





80. भारत सरकार को परदेशों में आवेदन :  
 Revision Application to Government of India:  
 इस आवेदन को परदेशों में एक निदेशिका के तहत प्रस्तुत किया जाएगा, एडवोकेट जनरल, SEBE के प्रधान कार्यालय के द्वारा। आवेदनकर्ता को निदेशिका में निम्नलिखित जानकारी देनी होगी :  
 The application shall be filed in the Office of the Advocate General, SEBE, by the applicant through the Indian Consulate/Embassy in the country where the application is filed. The applicant shall furnish the following information in the application form:
81. यदि आवेदनकर्ता किसी देश में निवास कर रहा है तो वह आवेदनकर्ता के नाम पर निदेशिका को प्रस्तुत करने के लिए आवेदनकर्ता को निदेशिका में निम्नलिखित जानकारी देनी होगी :  
 If the applicant is residing in any foreign country, the application form shall be filed in the country where the applicant is residing through the Indian Consulate/Embassy in that country. The applicant shall furnish the following information in the application form:
82. आवेदनकर्ता को आवेदनकर्ता के नाम पर निदेशिका को प्रस्तुत करने के लिए आवेदनकर्ता को निदेशिका में निम्नलिखित जानकारी देनी होगी :  
 The applicant shall furnish the following information in the application form:
83. आवेदनकर्ता को आवेदनकर्ता के नाम पर निदेशिका को प्रस्तुत करने के लिए आवेदनकर्ता को निदेशिका में निम्नलिखित जानकारी देनी होगी :  
 The applicant shall furnish the following information in the application form:
84. आवेदनकर्ता को आवेदनकर्ता के नाम पर निदेशिका को प्रस्तुत करने के लिए आवेदनकर्ता को निदेशिका में निम्नलिखित जानकारी देनी होगी :  
 The applicant shall furnish the following information in the application form:
85. आवेदनकर्ता को आवेदनकर्ता के नाम पर निदेशिका को प्रस्तुत करने के लिए आवेदनकर्ता को निदेशिका में निम्नलिखित जानकारी देनी होगी :  
 The applicant shall furnish the following information in the application form:
86. आवेदनकर्ता को आवेदनकर्ता के नाम पर निदेशिका को प्रस्तुत करने के लिए आवेदनकर्ता को निदेशिका में निम्नलिखित जानकारी देनी होगी :  
 The applicant shall furnish the following information in the application form:
87. आवेदनकर्ता को आवेदनकर्ता के नाम पर निदेशिका को प्रस्तुत करने के लिए आवेदनकर्ता को निदेशिका में निम्नलिखित जानकारी देनी होगी :  
 The applicant shall furnish the following information in the application form:
88. आवेदनकर्ता को आवेदनकर्ता के नाम पर निदेशिका को प्रस्तुत करने के लिए आवेदनकर्ता को निदेशिका में निम्नलिखित जानकारी देनी होगी :  
 The applicant shall furnish the following information in the application form:

**Order-In-Appeal:**

The present appeal has been filed by the Assistant Commissioner, Central Excise Division Surendranagar on behalf of the Principle Commissioner, Central Excise & Service Tax, Surendranagar (hereinafter referred to as the Revenue), in pursuance of the directions and authorization issued by the Revenue under Section 84(1) of the Finance Act, 1994 against the Order-In-Original No. 241206/19 (dated 18.03.2015) (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, Central Excise Division Surendranagar (hereinafter referred to as the Lower Authority) in the case of M/s. Chamcraft Machine Tools, Plot No. 015-13, Plot No. 1522, Phase IV, GIDC Wadi San Gile, Surendranagar (hereinafter referred to as the Respondent assessee).

2. It is stated that the facts of the case are that the respondent assessee are holding Central Excise Registration and are engaged in the manufacture of excisable goods falling under First Schedule to the Central Excise Tariff Act 1985. The respondent assessee filed a refund application of Rs.5249/- for the refund of Education Cess (Rs.2854/-) and for (Rs.2395/-) for S&H Cess lying unspent in their Personal Ledger Account, which could not be utilized after Cess on all goods falling under First Schedule to the Central Excise Tariff Act, 1985 (w.e.f. 15.03.2015), has been Exempted vide Notification No 142015-CE dated 01.03.2015.

2.1. As the balance of Cess (Education Cess & S&H Cess) cannot be utilized prior than for the payment of above Cess, and the said Cess being Exempted vide Notification No 142015-CE dated 01.03.2015 the respondent assessee filed the above refund claim with the Jurisdictional Assistant Commissioner. The lower authority vide Impugned order sanctioned the refund of above amount under Section 11 B(2) (i) of Central Excise Act, 1944 (hereinafter to be referred as the Act).

2.2. The Revenue had the different views on sanction of Education Cess & S & H Cess lying unspent by PLA of the respondent assessee and did not accept the impugned order passed by lower authority.

Aggrieved by the impugned Order the Revenue have filed the present Appeal on the following grounds that:-

- i). The Lower Authority has erred in sanctioning the refund of unutilised balance amount of Cess (Education Cess & S & H Cess) lying in PLA.
- ii). There is no provision to refund the balance of education Cess and the Secondary and Higher Education Cess lying in PLA as on 01.03.2015.
- iii). The lower authority has sanctioned the refund by invoking the Section 11B(2)(i) of the Act & there is no provision of refund of Education Cess in any of the provisions of Section 11 B of the Act.



therefore the refund sanctioned by the lower authority is erroneous and the refund order is liable to be set aside.

3. The respondent assessee filed Memorandum of Cross objections dated 18.02.2017 on the appeal filed by her Revenue. The respondent assessee inter alia submitted that the Department has filed the appeal merely on presumption and assumption without verifying the details of sanction or refund claim sanctioned by the lower authority.

4. Personal hearing in the case was granted to the respondent assessee on 05.02.2016 but respondent assessee did not attend the personal hearing. Again, personal hearing in the case was granted to the respondent assessee on 27.02.2016 but respondent assessee did not attend hearing on this date also.

4.1. Respondent assessee vide email dated 20.05.2016 informed that it is not possible for them to attend personal hearing due to long run from their place of business and the amount involved in the case is very small and hence the case may be decided on the basis of cross objections dated 18.02.2017 submitted vide letter dated 21.02.2017.

5. I find that the respondent assessee vide their cross objection dated 18.02.2017 have raised the following objections on the Memorandum of appeal filed by the Revenue:-

- i) That the revenue has filed the appeal on assumption and presumption and without verification of the details facts of the refund claim sanctioned by the assistant commissioner.
- ii) That the FIA is maintained by the assessee and certain amount is deposited in advance under respective head of account i.e. Brain Excise Duty, ED Cases &H Cases etc, under CAP-7 Scheme, which is accounted for in personal ledger account. In case of Insufficient balance in Central Credit account for payment of duty for the goods cleared during the month the remaining amount is debited in respective head of account in personal ledger account maintained by the assessee. Thus the advance deposit made in FIA belongs to the assessee and there is no provision in Central Excise Act, 1944 and rules framed thereunder or any other law for the time being in force to disallow the refund claim of balance lying unutilised in personal ledger account. As section 15 B (2) (c) of Central Excise Act 1944 provides for refund of Unsettled advance deposit lying in balance of the Applicant's account current, maintained by the commissioner, Central Excise as & when claimed by the assessee.

6. I have gone through the impugned order, the grounds of appeal filed by the revenue and contents of cross objections filed by the respondent-assessee. The brief issue to be decided in the Depts. In the appeal is whether impugned order sanctioning the claim of refund of Rs.51,436/- in respect of cesses lying unutilised in their Personal Ledger Account under Section 115(2) (a) of the Act is correct, legal or otherwise.


7. I observed that in the case the impugned order is dated 16.09.2016 & date of communication of Directions to file appeal is 20.12.2016 and the appeal has been filed on 04.01.2017, Hence I find that the appeal has been filed in time.

8. Before I propose to decide the Appeal filed by the revenue, going into merits of the case, I find that the Commissioner (Appeals) GST & C, Guise Rajkot vide letter F.No. 02/Misc/Appeals/36/1517-18 Dtd dated 19.03.2016 has informed that keeping in mind the regularity of Government litigation and withdrawal of cesses on monetary limit as prescribed vide Board's instructions dated 15.03.2016 issued from F.No. 290/Misc/290/2017-18, the Commissioner, GST & C, Excise, Bhavnagar (the Appellant) has requested to permit him to withdraw the Appeal, filed on the monetary grounds as prescribed vide Board's above instructions.

9. In view of the above, I pass the following Order:-

**ORDER:**

To allow the appeal, filed by the revenue, as will draw it.

WITNESSED AND SIGNED BY,  
  
 Pramod A. Vasave

  
 (Pramod A. Vasave)  
 Commissioner (Appeals)  
 Commissioner  
 GST & Central Excise, Kutch

By R.P.A.O.

To,

1) The Assistant Commissioner,  
 Service Tax Division- Bhavnagar Appellant

2) M/s. Champoral Machine Tools  
 Plot No. 1015-10, Plot No. 1022,  
 Phase IV GIDC Wardapur City,  
 Surendranagar Respondent

Copy to-

1. The Chief Commissioner, GST & C Ex, Ahmedabad Zone, Ahmedabad.
2. The Principal Commissioner, GST & C Ex, Bhavnagar
3. The Assistant Commissioner, GST & C Ex, Division, Surendranagar.
4. Superintendent, GST & C. Ex. I, Division, Surendranagar
5. Group I File