



राज्य आयकर (अपील) का प्राधिकार, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क
CENTRAL PRINCIPAL COMMISSIONER (APPEALS), GST AND CENTRAL EXCISE



बिर्ला इन्फो टेक पब्लिक लिमिटेड / Birla Infotech Pvt. Ltd., Birla
रक्षा कोर्स रिंग रोड : Race Course Ring Road
राजकोट / Rajkot - 360 001

Telex Box No. : 91 237862544143 Email: taxappeals@nita.nic.in

संबन्धित दस्तावेज संख्या :-

क्र. (Sl. No.)	संख्या (No.)	दिनांक (Date)
1	2202TBM2018-18	24/02/2018-18
2		02-03-2018

संबन्धित अपील संख्या (On-line-Appeal No.):

KCU-EXCISE-001-APP-0311-2019

आदेश की तिथि (Date of Order)	27.02.2019	आदेश जारी की तिथि (Date of Issue)	08.03.2019
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द्वारा/ By श्री/ Shri **अशोक साठवेल**, प्रधान आयकर अधिकारी (Dy. Commr.), Rajkot

आवेदनकर्ता का पता (Address of the Appellant) :-
श्री. एच. ए. वल्लभ डेग लि., रेलवे वाडपुडा शहर, वडपुडा, तालुका अंजोर, जिला राजकोट.
Shri. H. A. Vallabh Deg Ltd., Railway Wadpada City, Village-Wadpada, Taluka-Anjar, District-Rajkot.

आवेदनकर्ता का पता (Address of the Appellant) :-
M/s. Wadpada Deg Ltd., Railway Wadpada City, Village-Wadpada, Taluka-Anjar, District-Rajkot, Pin No-370106Rajkot.

यह आदेश/ This Order is issued in pursuance of the provisions of Section 119C of the Customs Act, 1962 and the provisions of Rule 100 of the Customs Rules, 1962.

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The amount of duty payable by the appellant is Rs. 1,444/- (Rupees One Thousand Four Hundred and Four only) as per the order of the Tribunal dated 08.03.2019.

यदि/ If the appellant is aggrieved by this order, he may prefer an appeal to the Tribunal within the time specified in the order.

अपील/ Appeal :-
अपीलकर्ता/ Appellant :-
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The appeal is filed in pursuance of the provisions of Section 119C of the Customs Act, 1962 and the provisions of Rule 100 of the Customs Rules, 1962.

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ORDER-IN-APPEAL

M/s Welspun Corp Ltd, Village Varsamed, District Kutch (hereinafter referred to as "Appellant") filed Appeal No. V2/2/GDM/2018-19 against Order-in-Original No. 24/2017-1B dated 2.2.2018 (hereinafter referred to as 'impugned order') passed by the Dy. Commissioner, Central GST & Central Excise, Anjar-Dhachau Division, Gandhidham Commissionerate (hereinafter referred to as 'refund sanctioning authority').

2. The brief facts of the case are that the Appellant, holding Service Tax Registration No. AAACW0744L5T007, filed refund claim of Rs. 8,96,903/- on 1.1.2018 under Notification No. 41/2012-ST dated 29.6.2012 in respect of Service Tax paid on the services utilized for goods exported by them. The refund sanctioning authority rejected the refund claim vide the impugned order on the ground that the refund claim did not fulfill the condition stipulated at Para 1(c) of Notification No. 41/2012-ST dated 29.6.2012 and hence, the Appellant is not eligible for refund of Service Tax.

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

(i) The refund sanctioning authority has not followed principles of natural justice, as neither any query was raised nor opportunity of personal hearing was granted before rejecting the refund claim. It is a settled law that principles of natural justice has to be followed in any proceedings under a law. The Appellant, therefore, requests for remanding the matter back to the refund sanctioning authority.

(ii) The refund sanctioning authority has merely put vague calculations and reproduced Para 1(c) of Notification No. 41/2012-ST dated 29.6.2012 to reject the refund claim. It is neither explained in the impugned order nor reasoned as to how refund claim dissatisfied the condition in Para 1(c) of the Notification supra. The impugned order being non speaking order deserves to be set aside.

(iii) The Appellant duly complied with the condition at Para 1(c) of Notification supra and if the refund claim was considered shipping bill



wise and not in totality, then eligible amount of refund would work out to be more than the amount claimed.

(iv) The Appellant is a manufacturer-exporter and was registered with Central Excise. The refund claim was rightly filed before the Dy. Commissioner of Central Excise having jurisdiction over the factory of the Appellant.

3.1 In Personal Hearing, they reiterated the grounds of Appeal and submitted that they have claimed rebate under Para 3(a) of Notification No. 41/2012-ST dated 29.6.2012; that even if they don't meet the condition under Para 1(c), then also rebate needs to be allowed because goods have been exported and refund claim has been made within time.

Findings:-

4. I have carefully gone through the facts of the case, the impugned order, and written as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is whether the Appellant is eligible for refund under Notification No. 41/2012-ST dated 29.6.2012 or not.

5. I find that the Appellant had filed claim for refund of Service Tax of Rs. 8,96,503/- paid on the services utilized for export of goods under Notification No. 41/2012-ST dated 29.6.2012. The refund sanctioning authority rejected the refund claim on the ground that refund claim did not fulfill the condition stipulated at Para 1(c) of Notification No. 41/2012-ST dated 29.6.2012 and consequently the Appellant is not eligible for refund of Service Tax. The Appellant argued that the refund sanctioning authority did not follow the principles of natural justice, as neither query was raised nor opportunity of personal hearing was granted before rejecting the refund claim and requested to remand the matter to the refund sanctioning authority.

6. I find that it is evident from the impugned order that neither show cause notice was issued nor opportunity of personal hearing was granted to the Appellant before rejecting the refund claim. I find that issuance of Show Cause Notice and granting of personal hearing even when issue of

SCN is waived, are obligatory before passing of quasi-judicial orders. Having failed to do so, rejection of the refund claim has to be considered as illegal and not proper and in violation of the principles of natural justice. rely on the judgment of the Hon'ble Madras High Court in the case of *Vasta Bio-Tech Pvt. Ltd.* reported as 2018 (360) E.L.T. 234 (Mad.), wherein it has been held as follows :-

"5. The petitioner's case is that had a show cause notice been issued to them, they would have explained to the Authority, as regards the discrepancy between the imported goods and the sale proceeds, and several basic essential documents, etc. to the said effect, the said affidavit has been filed to justify their stand. Since the denial/rejection of the petitioner's claim for refund results in civil consequence, the principles of natural justice demands that the petitioner be afforded an opportunity. The explanation sought to be given by the respondent, i.e. Para No. 10 of the said inter-affidavit cannot be countenanced, as the statute does not permit for an opportunity being granted, and if statute is silent, then, principles of natural justice have to be read into the statute, so that the taxpayer has reasonable opportunity to set forth his case.

6. Hence, for the above reasons, the petitioner is directed to treat the impugned tax of interim/initial instalment as a provision for retention of value amount of Rs. 1,85,586/- is cancelled, as show cause notice, submit their objections within a period of 90 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the authorized representatives of the petitioner and consider the case as projected by the petitioner and examine as to whether they are entitled for refund of balance amount of Rs. 1,85,586/-. The above direction shall be complied with within a period of 60 days from the date of receipt of the objections.

7. Accordingly, the Petition stands disposed of. No costs."

(Emphasis supplied)

5.7 I also find that lacunae left, in observance of principles of natural justice can be cured only by the original authority who floated it as has been held by the Hon'ble CESTAT in the case of *Jagir Singh* reported as 1987 (28) ELT 521 (Tri), wherein it has been held that,

"8. ... A perusal of the said activities would show that the ratio of all the decisions is that deficiencies of natural justice before trial Tribunal cannot be cured in subsequent proceedings. In other words, if the opportunity to defend is not afforded by the trial Tribunal, the deficiency of the opportunity to defend by the Appellate Court in subsequent proceedings would perpetuate the deficiency of natural justice which was not granted by the trial court. There can be no quarrel with this ratio. On the other hand, at the various occasions, the Tribunal have cherished the said principle of law as and when occasion arose and whenever it was found that an opportunity to defend was not afforded by the trial Tribunal the case was always remanded to the trial Tribunal itself to decide the case afresh according to the reasonable and proper opportunity to defend. To quote, in the case of *Rohit Mohan and Others v. Collector of Central Excise and Customs, Chandigarh* supra, the Tribunal in fact remitted back the case to the Collector of Central Excise & Customs for deciding the case in the light of the observations made therein. In the instant case also when the appellant filed his

appeal against the order of the lower authority. Accordingly, that is to say, the Board's Order No. 1547 of 1967 dated 15.09.67 confirming the Director's Order No. 1014/581, dated 7.7.66, and explained that it was not a case of an opportunity to prove his case regarding the possession of the stamp and gold in question. The Tribunal, in reaching its conclusion that as a matter of law which related to the essential facts of the case, had transferred the case to the Adjudicating Authority itself, that is to say, to the Trial Tribunal and not to the lower Appellate Authority. Thus, in the considered opinion, the matter has arisen and the cases cited as analogous are not applicable to the instant case."

(Emphasis supplied)

6.7 In view of above, it is apparent that the deficiency allowed to creep in by the refund sanctioning authority can not be cured or set right by this Appellate Authority but by him only.

7. In view of above backdrop of non-compliance of principles of natural justice by the refund sanctioning authority, I have no option but to remand back this case to the refund sanctioning authority, who shall follow the principles of natural justice, giving the Appellant sufficient opportunities to be heard and then pass reasonable and speaking order within 3 months from the receipt of this order. The Appellant is directed to submit their say with all relevant documents within one month of the receipt of this order.

8. I, therefore, set aside the impugned order and allow this appeal by way of remand to the refund sanctioning authority to be decided within 1 months from the receipt of this order.

9. उपरोक्तों द्वारा दर्ज की गई अपील का निम्न प्रकार से नतीजे से किया जाता है।

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

नरकविरी,
 अधिकारी
 रिजर्व बैंक
 अहमदाबाद

(बुधवार संज्ञा)
 प्रथम से मुद्रा (अहमदाबाद)

By S.P.A.G.

To,
 M/s Welspun Corp Ltd,
 Welspun City,
 Village Varsamed 375110,
 Taluka Anjar,
 District Kutch.

शुक्ति
 से, कच्छ कमी लिमिटेड
 वेल्स्पुन सिटी, वरस मेडी,
 अणार तालुका,
 जिला कच्छ

प्रतिबन्ध

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, नुवरात क्षेत्र-अन्वयक को ज्ञापक हेतु।
 - 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
 - 3) उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अंजोर-अंचाल मण्डल, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- ५/५ नई काइला