::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-DIN- 20200964SX0000286E64

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/08/GDM/2020	6/UrbanRef/19-20	17-12-2019
	V2/09/GDM/2020	7/UrbanRef/19-20	18-12-2019

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

KCH-EXCUS-000-APP-065 TO 066-2020

आदेश का दिनांक / Date of Order: **27.08.2020** जारी करने की तारीख / Date of issue: **02.09.2020**

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by Shri Gopi Nath, Commissioner (Appeals),Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश मे सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

1.M/s Cargill International SA-Switzerland, C/o Deloitte Haskins & Sells, LLP 10th floor, Building 10, Tower B, DLF Cyber City Complex, DLF City, Phase –II, Gurugram-122002, Haryana.
2.M/s Cargill Ocean Transportation Singapore Pte Ltd., C/o Deloitte Haskins & Sells, LLP 10th floor, Building 10, Tower B, DLF Cyber City Complex, DLF City, Phase –II, Gurugram-122002, Haryana.

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.

(A) सीमा शुल्क,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील,केन्द्रीय उत्पाद शुल्क अधिनियम,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखि+त जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 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.

(ii) 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 असावा अहमदाबाद- ३८००१६को की जानी 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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क 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 शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन 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/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में 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 शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए 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/-.

(i) वित्त अधिनियम,1994की 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 सकेगी 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 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 Tax 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.

(ii) मीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय 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 जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।/
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 penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a 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.

(C) भारत सरकार कोपुनरीक्षण 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 sub-section (1) of Section-35B ibid:

(i) 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 नुकसान 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

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

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outsideIndia export to Nepal or Bhutan, without payment of duty.

(iv) 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 वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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.

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

(vi) 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 तो रूपये 1000 -/ का भुगतान 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.

(D) 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 यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case,if the order covers variousnumbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding 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.

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

(F) 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 ओर 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.

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

Following two appeals have been filed against Orders-in-Original (hereinafter referred to as 'impugned orders') mentioned against each appeal, passed by the Asst. Commissioner, Central GST, Urban Division, Gandhidham (hereinafter referred to as 'adjudicating authority') :

Sl. No.	Name of Appellant	Appeal No.	OIO No. & Date	Amount of refund claim (in Rs.)
1.	Cargill International SA- Switzerland	V2/8/GDM/2020	6/UrbanRef/19-20 dated 17.12.2019	2,12,32,403/-
2.	Cargill Ocean Transportation (Singapore) Pte Ltd	V2/9/GDM/2020	7/UrbanRef/19-20 dated 18.12.2019	12,14,369/-

1.1 Since issue involved in above appeals is common, both the appeals are taken up together for decision vide this common order.

2. The brief facts of these appeals are that the appellants were engaged in the business of providing ocean transportation service. Notification No. 25/2012-ST dated 20.6.2012 was amended vide Notification No. 1/2017-ST dated 12.1.2017 to provide that if services by way of transportation of goods was provided by a vessel from a place outside India upto Customs Station in India, then service tax was required to be discharged by Shipping line or their agents in India on ocean freight. Accordingly, the Appellants had discharged service tax on ocean freight during the period from 22.1.2017 to 22.4.2017 through their agents who were registered with Service Tax

2.1 The Appellants filed refund claims before the refund sanctioning authority under Section 11B of the Central Excise Act, 1944 on the grounds that they were not liable to pay service tax on ocean freight but had erroneously discharged service tax on ocean freight since they were not liable to pay service tax on ocean transportation service rendered by them.

2.2 The refund claims were rejected by the refund sanctioning authority vide the impugned orders on the grounds that,

(i) The Appellants had correctly discharged service tax on ocean freight during the period from 22.1.2017 to 22.4.2017 through their agents, in terms of Notification No. 25/2012-ST dated 20.6.2012 as amended vide Notification Nos. 1/2017-ST, 2/2017-ST and 3/2017-ST, all dated 12.1.2017; and,

(ii) The Appellants paid service tax during the period from 31.3.2017 to 8.6.2017 and refund claims were filed on 18.9.2019 i.e. beyond one year from date of deposit of service tax and hence, refund claims were barred by limitation under Section 11B of the Central Excise Act, 1944, made applicable to service tax by virtue of Section 83 of the Finance Act, 1994.

3. Aggrieved, the Appellants have filed the present appeals, *inter alia*, on the grounds that,

(i) The Appellant is engaged in the business providing Ocean transportation services by vessels to its customers and had provided this service outside India during the period from 22.1.2017 to 22.4.2017; that the payments for receipt of such Ocean transportation services by vessel was also paid by the Customers to the Appellant outside India. Thus, there was no provision or receipt of services in the taxable territory i.e. India. Merely because the destination of such goods was India, the Foreign shipping Company i.e the Appellant herein (Service provider) was made liable to pay Service Tax by virtue of amendments made in Service Tax Rules 1994 by virtue of Notification No. 2 & 3 of 2017 dated 12.1.2017 and exemption notification No 25/2012-ST dated 20.6.2012 was amended vide Notification No. 1/2017-ST dated 12.1.2017; that by virtue of said amendment, service tax was levied on Ocean Freight charges for on a transaction where both the provider of service and recipient of services were outside India and where both the services were provided and received / consumed outside India; that all these Notifications and Service Tax Rules go beyond the basic provisions of the Finance act and in particular Section 64(1) and Section 66B of the Finance Act, which provides that Chapter V of the Finance Act applies to transactions within the taxable territory i.e. India and only on the value of services provided in the taxable territory and not extraterritorial events occurring outside the land mass of India; that Section 94 of the Finance Act only empowers the Government to issue Notifications and make Rules which are within the provisions of Chapter V of the Finance Act and not for extra-territorial jurisdictions.

(ii) That the entire levy on this transaction i.e. Services provided by the Appellant outside India to its recipient of service located outside India is illegal and beyond the scope of the Finance Act *per se* and the Rules made to collect the tax from the Service provider or through its agents violates the basic fundamental of Chapter V of the Finance Act, which provides for levy of Service Tax only on transactions which are undertaken within the taxable territory and relied upon

decision passed by the Hon'ble Gujarat High Court in the case of Sal Steel Limited Vs Union of India in R/Special Civil Application C/SCA/2078S of 2018.

(iii) That the adjudicating authority erred in holding that the refund claim was barred by limitation under Section 11B of the Central Excise Act, 1944; that the provisions of Section 11B of the Central Excise Act is not applicable to the current situation at all; that the provisions of Section 11B applies only in cases where any duty Duty/Tax has to be claimed as Refund from the Government. However, in the present case, the Company is claiming refund of an amount which was wrongly deposited with the Government under a mistake of law to be Service Tax. The entire levy of Service Tax on Ocean Freight charges for a transaction which has undertaken outside the territorial jurisdiction is illegal and ultra-vires the Constitutional framework. Thus, once the amount deposited itself is not "a duty of excise" or Service Tax, to claim refund of such amount wrongly deposited as Service Tax, provisions of Section 118 would not be applicable and accordingly the period of one year would not be applicable and relied upon case law of Parijat Construction - 2018 (9) G.S.T.L. 8 (Bom.) and 3E Infotech - 2018(18) GSTL 410.

4. Hearing in the matter was conducted in virtual mode through video conferencing with prior consent of the Appellants. Shri Vaibhav Jain, Shri Gaurav Vijay and Shri Bhavesh Ahuja of Deloitte Haskins & Sells appeared on behalf of both the Appellants and reiterated submissions made in appeal memoranda and also filed additional written submission by email. In additional submission, the grounds of appeal memorandum are reiterated and relied upon following case laws:

(a) Sujaya D. Alva - 2019 (28) G.S.T.L. 196 (Kar.)
(b) Shankar Ramchandra Auctioneers- 2010 (19) STR 222 (T)
(c) Jubilant Enterprises P. Ltd. - 2014 (35) STR 430 (T)
(d) KVR Construction 2010 SCC OnLine Kar 5419 maintained by the Hon'ble Supreme Court as reported in 2018 (14) GSTL J70 (SC)

5. I have carefully gone through the facts of the cases, the impugned orders, the appeal memoranda and the submissions made by the appellant during the personal hearing as well as in additional submissions. The issue to be decided in the present appeals is whether rejection of refund claims by the refund sanctioning authority vide the impugned orders is correct, legal and proper or not.

6. On going through the records, I find that the Appellants had filed refund claims under Section 11B of the Act before the refund sanctioning authority on the grounds that they erroneously discharged service tax on ocean transportation

service. The refund sanctioning authority rejected the refund claims on the grounds that The Appellants had correctly discharged service tax on ocean freight during the period from 22.1.2017 to 22.4.2017 and that refund claims were barred by limitation under Section 11B of the Central Excise Act, 1944 as the Appellants had paid service tax during the period from 31.3.2017 to 8.6.2017 but refund claims were filed on 18.9.2019 i.e. beyond one year from date of deposit of service tax.

6.1 The Appellants have contended before me that they had provided ocean transportation service outside India and consideration thereof was also received outside India and there was no provision of service within the taxable territory; that service tax was not leviable on such transaction and relied upon case law of Sal Steel Limited; that their claim was not barred by limitation prescribed under Section 11B of the Act as the amount claimed as refund by them was wrongly deposited with the Government as a mistake of law to be service tax and provisions of Section 11B of the Act would not be applicable to their refund claims and relied upon various case laws.

7. I find that the refund claims were rejected by the refund sanctioning authority on merit as well as on limitation under Section 11B of the Central Excise Act, 1944. Since, the refund claims were rejected on limitation, it would be pertinent to examine whether the doctrine of limitation prescribed under Section 11B *ibid* are applicable to the refund claims or not. I find that the Appellants had rendered ocean transportation service in terms of Notification Nos. 1/2017-ST, 2/2017-ST and 3/2017-ST, all dated 12.1.2017 and had self assessed and voluntarily discharged service tax during the period from 22.1.2017 to 22.4.2017. The Appellants filed refund claims under Section 11B of the Central Excise Act, 1944 on 18.9.2019. Further, such self assessment had attained finality. These facts are not under dispute. I find that refund claim under Section 11B *ibid* is required to be filed within one year from the relevant date i.e. date of deposit of service tax in the present case. The relevant provisions of Section 11B are reproduced as under:

> **"SECTION 11B. Claim for refund of duty and interest, if any, paid on such duty** — (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to

establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2)."

8. I find that service tax was deposited by the Appellants during the period from 22.1.2017 to 22.4.2017 and refund claims were filed on 18.9.2019 i.e. beyond one year from date of deposit of service tax. Thus, both refund claims are barred by limitation provided under Section 11B *ibid.* It appears that the Appellants had filed refund claims apparently after pronouncement of favourable decision by the Hon'ble Gujarat High Court on 6.9.2019 in Special Civil Application No. 20785/2018 filed by M/s SAL Steel Ltd reported as 2020 (37) G.S.T.L. 3 (Guj.). In the said decision, the Hon'ble Court has held Rule 2(1)(d)(EEC) of the Service Tax Rules,1994 and Notification Nos. 15/2017-S.T. and 16/2017-S.T. both dated 13.4.2017 seeking to levy and collect service tax on ocean transportation service rendered and consumed outside India as *ultra vires* Sections 66B, 67 and 94 of the Finance Act, 1994.

8.1. Even in a situation, where refund claims were filed on the basis of favourable decision rendered in some other assessee's case, it is a settled position of law that refund claim is to be filed within limitation prescribed under the respective Act, as held by the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd reported as 1997 (89) E.L.T. 247 (S.C.), wherein it has been held that,

"70. *Re : (II) :* We may now consider a situation where a manufacturer pays a duty unquestioningly - or he questions the levy but fails before the original authority and keeps quiet. It may also be a case where he files an appeal, the appeal goes against him and he keeps quiet. It may also be a case where he files a second appeal/revision, fails and then keeps quiet. The orders in any of the situations have become final against him. Then what happens is that after an year, five years, ten years, twenty years or even much later, a decision is rendered by a High Court or the Supreme Court in the case of another person holding that duty was not payable or was payable at a lesser rate in such a case. (We must reiterate and emphasize that while dealing with this situation we are keeping out the situation where the provision under which the duty is levied is declared unconstitutional by a court; that is a separate category and the discussion in this paragraph does not include that situation. In other words, we are dealing with a case where the duty was paid on account of mis-construction, mis-application or wrong interpretation of a provision of law, rule, notification or regulation, as the case may be.) Is it open to the manufacturer to say that the decision of a High Court or the Supreme Court, as the ease may be, in the case of another person has made him aware of the mistake of law and, therefore, he is

entitled to refund of the duty paid by him? Can he invoke Section 72 of the Contract Act in such a case and claim refund and whether in such a case, it can be held that reading Section 72 of the Contract Act along with Section 17(1)(c) of the Limitation Act, 1963, the period of limitation for making such a claim for refund, whether by way of a suit or by way of a writ petition, is three years from the date of discovery of such mistake of law? *Kanhaiyalal* is understood as saying that such a course is permissible. Later decisions commencing from *Bhailal Bhai* have held that the period of limitation in such cases is three years from the date of discovery of the mistake of law. With the greatest respect to the learned Judges who said so, we find ourselves unable to agree with the said proposition. Acceptance of the said proposition would do violence to several well-accepted concepts of law. One of the important principles of law, based upon public policy, is the sanctity attaching to the finality of any proceeding, be it a suit or any other proceeding. Where a duty has been collected under a particular order which has become final, the refund of that duty cannot be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid) is set aside according to law.
So long as that order stands, the duty cannot be recovered back nor can any claim for its refund be entertained. ... ...

Once this is so, it is un-understandable how an assessment/adjudication made under the Act levying or affirming the duty can be ignored because some years later another view of law is taken by another court in another person's case. Nor is there any provision in the Act for re-opening the concluded proceedings on the aforesaid basis. We must reiterate that the provisions of the Central Excise Act also constitute "law" within the meaning of Article 265 and any collection or retention of tax in accordance or pursuant to the said provisions is collection or retention under "the authority of law" within the meaning of the said article. In short, no claim for refund is permissible except under and in accordance with Rule 11 and Section 11B. An order or decree of a court does not become ineffective or unenforceable simply because at a later point of time, a different view of law is taken. If this theory is applied universally, it will lead to unimaginable chaos.

... ... We are, therefore, of the clear and considered opinion that *the theory of mistake of law and the consequent period of limitation of three years from the date of discovery of such mistake of law cannot be invoked by an assessee taking advantage of the decision in another assessee's case. All claims for refund ought to be, and ought to have been, filed only under and in accordance with Rule 11/Section 11B and under no other provision and in no other forum.* An assessee must succeed or fail in his own proceedings and the finality of the proceedings in his own case cannot be ignored and refund ordered in his favour just because in another assessee's case, a similar point is decided in favour of the manufacturer/assessee. (See the pertinent observations of Hidayatullah, CJ. in *Tilokchand Motichand* extracted in Para 37). The decisions of this Court saying to the contrary must be held to have been decided wrongly and are accordingly overruled herewith."

(Emphasis supplied)

9. The Appellant has contended that the provisions of Section 11B applies only in cases where any duty Duty/Tax has to be claimed as Refund from the Government but in their case, they are claiming refund of an amount which was wrongly deposited with the Government under a mistake of law to be Service Tax;

that the entire levy of Service Tax on Ocean Freight was ultra-vires the Rules and Notification and hence, amount deposited by them was not Service Tax and provisions of one year under Section 11B would not be applicable to such wrongly deposit of Service Tax.

9.1 I find that when the Appellants had voluntarily discharged service tax on ocean transportation service at material time, they deposited it as Service Tax. They filed refund claims only after pronouncement of decision by the Hon'ble Gujarat High Court in the case of SAL Steel Ltd, as discussed supra. So, what was deposited by them was service tax and that too on their own volition. Further, they filed refund claims under the provisions of Section 11B of the Central Excise Act, 1944. Hence, refund claim is admissible only if it is filed within one year from relevant date, as provided therein. The refund sanctioning authority, being creature of statute, was bound to follow the provisions of the Central Excise Act, 1944 and cannot travel beyond the provisions contained in Section 11B. I rely on the decision of the larger bench of the Hon'ble CESTAT, Chandigarh rendered in the case of Veer Overseas Ltd. reported as 2018 (15) G.S.T.L. 59 (Tri. - LB), wherein it has been held that,

> "7. What is crucial is that the appellants paid the claimed amount as service tax. They have approached the jurisdictional authority of service tax for refund of the said money. It is clear that the jurisdictional service tax authority is governed by the provisions of Section 11B as the claim has been filed as per the said mandate only. Here, we have specifically asked the Learned Counsel for the appellant under what provision of law he is seeking the return of the money earlier paid. He admitted that the claim has been preferred in terms of the provisions of Section 11B. If that being the case, it cannot be said that except for limitation other provisions of Section 11B will be made applicable to the appellant. The Learned Counsel also did not advance such proposition. He repeatedly submitted that the amount is paid mistakenly. The same is not a tax and should be returned without limitation as mentioned in Section 11B. We are not convinced by such submission.
>
> **8.** Here it is relevant to note that in various cases the High Courts and the Apex Court have allowed the claim of the parties for refund of money without applying the provisions of limitation under Section 11B by holding that the amount collected has no sanctity of law as the same is not a duty or a tax and accordingly the same should be returned to the party. We note such remedies provided by the High Courts and Apex Court are mainly by exercising powers

under the Constitution, in writ jurisdiction. It is clear that neither the jurisdictional service tax authority nor the Tribunal has such constitutional powers for allowing refund beyond the statutory time-limit prescribed by the law. Admittedly, the amount is paid as a tax, the refund has been claimed from the jurisdictional tax authorities and necessarily such tax authorities are bound by the law governing the collection as well as refund of any tax. There is no legal mandate to direct the tax authority to act beyond the statutory powers binding on them. The Hon'ble Supreme Court in *Mafatlal Industries Ltd.* (supra) categorically held that no claim for refund of any duty shall be entertained except in accordance with the provisions of the statute. Every claim for refund of excise duty can be made only under and in accordance with Section 11B in the forms provided by the Act. The Apex Court further observed that the only exception is where the provision of the Act whereunder the duty has been levied is found to be unconstitutional for violation of any of the constitutional limitations. This is a situation not contemplated by the Act. We note in the present case there is no such situation of the provision of any tax levy, in so far as the present dispute is concerned, held to be unconstitutional. As already held that the appellant is liable to pay service tax on reverse charge basis but for the exemption which was not availed by them. We hold that the decision of the Tribunal in *Monnet International Ltd.* (supra) has no application to decide the dispute in the present referred case. We take note of the decision of the Tribunal in *XL Telecom Ltd.* (supra). It had examined the legal implication with reference to the limitation applicable under Section 11B. We also note that the said ratio has been consistently followed by the Tribunal in various decisions. In fact, one such decision reached Hon'ble Supreme Court in *Miles India Limited* v. *Assistant Collector of Customs* - 1987 (30) E.L.T. 641 (S.C.). The Apex Court upheld the decision of the Tribunal to the effect that the jurisdictional customs authorities are right in disallowing the refund claim in terms of limitation provided under Section 27(1) of the Customs Act, 1962. We also note that in *Assistant Collector of Customs* v. *Anam Electrical Manufacturing Co.* - 1997 (90) E.L.T. 260 (S.C.) referred to in the decision of the Tribunal in *XL Telecom Ltd.* (supra), the Hon'ble Supreme Court held that the claim filed beyond the statutory time limit cannot be entertained.

9. The Apex Court in *Mafatlal Industries Ltd.* (supra) observed that the Central Excise Act and the Rules made thereunder including Section 11B too constitute "law" within the meaning of Article 265 and that in the face of the said provisions - which are exclusive in their nature no claim for refund is maintainable except and in accordance therewith. The Apex Court emphasized

Attested

(V.T.SHAH)
Superintendent(Appeals)

By R.P.A.D.

To,

1.	M/s Cargill International SA- Switzerland C/o Deloitte Haskins & Sells, LLP 10TH floor, Building 10, Tower B, DLF Cyber City Complex, DLF City Phase-II, Gurugram - 122002, Haryana.
2.	To, M/s Cargill Ocean Transportation Singapore Pte Ltd, C/o Deloitte Haskins & Sells, LLP 10TH floor, Building 10, Tower B, DLF Cyber City Complex, DLF City Phase-II, Gurugram - 122002, Haryana.

प्रतिलिपि:-

1) 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) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अर्बन मण्डल गांधीधाम को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।