



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE 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 / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/17/EA2/GDM/ 2017	ST/328/2017-18	23/06/2017

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

KCH-EXCUS-000-APP-241-2018-19

आदेश का दिनांक / Date of Order:	31.12.2018	जारी करने की तारीख / Date of issue:	04.01.2019
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ 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 / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-
M/s. Vishnu Export, Plot No. 109 & 209,Ganga Complex, S.D.F. Phase-II, Kandla Special Economic Zone (KASEZ)Gandhidham-370230 (Kutch)Gandhidham-370230 (Kutch)

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) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन 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 सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की परिचय क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए 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 नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए 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 For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की 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, बशर्त 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" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 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 को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतक के अंतर्गत अवर 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 क्रेडिट 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 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 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 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 कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। /
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, 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-1 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 ::

The Commissioner, Central GST & Central Excise, Gandhidham (Kutch) (hereinafter referred to as 'the department') filed present appeal against Order-In-Original No. ST/328/2017-18 dated 23.6.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Service Tax Division, Gandhidham (Kutch) (hereinafter referred to as "the lower adjudicating authority") in the case of M/s. Vishnu Export, Plot No. 109 & 209, Ganga Complex, S.D.F. Phase-II, Kandla Special Economic Zone, Gandhidham – 370230 (hereinafter referred to as "the respondent").

2. The brief facts of the case are that the respondent, having Service Tax Registration No. AALFV9288NSD003 and holder of Letter of Approval No. KASEZ/IA/10/2013-14/6250 dated 18.9.2013 issued by KASEZ, Gandhidham (Kutch) filed refund claim of service tax under Notification No. 12/2013-ST dated 1.7.2013 of Rs. 1,80,78,526/- paid by them from October, 2016 to December, 2016 in the category of 'intellectual property service' received by them. The refund claim was sanctioned by the lower adjudicating authority vide impugned order.

3. Being aggrieved with the impugned order, department preferred present appeal, *interalia*, on the following grounds: -

(i) The refund claim was filed by M/s. Vishnu Export, a partnership firm constituted by three partners viz. Shri Ankur Garg, Shri Archit Garg and Shri Sajal Garg, however, it is apparent from the facts that the said partnership firm had not obtained any Letter of Approval and also not executed LUT with KASEZ. The Letter of Approval which was obtained is a different legal entity and it is a proprietorship concern of Shri Ankur Garg in the same name of M/s. Vishnu Export. It was never revealed before any authorities as to how the operations of partnership firm and a proprietorship concern with the same name were being made from the same address of KASEZ. There is no clarity about the relation between the partnership firm and the proprietorship concern, being run in the same name and style from the same premises.

(ii) As per details provided in the refund application, the respondent was holding IEC No. 0813010179 dated 26.7.2013 but the said IEC have been allotted to a partnership firm constituted by three partners viz. Shri Kamal Lalwani, Shri Dilipkumar Lalwani and Shri Ankur Garg. Against this, the respondent has declared to be a holder of Service Tax registration No. AALFV9288NSD003 issued to them on 8.1.2016 wherein constitution of the registration holder is mentioned as partnership firm and the Bank Account No. 914020048301671 with Axis Bank Ltd. Changodar has been mentioned in registration application which also indicates that constitution of account holder is partnership firm. However, from the notarized authorization dated nil executed by three partners of M/s. Vishnu Export in favour of Shri Shreyansh Daga, it appears that it is a different partnership firm with the same name as name of the partners in the said authorization are Shri Ankur Gard, Shri Archit Garg and Shri Sajal Garg. None of these firms are holding Letter of Approval and acting as SEZ unit. Thus, these firms who had no operations within KASEZ had claimed refund of service tax in the guise of SEZ unit and in the absence of proper verification, the refund has been granted to them, which is otherwise not due for payment to them and in absence of any connection or link of transaction between two partnership firms with the same name, the claim appears to have been made by a partnership firm, who was not at all eligible to claim the refund under Notification No. 12/2013-ST dated 1.7.2013.

(iii) The respondent provided the Bank statement which did not indicate any receipt in foreign exchange. When a firm is claiming refund of such a huge amount for the authorized operations within the SEZ, naturally there should have been positive flow of revenue of more than the sum of refund being claimed by the respondent.

(iv) The respondent claimed for refund of service tax paid on intellectual property service rendered to them by M/s. Vishnu & Company Trademarks Pvt. Ltd. towards utilization of trademark "Vimal" for the authorized operations, however, looking to non-exclusive brand license agreement dated 22.8.2014, it appears that the rights of intellectual property assigned in favour of M/s. Vishnu Export, a proprietorship concern of Shri Ankur

Garg. Thus, there was no apparent contractual relation of the respondent with the right-holder M/s. Vishnu & Company Trade Marks Pvt. Ltd. and they were not obliged to make any payment in favour of the right holder. Hence, the payment stated to have been made by the respondent is either for some different purpose or for different transactions, which has no connection with the authorized operations in SEZ.

(v) Even if it is believed that there is a relation of the respondent with the agreement dated 22.8.2014, the said agreement was valid upto 31.8.2016 only and payment made against such agreement after 31.8.2016 was therefore beyond the scope of the agreement and did not cover within the scope of the authorized operation and thereby not eligible for exemption under Notification No. 12/2013-ST dated 1.7.2013. In the instant case, the respondent filed refund claim on the basis of two invoices covering the period from 01.04.2016 to 31.8.2016 and from 1.9.2016 to 14.10.2016 which ought to have been rejected for this reason also. Further, in terms of Clause 2.2 of the agreement dated 22.8.2014, the billing was to be made bi-annually on 31st October for the period from 1st April to 30th September and on 31st March for the period from 1st October to 31st March. The two bills based on which refund claimed were issued on 1.9.2016 for the period from 1.4.2016 to 31.8.2016 and issued on 1.11.2016 for the period from 1.9.2016 to 14.10.2016. It was alleged that being no specific mention of agreement in the invoices and there being no reason to issue the invoice deviating the contractual term, the payment made by the respondent cannot be connected with their authorized operation in SEZ and thereby the respondent has no locus-standi to substantiate their eligibility for claiming refund.

(vi) The respondent has been issued three bills by the service provider during FY 2016-17 valued at Rs. 27,07,68,036/- as facts appear from the ledger of M/s. Vishnu & Company Trade Marks Pvt. Ltd. The respondent claimed refund of service tax of Rs. 1,80,78,526/- pertaining to the period from 1.4.2016 to 14.10.2016. The respondent stated in the refund application that the turnover of the authorized operations of the SEZ unit for the previous financial year was Rs. 1,80,78,526/-. This aspect has never

been clarified though there appears third transaction of Rs. 13,21,66,010/- which was also not explained with supporting account details of gross turnover during the relevant period. The CA certificate dated 2.6.2017 is merely a statement made on the basis of representation from the management and nothing else as the same was issued on the basis of unaudited figures and without verification by the Chartered Accountant. The CA certificate has been issued without Membership number and details of the CA and hence such certificate cannot be relied upon.

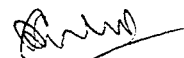
(vii) In terms of condition (IV) of Notification No. 12/2013-ST dated 1.7.2013, the SEZ unit intending to avail exemption or refund under the said notification is required to maintain proper account of receipt and use of the specified services, on which exemption or refund is claimed for the authorized operations in SEZ unit. However, the respondent has avoided providing abstracts of any register being maintained by them.



4. Personal hearing in the matter was attended to by S/Shri N.K. Tiwari, Consultant and Ankur Garg, Partner on behalf of the respondent and reiterated the findings of the impugned order and submitted compilation of documents showing that they changed from proprietorship concern to partnership firm w.e.f. 18.12.2014/8.1.2015 onwards duly approved by KASEZ; that no service tax was payable by them but they paid service tax and hence, refund of service tax paid can't be denied to them; that the statement of facts at Para 1.3 of Appeal Memorandum is factually incorrect as they were having IEC of Partnership firm w.e.f. 1.9.2014 as is evident from IEC certificate produced at Page 68A of the compilation; that grounds of appeal at Para 2.1 to Para 2.4 are not relevant; that they have exported the goods through their merchant exporter; on query to produce co-relation, he sought one week time to submit these details; that Chartered Accountant Shri Srikant Bothra is having Membership No. 527805 since 1.10.2012 as is produced at Page No. 96 of compilation; that appeal may be rejected and order upheld.

4.1 The respondent in their additional written submissions stated that the respondent was permitted by the Development Commissioner, KASEZ, Gandhidham to manufacture Pan Masala containing tobacco vide Letter of

Approval No. 10/2013-14 dated 18.9.2013. The said unit was proprietorship concern of Shri Ankur Garg. Shri Ankur Garg entered into a partnership deed by admitting Shri Archit Garg and Shri Sajal Garg vide deed of partnership dated 20.9.2014 commencing from 1.9.2014. The Joint Development Commissioner, KASEZ, Gandhidham vide letter dated 18.11.2014/8.1.2015 informed that proposal for change of constitution of the firm from proprietorship to partnership was accepted. The respondent obtained new PAN card in the name of partnership firm and also opened a new bank account in the name of partnership firm. The respondent entered into a license agreement with M/s. Vishnu & Company Trademarks Pvt. Ltd. for use of "VIMAL" trademark on 22.8.2014 and informed to the said company on 8.9.2014. The respondent vide deed of partnership dated 31.3.2017 made changes in the partners wherein Shri Dilipkumar Lalwani and Shri Kamal Lalwani were inducted as partners and informed KASEZ, Gandhidham vide letter dated 24.11.2017. The respondent obtained service tax registration No. AALFV9288NSD003 on 8.1.2016. The respondent thereafter filed refund claim of Rs. 1,80,78,526/- on 19.4.2017 for the period from 1.4.2016 to 14.10.2016 and started availing ab-initio exemption from service tax thereafter.



4.2 It is submitted that the appeal filed by the department proceeds on an incorrect appreciation of facts based on assumption that there were three units in the name of Vishnu Export which have been referred as VE-1, VE-2 and VE-3. The grounds of appeal mentioned at Para 2.1 to Para 2.4 are based on assumption that they were different entities, which is factually incorrect and are not sustainable. Regarding Para 2.5 of Grounds of Appeal, it is submitted that earning of foreign exchange was not required to be produced for refund claim filed under Notification No. 12/2013-ST. It is also submitted that the goods were exported through merchant exporter, however, they submitted documents to demonstrate that the export was of the goods manufactured by the respondent and receipt of sale proceed by the merchant exporter was in foreign currency. Regarding Para 2.6 of the Grounds of Appeal, it is submitted that the refund claim was filed by the partnership firm, M/s. Vishnu Export, who had entered into a non-exclusive brand license agreement on 23.8.2016 (valid upto 31.3.2018) with license


holder. As regard to period of billing, it is submitted that from 14.10.2016, the respondent have been availing ab-initio exemption from service tax and therefore, the respondent was liable to pay the amount as per the agreement without service tax. As regard to Para 2.10 of the Grounds of Appeal, it is submitted that Membership No. of the Chartered Accountant is 527805 and a copy of certificate of membership in favour of Shri Srikant Bothra is produced by the respondent. As regard to Para 2.11 of the Grounds of Appeal, it is submitted that the goods manufactured and exported by the respondent through merchant exporter bear the brand name "VIMAL" and the respondent is maintaining all the records in their factory.

4.3 Though this appeal has been filed by the department but no one appeared on any date though personal hearing was fixed on 11.10.2018, 16.10.2018 and 5.11.2018. The submissions of the respondent was sent to the Commissioner, CGST & Central Excise, Kutch (Gandhidham) vide letter No. V2/17/EA2/GDM/2017 dated 26.11.2018 for comments but nothing was received. Thereafter, reminder was issued on 17.12.2018 but the facts stated and contention made by M/s. Vishnu Exports (the respondent) were not denied by the department.

FINDINGS:

5. I have carefully gone through the facts of the case, the impugned order, the grounds of appeal and the submissions made by the appellant during and after personal hearing as well as comments made by the department. The issue to be decided in the present case is as to whether the impugned order sanctioning refund of service tax paid on intellectual property service to the respondent is correct, legal and proper or otherwise.

6. It has been contended in the appeal filed by the department that the refund claim was filed by M/s. Vishnu Export, a partnership firm constituted by three partners viz. Shri Ankur Garg, Shri Archit Garg and Shri Sajal Garg, whereas the Letter of Approval was obtained by a different legal entity i.e. proprietorship concern of Shri Ankur Garg in the same name of M/s. Vishnu Export. The respondent has submitted that LOA holder

proprietorship concern in the name of M/s. Vishnu Export was converted into Partnership firm w.e.f. 1.9.2014 and submitted copy of partnership deed dated 20.9.2014 and copy of letter dated 18.11.2014/8.1.2015 of the then Joint Development Commissioner, KASEZ, Gandhidham accepting change of constitution of the firm with the approval of Development Commissioner, KASEZ. The respondent obtained new PAN card in the name of partnership firm and also opened a new bank account in the name of partnership firm; that the respondent vide deed of partnership dated 31.3.2017 made changes in the partners wherein Shri Dilipkumar Lalwani and Shri Kamal Lalwani were inducted as partners and had informed KASEZ, Gandhidham vide their letter dated 24.11.2017 and all these facts have not been stated in the Departmental appeal. I find that the respondent has sufficiently established that the proprietorship concern, a holder of Letter of Approval was converted into Partnership firm having above named three partners and also produced copy of partnership deed dated 1.9.2014 and copy of KASEZ, Gandhidham's letter dated 18.11.2014 approving change of constitution of the firm. Hence, I find that the plea of the department is not based on facts and hence, cannot be accepted. 

6.1 It has also been contended in the appeal memorandum that the respondent had provided the Bank statement, which did not indicate receipt of foreign exchange whereas the respondent has submitted that evidences of earning of foreign exchange is not required to be furnished for the purpose of claiming refund of service tax under Notification No. 12/2013-ST; they also submitted that the goods were exported through merchant exporter and produced ledger account of merchant exporter showing receipt of amount in foreign currency. I find that these submissions of the respondent are undisputed facts and are required to be accepted in absence of denial by the department in their comments.

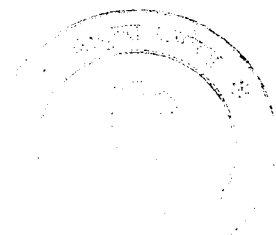
6.2 The respondent has contended that the non-exclusive brand license agreement with trademark owner was entered with proprietorship concern of Shri Ankur Garg and was valid upto 31.8.2016. I find that the respondent has produced sufficient documentary evidences to support their contention that they have changed constitution of the firm from proprietorship concern

to partnership firm w.e.f. 1.9.2014 and also suitably informed the trademark owner. It has also been submitted by the respondent that they entered into non-exclusive brand license agreement with trademark owner on 23.8.2016, which remained valid upto 31.3.2018 for use of trademark "VIMAL". Therefore, I do not find any force in the arguments/contention made by the department in appeal and this appeal appears to have been made without proper verification of facts.

7. The comments were called for from the Commissioner, Central GST & Central Excise, Gandhidham on the written submission dated 2.11.2018, however, nothing in contrary to the submissions made by the respondent has been submitted.

7.1 The department in appeal had contended that the respondent had been issued three bills by the service provider during FY 2016-17 valued at Rs. 27,07,68,036/- as appeared from the ledger of M/s. Vishnu & Company Trade Marks Pvt. Ltd, whereas the respondent stated in the refund application that the turnover of the authorized operations of the SEZ unit for the previous financial year was Rs. 1,80,78,526/-. I find that the respondent had filed refund claim of service tax paid on receipt of intellectual property service for the period from 1.4.2016 to 14.10.2016 and thereafter, started availing ab-initio exemption provided under Notification No. 12/2013-ST, which cannot be disputed. In the matrix of the said factual position, the respondent would have not declared the details of amount to be paid/payable to the trademark owner in their refund application. The department contended that CA certificate had been issued without Membership number details of the CA issuing such certificate whereas I find that the respondent has submitted copy of membership certificate No. 527805 issued by ICAI to the Chartered Accountant, who issued said certificate. As regard to non-maintenance of proper records of receipt of service, I find that the respondent has demonstrated that they maintained proper records and lawfully filed refund claim of service tax paid on taxable services received for authorized operations in SEZ and the claim was found correct and proper by the lower adjudicating authority.

7.3 In view of above facts, I find that the respondent is the same firm




which entered into non-exclusive brand license agreement for use of registered trademark; that the trademark owner charged and recovered service tax from the respondent; that the said service was exclusively used for authorized operations in SEZ and therefore, refund of service tax cannot be denied to the respondent. Hence, I do not find any infirmity in the impugned order and uphold the same.

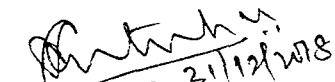
8. In view of above, I reject the appeal filed by the department and uphold the impugned order sanctioning refund of service tax claimed by the respondent in this regard.

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

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

सत्यापित,


ए. ए. पी. पी.टी.
अधीक्षक (अपील)


(कुमार संतोष)
आयुक्त (अपील्स)

By Speed Post

To,

(i) The Commissioner, Central GST & Central Excise, Gandhidham.(Kutch).	(i) आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम (कच्छ)
(ii) M/s. Vishnu Export, Plot No. 109 & 209, Ganga Complex, S.D.F. Phase-II, Kandla Special Economic Zone, Gandhidham – 370230	(ii) मे. विष्णु एक्सपोर्ट, प्लॉट न. १०९ एवं २०९, गंगा कॉम्प्लेक्स, एस.डी.एफ. फेस-II, कांडला स्पेशल इकनॉमिक ज़ोन, गांधीधाम – ३७०२३०

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for kind information.
- 2) The Assistant Commissioner, GST & Central Excise Division, Gandhidham.
- 3) Guard File.