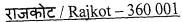


::प्रधानआयुक्त (अपील्स) का कार्यालय, बस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुल्क:: O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST &CENTRAL EXCISE

द्वितीय तल,जी एस टी भवन. / 2nd Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road



Tele Fax No. 0281 - 2477952/2441142Email: cexappealsrajkot@gmail.com



<u>रजिस्टर्ड डाक ए.डी.दवारा</u>:-

क

अपील / फाइलसंख्या/ Appeal /File No.

V2/28/GDM/2018-19

मूल आदेश सं / O.I.O. No.

Rejection letter from F.No. V/41-01/Anjar-

Bhachau/Refund/2018-19

दिनांक/

Date

13-04-2018

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

KCH-EXCUS-000-APP-041-2019

आदेश का दिनांक /

Date of Order:

25.03.2019

जारी करने की तारीख /

27.03.2019

Date of issue:

कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारितः /

Passed by ShriKumar Santosh, Principal Commissioner (Appeals), Rajkot

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद श्ल्क/ सेवाकर/वस्त् एवंसेवाकर, ग राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजितः /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST

Rajkot / Jamnagar / Gandhidham :

अपीलकर्ता&प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-ਬ

M/s Gokul Agro Resources Ltd., Plot No. 76/1, 80 & 89,, Nr. Sharma Resort, Galpadar Road,, Village: Meghpar Borichi, Tal: Anjar, Dist: Kutch-370201.

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.

- सीमा शुक्क ,केन्द्रीय उत्पाद शुक्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुक्क अधिनियम ,1944 की धारा 35B के तमित वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/ Appeal to Customs, Excise & Service Tribunal under Section 35B of CEA, 1944 / Under Section 86 (A) 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.
- उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६को की जांनी चाहिए ।/ To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above (ii)
- (iii) जाना चाहिए । संबंधित ड्राफ्ट का भगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित हैं । स्थान 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 dutydemand/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/-

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994 की धारा 86(1) के,अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपन्न 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 माँग, ब्याज की माँग 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुक्क की प्रति संलग्न करें। निर्धारित शुक्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सावजनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित अपलि अपल का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए (B) 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/-.

...2... (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 सकेती 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 आयुक्त केन्द्रीय उत्पाद शुल्क के अधिक के अधिक अधिक अधिक अधिक अधिक के अधिक अधिक के अधिक उर्दाच पुरुष पुरुष नारत जापरा जापरा पा श्रद्धाचा राज्यन पार (उण्डा राज्यन श्रात अमाणित हाना चाहर) जार जायुक्त द्वारा राहायफ जायुक्त जयवा 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 Taz 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 Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/Service Tax to file the appeal before the Appellate Tribunal. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35एफ के अंतर्गत, जो की वितीय 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 जुमांना विवादित है, या जुमांना, जब के करन करने किया जाए. बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

धारा 11 डी के अंतर्गत रकम

(ii)

सेनवेट जमा की ली गई गलत राशि (ii)

सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम (iii)

- बशर्ते यह कि इस धारा के प्रावधान वितीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।/ऽ

विचाराधीन स्थान अर्ज़ी एवं अपील को लागू नहीं होगे।/>
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 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.

भारत सरकार कोपूनरीक्षण आवेदन : (C) भारत सरकार कापुनरक्षिण आवेदन:
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर 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 subsection (1) of Section-35B ibid:

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 नकसान 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 (i)

भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात् कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के (ii) 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.

यदि उत्पाद शुल्क का भगतान किए बिना भारत के बोहर, 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. (iii)

सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित अधिनियम (न॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि (iv) पर या बाद में पारित किए गए है।/ 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.

उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुन्क (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 शुन्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुन्क 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. (v)

पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए । जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो (vi) तो रूपये 1000 -/ का भगतान 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.

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 यथ्रास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता हैं। / 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 with standing 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. (D)

यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-। के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का (E) विवास पहल्क टिकिट लेग 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.

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. (F)

उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट (G) 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 ::

M/s Gokul Agro Resources Ltd, Kutch (hereinafter referred to as "Appellant") filed Appeal No. V2/28/GDM/ 2018-19 against letter F.No. V/41-1/Anjar-Bhachau/Refund/2018-19 dated 13.4.2018 (hereinafter referred to as 'impugned letter') issued by the Dy. Commissioner, Central GST & Central Excise, Anjar-Bhachau Division, Gandhidham Commissionerate (hereinafter referred to as 'lower adjudicating authority').

- 2. The brief facts of the case are that the Appellant holding Service Tax Registration No. AAFCG6591ASD003, was engaged in export of Raw Cotton. The Appellant filed refund claim of Rs. 3,47,515/- on 3.4.2018 under Notification No. 41/2012-ST dated 29.6.2012, as amended, in respect of service tax paid on services availed for export of goods. The lower adjudicating authority rejected the refund claim vide the impugned letter on the ground that refund claim was filed beyond one year from the Let Export Order (LEO) dates in all shipping bills involved in the claim and hence, the claim is hit by limitation of time.
- 3. Being aggrieved with the impugned letter, the Appellant has preferred appeal, *inter-alia*, on the following grounds:-
- (i) They had filed refund claim of Rs. 3,47,515/- under Notification No. 41/2012-ST dated 29.6.2012 on 3.4.2018 for the services availed for goods exported as per following shipping bills:-

Sl. No.	Shipping bill No	Shipping bill date	Date of Let Export
			Order
1.	3610294	21.1.2017	23.1.2017
2.	3542935	18.1.2017	21.1.2017
3.	3577121	20.1.2017	21.1.2017
4.	3224044	3.1.2017	5.1.2017
5.	3302965	6.1.2017	12.1.2017
6.	3471012	16.1.2017	18.1.2017
7.	4298641	22.2.2017	23.2.2017
8.	4314339	23.2.2017	25.2.2017
9.	4492631	2.3.2017	3.3.2017
10.	4477239	10.3.2017	14.3.2017

- (ii) There is no dispute that they had received services which were used for exported goods; that primary motive of Notification No. 41/2012-ST is to reduce burden of tax on export by way of granting refund of services tax paid on input services used for exported goods.
- (iii) There is no allegation in the impugned rejection letter that the refund claim was incomplete, incorrect or defective. The only allegation raised is that the claim was filed late; that reason for delay in filing the claim is that the

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relevant shipping documents were misplaced and when they were recovered, they immediately filed the claim; that there was just two months delay in filing the refund claim for which substantive benefit of refund due to export cannot be denied to them; that they have complied with substantive conditions of the notification and non fulfillment of procedural/technical condition may be condoned and they relied upon the following case laws:

- (a) Madhav Steel-2010-TIOL-575-High Court-Mum
- (b) Modern Process Printers-2006(204) ELT 632
- (c) Ford India Pvt Ltd-2011(272) ELT 353
- (d) Ashima Dyecott Ltd-2011-TIOL-905-CESTAT-AHM
- 3.1 In Personal Hearing, Shri Parshottam Prajapati, Executive of the Appellant reiterated the grounds of Appeal.

Findings:-

- 4. I have carefully gone through the facts of the case, the impugned letter 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, as amended or claim of the Appellant is time barred?
- 5. I find that the lower adjudicating authority has rejected the refund claim filed by the Appellant under Notification No. 41/2012-ST dated 29.6.2012, as amended on the ground that claim was filed beyond one year from the Let Export Order (LEO) dates mentioned in shipping bills involved in the claim and hence, the claim is hit by limitation of time. The Appellant has not disputed about the fact that the refund claim was filed beyond one year from the Let Export Order dates but contested on the ground that they have complied with substantive condition of the notification saying that there was just two months delay in filing the refund claim for which substantive benefit of export cannot be denied to them; that non fulfillment of procedural/technical conditions may be condoned.
- 6. I find that Notification No. 41/2012-ST dated 29.6.2012, as amended prescribed time limit of one year from the date of export of goods for claiming rebate of service tax as per Paragraph 3(g) *ibid*, which reads as under:
 - "(g) the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.

Explanation. - For the purposes of this clause the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance

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and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962);"

- 6.1 I find that above condition is substantive and cannot be called procedural or technical by any stretch of imagination and hence, cannot be condoned. I rely on the order passed by the Hon'ble CESTAT, New Delhi in the case of Life Long India Limited reported as 2016 (43) S.T.R. 314 (Tri. Del.), wherein it has been held that,
 - "5. In respect of those claims which were found by the impugned order as well as the primary adjudication orders to be beyond the period of limitation, ld. counsel for the appellants contends that since the delay was not considerable, the authorities below should have exercised discretion and condoned the same. This contention does not commend acceptance by the Tribunal. Paragraph 3(g) of the Notification No. 41/2012-S.T. clearly indicates the period of limitation and provides no discretion for condonation of the delay. In the circumstances, it cannot be gainfully contended that the authority had a reservoir of discretion to condone the delay, if satisfied with reasons for the delay for making an application for refund."

(Emphasis supplied)

- 6.2 I also rely on the order passed the Hon'ble CESTAT, New Delhi in the case of Salora International Ltd reported as 2017 (47) S.T.R. 177 (Tri. Del.), wherein it has been held that,
 - "5. The Para 3 of the notification clearly lays down that the refund shall be filed within one year from the date of export of the goods and explanation attached to the said condition clearly lays down that the date of export shall be the date on which the proper officer of the Customs makes an order permitting clearance of the goods. Admittedly in the present case, the refund stands filed by the appellant after the "let-go" order was passed by the Customs. As such the limitation aspect which stands provided in the notification itself, cannot be diluted and the refund filed after that date cannot be held admissible."

(Emphasis supplied)

- 7.1 In view of above, I hold that the Appellant is not eligible for refund under Notification No. 41/2012-ST dated 29.6.2012, as amended as the claim was filed beyond one year from date of export and consequently hit by limitation of time prescribed at Para 3(g) of notification *supra*.
- 8. I also examine the case laws relied upon by the Appellant as under:
- (i) In the case law of Madhav Steel-2010-TIOL-575-High Court-Mum, issue involved was that the petitioner had failed to establish that the goods sold by

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the petitioner to the exporter under 7 invoices, form part of the goods purchased by the petitioner from the manufacturer under the 11 invoices raised by the said manufacturer. The Hon'ble High Court held that documents produced by the petitioner established that the goods purchased by the petitioner from the manufacturer are the goods sold by the petitioner to the exporter and the same have been exported by the said exporter and hence, the petitioner was eligible for rebate.

- (ii) In the case law of Modern Process Printers-2006(204) ELT 632, the rebate claim filed by the party under Notification No. 41/2001-C.E.(N.T.) dated 26.6.2001 was rejected on the ground that the party failed to file declaration containing input output ratio with the jurisdictional Asst. Commissioner as required under Para(1) of the said notification. The Revisionary Authority held that procedural infraction of Notification/Circulars etc. are to be condoned, if exports have actually taken place and that substantive benefit cannot be denied for procedural lapses.
- (iii) In the case law of Ford India Pvt Ltd-2011(272) ELT 353, the party had filed rebate claim under Rule 18 of the Central Excise Rules, 1944 read with Notification No. 41/2001-CE(NT) within time limit but later on when Cenvat credit was held to be ineligible, the party paid duty subsequently. The Hon'ble Tribunal held that substantive compliance is sufficient where factum of export is not in doubt and that rebate being a beneficial scheme, it should be interpreted liberally.
- (iv) In the case law of Ashima Dyecott Ltd-2011-TIOL-905-CESTAT-AHM, the party had filed claim for refund of service tax paid on the various services utilized for export of goods which was rejected on procedural and technical grounds like non-mention of the service tax registration in the invoices, service tax registration of the service provider under a different category etc. The Hon'ble Tribunal remanded the matter by observing that some of the defects are rectifiable and in some cases it can be proved by production of other evidences that the services on which refund has been claimed, stand utilized by the appellant for export of their goods.
- 8.1 I find that none of the case laws relied upon by the Appellant deals with delay in filing rebate claims beyond stipulated time limit. Since, facts involved in relied upon case laws are different and distinguishable from the present case, the said case laws are not applicable to the facts of the present case.





- 9. I, therefore, uphold the impugned order and reject the appeal filed by the appellant.
- 9.1 अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 9.1 The appeal filed by the Appellant is disposed off as above.

सत्यापित,

(कुमार संतोष)

प्रधान आयुक्त (अपील्स)

.

विपुल शाह अधीक्षक (अपील्स)

By R.P.A.D.

To,
M/s Gokul Agro Resources Ltd,
Plot No. 76/1,80 & 89,
Near Sharma Resort,
Galpadar Road,
Meghpar Borichi,
Taluka Anjar,

सेवा में, में गोकुल एग्रो रिसौर्सेस लिमिटेड, प्लॉट नं 76/1,80,89, गलपादर रोड, मेघपर बोरिची, तालुका अंजार, जिल्ला कच्छ।

प्रतिलिपि:-

District Kutch.

- 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, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 3) उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अंजार-भचाउ मण्डल, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।