



अन्वयगत (अपील) आ आर्जी-आवृत्त एवं सेवा प्रदायक केन्द्रों के लिये  
 APPEAL TRIBUNAL COMMISSIONER (AP) AND SERVICE CENTRAL OFFICE



दिल्ली न्यायालय का हिस्सा / 2<sup>nd</sup> Floor, GST Bhawan

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**विवाद का संक्षेप:**

आवेदनकर्ता का नाम / Applicant's Name	आवेदन संख्या / Application No.	दिनांक / Date
M/S. SGTI (P) Ltd.	25/Refund/2017-18	23.10.2018

आवेदन संख्या / Application No.

**R/11-FNCL-000-APP/035/2019**

आवेदन संख्या /

Applicant's Name

M/S. SGTI (P) Ltd.

आवेदन संख्या /

Applicant's Name

18.03.2019

आवेदनकर्ता का नाम /

Applicant's Name

आवेदन संख्या /

Applicant's Name

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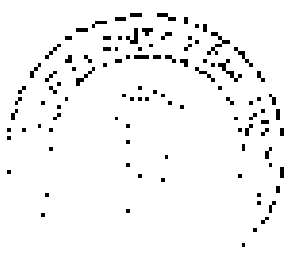
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:: ORDER IN APPEAL ::

M/s. Gokul Agri Resources Limited, Plot No. 76/1, 80 & 89, Near Sharma Bazar, Galpatan Road, Village: Meghar Barchi, Taluka: Anjar, District: Kutch, Pin - 370 201 (hereinafter referred to as the appellant) has filed the present appeal against the Order-in-Original No. 25/Refund/2017 LE dated 22.02.2018 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division - Anjar-Shopru (Kutch) (hereinafter referred to as "the lower adjudicating authority").

2. The brief facts of the case are that the appellant had filed an application for refund of Rs. 8,55,547/- under Notification No. 41/2012 ST dated 29.05.2012, as amended, for refund of service tax paid on various taxable services used in relation to export of Castor Seed Extraction De-oiled Cakes during May, 2017. The lower adjudicating authority sanctioned refund claim of Rs. 6,09,915/- but rejected refund claim of Rs. 2,02,360/- (towards service tax of Rs. 88,588/-; Krishi Kalyan Cess (hereinafter referred to as 'KKC') of Rs. 5,733/- and Swachh Bharat Cess (hereinafter referred to as 'SBC') of Rs. 6,739/-) on the ground that the appellant had not submitted original Invoice No. SYM/KDL/457 dated 21.06.2017 and also rejected refund claim of Rs. 71,781/- towards KKC and Rs. 21,781/- towards SBC on the ground that there is no declaration regarding refund of KKC and SBC in Notification No. 41/2012-ST.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal wherein, inter alia, on the grounds as under:-

(i) The lower adjudicating authority had nowhere disputed the fact that the appellant had claimed refund in respect of service tax paid for input services used for export of goods; the issue there is no dispute on export of goods and use of input services for the said export, thus rejection of refund was not justified only due to non submission of original invoice.

(ii) They have followed the procedure as prescribed in Para 3 of Notification No. 41/2012 ST dated 29.05.2012 and submitted all relevant documents including photocopy of Invoice No. SYM/KDL/457 dated 21.06.2017 only as original copy of the same has been misplaced by them.

(iii) The lower adjudicating authority did not consider other relevant documents including bank statement, which gives payment made to the service provider - M/s. Interocean Shipping (India) Pvt. Ltd.

(iv) The impugned order rejecting refund has been passed without serving

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select items, without issuing of any Show Cause Notice and without granting any person hearing in violation of the principles of natural justice.

(v) The appellant submitted that there is no dispute regarding availing of services for export of goods and hence, substantial benefit cannot be denied on technical ground relying upon the following cases/laws:

- Mangalore Chemicals and Fertilizers Limited - 1991 (173) FTR 437 (SC).
- Cipla Limited - 2013 (307) TR 606.
- Wipro Limited - 2014 (334) LL 706 (SC).

(vi) The appellant submitted that the levy of KKC and SBC (paid on service tax), therefore, when service tax itself is considered for rebate, then rebate of KKC and SBC (paid on service tax) needs to be allowed as per judgement of the Hon'ble Supreme Court in Civil Appeal No. 2791-2750 of 2010 In case of SBC Nutrients Private Limited.

4. Person hearing was granted to the appellant and department on 28.12.2018, 10.01.2019, 21.01.2019 and 19.02.2019 vide PH Ministry, however, neither any response/reply received from them nor any one appeared on any of the given dates, on behalf of the appellant and hence, I proceed to decide this appeal on the basis of available records.

**Findings:**

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum. The issues to be decided in the present appeal are as to

- (1) whether the impugned order rejecting refund of service tax due to non-submission of original invoice is proper or not existing;
- (2) whether the impugned order rejecting refund of KKC and SBC paid on the services used for export of goods under Notification No. 41/2012-57 dated 29.06.2012 is correct or not.

6. I find that the lower adjudicating authority rejected refund of service tax for Rs. 7,52,070/- on ground of non submission of original invoice of the service provider. I would like to reproduce the condition enumerated in para 3(a) of Notification No.41/2012-57 dated 29.06.2012, which is as under:

- (a) where the total amount of rebate sought under a claim is upto 5.50% of the total FOB value of export goods and the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Textiles, Form A-1 filed by applicant along with original invoice bill or bill of lading or any other documents for each qualified invoice, is accepted as valid in the name of the exporter, enclosing payment for the said 5.50% service used for export of the said goods and the service tax duty thereon certified in the manner specified in sub-clauses (4) and (5)
- (4) if the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be certified by the exporter and if the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;



*[Signature]*

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*(2) the documents enclosed with the claim shall also contain a certificate from the exporter or the person authorized by the Board of Directors, to the effect that specified service in which the documents pertain has been provided, the amount for export tax has been paid and the specified service has been used for export of the said goods under the shipping bill number.*

(Emphasis supplied)

6.1 I find that para 3(h) of Notification No.41/2012-ST dated 29.06.2012 stipulates submission of documents i.e. "invoices, bills, or any other documents for each specified service, in original, issued in the name of the exporter evidencing payment for the specified service used for export of the said goods and the service tax paid thereon". Thus, the lower adjudicating authority has rightly rejected the refund claim for amount where the appellant had not submitted original invoices in terms of para 3(h) of the Notification No. 41/2012-ST dated 29.06.2012.

6.2 However, the appellant has vehemently contended that before rejecting the refund claim they were neither issued defect memo / show cause notice nor personal hearing notice and therefore, the principles of natural justice have been violated.

6.3 It is evident from the impugned order that neither show cause notice has been issued nor opportunity of personal hearing granted to the appellant to explain their case before rejecting the refund claim. I find that issuance of show cause notice and granting of personal hearing are obligatory on part of the department / adjudicating authority before passing quasi-judicial order. Thus, the rejection of refund claim has to be considered as violation of the principles of natural justice. It is settled position of law that the refund claim should be rejected after issuance of show cause notice demonstrating reasons for denial/rejection of refund claim or giving refund claimant reasonably opportunities to explain their case.

7. Notification No. 41/2012-ST is clearly stating refund of service tax paid on the service used for export of goods and sub-section (2) of Section 1.3 of the Finance Act, 2015 and sub-section (2) of Section 151 of the Finance Act, 2015 clearly stipulate SBC and KKC as service tax respectively. Sub-section (5) of Section 19 of the Finance Act, 2015 and Section 151 of the Finance Act, 2015 also stipulate that all provisions relating to refund of service tax under Finance Act, 1994 shall be applicable to refund of SBC & KKC. It is not coming out from the impugned order whether these provisions were considered by the lower adjudicating authority. This issue has already been decided by this appellate

authority in many appeals and further upheld by the Additional Secretary (Appeals), Mumbai vide his Order No. 114-129/2018-



*(Signature)*


ST/VAZ/MSR/AM/2013 dated 05.04.2013) which have also been accepted by the Commissioner, Central Tax, Gandhinagar, (G. N.).

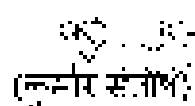
8. In view of above facts, the impugned order needs to be set aside and the matter needs to be remanded back to the lower adjudicating authority to pass speaking and reasoned orders giving fair and reasonable opportunities to the appellant.

9. It is noted that the Commissioner (Appeals) has power to remand appeals as decided by the Hon'ble CESTAT in the case of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported as 2012(294) ELT 57 (Tri-Tri) & also rely upon decision of the Hon'ble CESTAT in the case of CCE, Meerut-Ut. Vs. Hanco Ser. Power Products Ltd. reported as 2013 (289) ELT 353 (Tri-Tri) wherein it has been held that Commissioner (Appeals) has inherent power to remand a case. The Hon'ble Gujarat High Court in Tax Appeal No. 278 of 2014 in respect of Associated Hotels Hq. has also held that even after the amendment w.e.f. 11.05.2011 in Section 35A (3) of the Central Excise Act, 1944, the Commissioner (Appeals) would retain the power to remand a case.

10. In view of above, I set aside the impugned order and allow this appeal by way of remand with direction to the lower adjudicating authority to decide the case within 3 months from the date of receipt of this order and with directions to the appellant to submit their defence reply within one month from the receipt of this order treating the allegations contained in Para 2 to 6 of the impugned order as show cause notice.

११. अपीलकर्ता द्वारा दल की गई अपील का निरस्तार उपरोक्त शर्तों में किया जाता है।  
 9.11 The appeal filed by the appellant stands disposed off in a case remand.

  
 अनील कुमार  
 सहायक (अपील)

  
 (कुमार सतीश)  
 सहायक आयुक्त (अपील)

<b>By Regd. Post AD</b>	
To:	
M/s. Goyal Agro Resources Limited, Plot No. 25/1, SE & 23, Near Sharma Plaza, Gandhinagar Road, Village: Mehra, Sector: Jangam, District: Meerut, U.P. - 200 291	M/s. गौल एग्रो रिसोर्स लि., प्लॉट नं. 25/1, सी & 23, शर्मा प्लाजा के पास, गान्धिनगर रोड, गाँव: मेहरा, सेक्टर: जंगम, मिर्जापुर, उत्तर प्रदेश - 200 291

- Copy to:
- 1) The Principal Chief Commissioner, GST & Central Excise, Amritsar Zone, Amritsar for his kind information & case.
  - 2) The Commissioner, GST & Central Excise, Kulu & Commissionerate, Gandhinagar for necessary action.
  - 3) The Assistant, Excise, Deputy CGO & Central Excise, Division - Arjan-Bhachan, Gandhinagar for further necessary action.

