



अथवा (अंग्रेजी): न्यायपालिका, नयाँ दिल्ली, भारत
 NATIONAL COMMISSION FOR EMPLOYEES, NEW DELHI, INDIA
 दफ्तर: 18, 19, 20, B-10, Phase II, New Delhi-110048
 आर.सी.डी. नं. 1/2011-12, New Delhi-110048
 शहर: नयाँ दिल्ली, भारत
 टेलीफोन नं. 011-24795794-57, फेक्स: 011-24795790



सूचना क्र. 3/2018

आवेदन क्र. (Application No.)	18/2018	आवेदन दिनांक (Date of Application)	18.07.2018
आवेदनकर्ता (Applicant)	श्री. मीलान गिमिने पासिने (Mr. Milan Gimine Passine)	आवेदन प्राप्त दिनांक (Date of Receipt)	27.07.2018

3. आवेदन संख्या: नयाँ दिल्ली-18/2018

111V-EXCISE/000-APP-181-2018-19

आवेदन दिनांक: 18.07.2018, आवेदन प्राप्त दिनांक: 27.07.2018

आवेदनकर्ता: श्री. मीलान गिमिने पासिने, कर्नाटक राज्य, भारत
 Mr. Milan Gimine Passine, Karnataka, India

1. आवेदनकर्ता द्वारा प्रस्तुत किया गया प्रमाण, जहाँ वह एक निर्यात करने वाले व्यक्ति के रूप में कार्य करता है, और

2. आवेदनकर्ता द्वारा प्रस्तुत किया गया प्रमाण, जहाँ वह एक निर्यात करने वाले व्यक्ति के रूप में कार्य करता है, और

3. आवेदनकर्ता द्वारा प्रस्तुत किया गया प्रमाण, जहाँ वह एक निर्यात करने वाले व्यक्ति के रूप में कार्य करता है, और

4. आवेदनकर्ता द्वारा प्रस्तुत किया गया प्रमाण, जहाँ वह एक निर्यात करने वाले व्यक्ति के रूप में कार्य करता है, और

5. आवेदनकर्ता द्वारा प्रस्तुत किया गया प्रमाण, जहाँ वह एक निर्यात करने वाले व्यक्ति के रूप में कार्य करता है, और

6. आवेदनकर्ता द्वारा प्रस्तुत किया गया प्रमाण, जहाँ वह एक निर्यात करने वाले व्यक्ति के रूप में कार्य करता है, और

7. आवेदनकर्ता द्वारा प्रस्तुत किया गया प्रमाण, जहाँ वह एक निर्यात करने वाले व्यक्ति के रूप में कार्य करता है, और

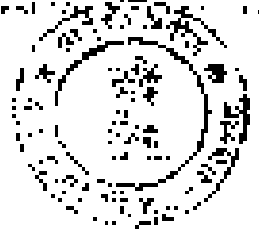
8. आवेदनकर्ता द्वारा प्रस्तुत किया गया प्रमाण, जहाँ वह एक निर्यात करने वाले व्यक्ति के रूप में कार्य करता है, और

9. आवेदनकर्ता द्वारा प्रस्तुत किया गया प्रमाण, जहाँ वह एक निर्यात करने वाले व्यक्ति के रूप में कार्य करता है, और

10. आवेदनकर्ता द्वारा प्रस्तुत किया गया प्रमाण, जहाँ वह एक निर्यात करने वाले व्यक्ति के रूप में कार्य करता है, और

11. आवेदनकर्ता द्वारा प्रस्तुत किया गया प्रमाण, जहाँ वह एक निर्यात करने वाले व्यक्ति के रूप में कार्य करता है, और

12. आवेदनकर्ता द्वारा प्रस्तुत किया गया प्रमाण, जहाँ वह एक निर्यात करने वाले व्यक्ति के रूप में कार्य करता है, और

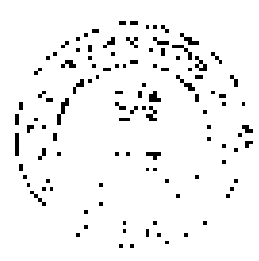


:: ORDER IN APPEAL ::

M/s. Milan Ginning Pressing Pvt. Ltd., In. 440 K. V. Sub-station, B. P. 8A, Limbdi, District – Surendranagar, Pin Code – 363421 (hereinafter referred to as 'the appellant') filed present appeal against Order-In-Original No. R/12/2017 dated 12.05.2017 (hereafter referred to as 'the impugned order') passed by the Assistant Commissioner, Service Tax Division, Bhavnagar (hereinafter referred to as 'the sanctioning authority').

2. The facts of the case are that the appellant filed refund claim of Rs. 3,31,556/- on 17.3.2017 under Notification No. 41/2012-57 dated 29.06.2012, in respect of service tax paid to various service providers for rendering taxable services in relation to export of goods from April, 2016 to August, 2016. A query letter dated 11.04.2017 was issued to the appellant, to clarify whether service tax paid by them to service providers had actually been paid by the service providers to the Government Exchequer and then SOA dated 26.05.2017 was issued. The sanctioning authority vide impugned order rejected refund of Rs. 3,31,556/- on the ground that the appellant failed to submit proper/satisfactory reply to the query raised as to whether the service providers, to whom they had paid service tax, had deposited service tax into Government account.

3. Being aggrieved with the impugned order, the appellant has preferred present appeal, *inter alia*, on the grounds that as per conditions specified in Notification No. 41/2012-57 exporter is required to give evidence of payment made by them to service provider in respect of the services availed and proof of actual export and the Notification nowhere mentioned that the exporters will have to submit proof of payment of service tax by the service providers to the Government account; that in the tax regime, there is no such mechanism provided wherein service recipient can prove that the service providers have paid service tax to the Government account.



4. The appellants filed written submission dated 26.05.2018 and dated 03.07.2018, *inter alia*, enclosing certificates issued by the service providers confirming that they had discharged their service tax liability for the financial year 2016-17 and submitted that the appellants did not want further personal hearing in the matter and appeal may be decided on the basis of their written submissions.

Findings:

5. I have carefully gone through the facts of the case, the impugned order, the grounds of appeal and written submissions made by the appellants. The issue to be decided in the present appeal is as to whether the impugned order rejecting refund of service tax filed under Notification No. 41/2012-57 dated 29.06.2012 is proper or otherwise.



6. The sanctioning authority rejected refund of Rs. 3,31,156/- on the ground that appellants could not furnish documentary/evidences certifying that the service tax paid by the appellant to their service providers has actually been deposited by those service providers to the Government account whereas the appellants has submitted that there is no such condition in the Notification. I find substantial force in the contention of the appellants. I find that Notification No. 41/2012-57 dated 29.06.2012 allows refund of service tax paid by the exporters in respect of the services availed for export of goods and it is settled legal position that if availment of services for export of goods, payment of service tax to the service providers and exportation of the goods are not disputed, refund of service tax filed by the appellant under Notification No. 41/2012-57 dated 29.06.2012 cannot be denied. The intent and object of the regulation is to promote exportation of goods and not to export taxes along with the goods. I find that there is no condition in the said Notification under which the appellant exporter was/is required to produce documentary proof to establish that service tax paid by them to the service providers has been deposited by those service providers. A 0

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the Government exchequer account. There were separate provisions under the Finance Act, 1994 for recovery of service tax from such persons, who charge and to pay service tax but not deposit the same to the Government exchequer account. Therefore, substantial benefit provided by the legislation cannot be denied to the appellant by the sanctioning authority beyond the provisions of law as has been done by the sanctioning authority in this case. Hence, I hold that rejection of refund claim of Rs. 1,01,550/- is not correct, legal and proper at all and the sanctioning authority has acted against rule of law abusing powers given to him under the law.

7. In view of above, I set aside the impugned order and allow appeal filed by the appellant, with consequential relief.

8.7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तर्कों से किया जाता है।

7.7. The appeal filed by the appellant stands disposed of in above terms.

आदेश
 (गुमर खतून)
 आयुक्त (अपील)

By Speed Post

To,

M/s. Milan Clothing Processing Pvt. Ltd.,
 Nr. 440 K. V. Sub-Station, N. I. - 24,
 Limbdi, District - Surendranagar. Pin
 Code - 363421

श्री. मिलन क्लिथिंग प्रोसेसिंग प्रा. लि.,
 440 के. वी. सब-स्टेशन के पास,
 लम्बडी, जिला - सुरेंद्रनगर,
 पिन कोड - 363421
 त्रिभुवन, सुरेंद्रनगर

Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
 - 2) The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
 - 3) The Assistant Commissioner, GST & Central Excise Division, Surendranagar.
- 9/1/2018
 Guam File.

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