/entity located in India (in the taxable territory) to the recipient of remittance in India?	Any activity of money changing companies are independent taxable activity. Therefore, service tax applies on currency conversion in such cases in terms of the Service Tax (Determination of Value) Rules. Service provider has an option to pay service tax at prescribed rates in terms of Rule 6(7B) of the Service Tax Rules 1994.
6	Whether services provided by sub-agents to such Indian Bank/entity located in the taxable territory in relation to money transfer is leviable to service tax?	Sub-agents also fall in the category of intermediary. Therefore, service tax is payable on commission received by sub-agents from Indian bank/entity.

5. Accordingly Circular No. 163/14/2012-S.T., dated 10.7.2012 stands superseded.

6. ...

7.2 I find that CBIC/CBEC in both the above Circulars has clarified that remittance of foreign currency is money and does not constitute any service to Indian exporters by foreign banks and hence, no service tax is payable on such remittance. I find that Hon'ble CESTAT in the case of M/s. Raymond Ltd reported as 2018 (19) GST 270 (Tri Mumbai) has held as under:-

> *"The brief facts of the case are that the appellant had incurred expenditure in foreign currency as amounts were deducted from export proceeds by the banks towards their charges. <u>They were issued show cause notice alleging that the charges were taxable in respect of service received in India under Section 66A of the Finance Act, 1994</u> as the same were <u>provided from foreign country and payment were made by them</u> as the <u>amount was debited from their own account and the appellants are liable to pay service tax along with interest</u> and penalty. The demands were confirmed against the appellant along with imposition of penalty u/s 76, 77 and 78 of the FA, 1994. The adjudication order was upheld by the Appellate Commissioner. Hence the present appeal before us.*
>
> *2. Heard Shri Prasad Paranjape, Ld. Advocate for the appellant and Shri Vivek Dwivedi, Ld. Asstt. Commr. (AR) for the Revenue who reiterated the findings of the Commissioner (Appeals).*
>
> *3. We find that the issue is no more disputed and stands resolved by the order of the Tribunal in case of Edelweiss Industries Pvt. Ltd. - 2017-TIOL-3765-CESTAT-DEL. The relevant portion of the Tribunal's order is as under :*
>
> > *4. [illegible]*
> >
> > > *"4. [illegible]"*
> >
> > *5. [illegible]*

4. In view of above order passed by the Tribunal and following the ratio of same we hold that the demand and penalties imposed against the appellant in present case is not sustainable. We therefore set aside the impugned order and allow the appeal with consequential reliefs, if any."

7.2 The Hon'ble CESTAT in the case of M/s. Cadila Pharmaceuticals Ltd reported as 2013 (32) STR 249 (Tri-Del) and in the case of M/s. Gujarat Ambuja Exports Ltd reported as 2013(30)STR 667 (Tri Ahmd) has also held that the amount charged by foreign bank cannot be considered as service received by the appellant. Therefore, I hold that appellant is not liable to pay service tax and impugned order confirming the demand is not correct, legal and proper and does not survive. Since, the demand of service tax has not sustained, demand of interest and imposition of penalty vide the impugned order also cannot survive and are required to be set aside.

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

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

9. The appeal filed by the Appellant stand disposed off in above terms.

(कुमार संतोष)
प्रधान आयुक्त (अपील्स)

By RPAD

To

M/s. Mankasia Coated Metals & Industries Limited, Survey No. 350, Village: Chandrani, Tal: Anjar Distt. Kutch.	मेसर्स मानकसिया कोटेड मेटल्स एंड इंडस्ट्रीज लिमिटेड, सर्वे नंबर 350, गांव चंद्राणी तालुका : अंजार, जिला: कच्छ।

Copy to:

1) The Pr. Chief Commissioner, CGST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
2) The Commissioner, Customs and Central Excise, Kutch Commissionerate, Gandhidham for necessary action.
3) The Deputy Commissioner, CGST, Anjar-Bhachau Division, Gandhidham for further necessary action.
4) Guard File.