::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔरकेन्द्रीय 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 :-

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/95/GDM/2019	**07/Refund/2019-20**	**21-06-2019**

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

KCH-EXCUS-000-APP-010-2020

आदेश का दिनांक / Date of Order:	**29.01.2020**	जारी करने की तारीख / Date of issue:	**29.01.2020**

श्रीगोपी 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 से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

Welspun Corp. Ltd.,Welspun City,Vilage-Versamedi, Taluka:Anjar,District:Kutch, Pin No.-370110, Gujarat

इस आदेश(अपील) से व्यथित कोइ 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 निम्नलिखित 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 असावी 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 रजिस्टार 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,1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र 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 शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार 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,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 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) सीमा 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" मे 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 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 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 छुट (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 outside India 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 गईं है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि 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 आदेशो 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 ::

M/s. Welspun Corp Ltd., Welspun City, Vill-Versamedi, Anjar, Kutch-370110 (hereinafter referred to as **"the appellant"**) have filed the present appeal against the Order-in-Original No.: 07/Refund/2019-20 dated 21.06.2019 (hereinafter referred to as **"the impugned order"**), passed by the Assistant Commissioner, CGST Division, Anjar-Bhachau, Gandhidham (hereinafter referred to as **"the refund sanctioning authority"**).

2. The brief facts of the case are that the Appellant had filed the original refund claim for Rs. 8,96,903/- on 01.01.2018 pertaining to rebate under Notification No. 41/2012-ST dated 29.06.2012 for various export services done by them during the month of May-2017 on specified services used for export of goods. The refund claim was rejected vide OIO dated 02.02.2018 on the ground that the claim did not fulfill the conditions stipulated at Para 1(c) of Notification No. 41/2012-ST dated 29.06.2012. Aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who vide OIA dated 08.03.2019 remanded back the case to the original refund sanctioning authority. The refund sanctioning authority vide the impugned order rejected the refund claim of the appellant on the ground that the rebate claim is not maintainable under Para 3 as the difference between the amount of rebate claimed under Paragraph 3 is less than 20% of the amount of rebate admissible under the procedure specified in Paragraph 2.

3. Aggrieved with the impugned order, the appellant preferred present appeal on the grounds as under: -

(i) that contrary to the settled principle in law a substantive benefit cannot be denied on account of procedural infirmities. In this regard, they place reliance on the judgment of the Hon'ble Supreme Court in the case of Commissioner Vs Associated Cement Co. Ltd.-2000 (116) E.L.T A66(S.C) and Shasun Chemicals and Drugs Ltd. Vs CESTAT- 2018 (11) G.S.T.L J39(Mad.) wherein reliance has been placed on the judgment of Madhya Pradesh High Court in 2002 (140) E.L.T 370(M.P.) and in 2009(24)E.L.T 31(M.P); that the legal principle laid down in the said

judgments has been upheld in catena of judgments.

(ii) that the Notification gives an option to the claimant to either claim refund under Para 2 or Para 3 of the Notification and the appellant can choose the most beneficial option conferred under the Notification; that the Hon'ble Tribunal, Delhi in the case of Jai Industries Vs Collector of Central Excise [1993 (68) E.L.T. 475] has held that even if the claimant has filed a refund claim under a particular provision of a Notification, alternate benefit is still available to the claimant.

(iii) that as per proviso 1(c) of the Notification, the rebate under the procedure specified in Paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified under Paragraph 2 and 3 is less than 20 % of the rebate available under the procedure specified in Paragraph 2. In such cases refund is admissible as per the procedure specified in para 2 of the Notification; that the condition does not affirm to reject the whole refund claim if the same has not been filed according to Para 3 instead of Para 2 of the Notification. In this regard, they place reliance on the decision of the Commissioner(Appeal-II), Central Excise, Ahmedabad's OIA No. AHM-SVTAX-000-APP-027-15-16 dated 22.05.2015.

4. In hearing Shri Surendar Mehta, Associate Vice President, Commercial, Shri Atul Nagrecha, Manager Indirect Tax and Insurance and Shri Roshil Nichani, authorized representatives of the appellant appeared on behalf of the appellant. They reiterated the submission of appeal memo and submitted copy of OIA passed by the Commissioner (Appeals), Ahmedabad for consideration and requested one week's time to file additional submission.

4.1 The appellant vide their additional submission dated 08.01.2020, have submitted that they had paid service tax on input services which were used for the export of goods, therefore they were entitled to the rebate/refund of the same in terms of Notification No. 41/2012-ST dated 29.06.2012; that if service tax rebate/refund is denied under para 2 or 3 of the said Notification, they would not be in a position to take cenvat credit of such service tax paid; that as they are not entitled to cenvat credit of the same, they are entitled to refund of the same in cash in terms

of Section 142(3) of the CGST Act, 2017.

5. I have gone through the records of the case, the impugned order, the grounds of appeal and written submission filed by the appellant and records of personal hearing. The issue to be decided in the present appeal is whether the impugned order rejecting refund claim of Rs. 8,96,903/- is correct, legal and proper or not.

6. On going through the records, I find that the refund sanctioning authority has rejected the rebate claim on the grounds that the difference between the amount of the rebate claimed under procedure prescribed in para 2 and 3 of the Notification no. 41/2012-S.T dated 29.06.2012 is less than 20% of the rebate available under the procedure specified in para 2 of the Notification.

7. For deciding the case, I would like to reproduce the relevant extract of Notification No. 41/2012-ST dated 29.06.2012 which reads as under:

*"..... **1(c) the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2;***

(2) the rebate shall be claimed in the following manner, namely:-

(d) the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that--

*(i) **the rebate of service tax paid on the specified services is claimed as a percentage of the declared Free On Board(FOB) value of the said goods, on the basis of rate specified in the Schedule;***

(ii) no further rebate shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the rebate obtained is less than the service tax paid on the specified services;

(iii) conditions of the notification have been fulfilled;

(e) service tax paid on the specified services eligible for rebate under this notification, shall be calculated by applying the rate prescribed for goods of a class or description, in the Schedule, as a percentage of the FOB value of the said goods;

(3) ***the rebate shall be claimed in the following manner, namely:-***

(a) ***rebate may be claimed on the service tax actually paid on any specified service on the basis of duly certified documents;***

(b) the person liable to pay service tax under section 68 of the said Act on the taxable service provided to the exporter for export of goods shall not be eligible to claim rebate under this notification;

(c) the manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall file a claim for rebate of service tax paid on the taxable service used for export of goods to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture in Form A-1;....."

[Emphasis supplied]

7.1 On analyzing the text of Notification No. 41/2012-S.T., I find that a manufacturer-exporter has been provided an option to claim rebate of Service Tax either on the basis of rates specified in the Schedule annexed to the notification as per the procedure specified in Para 2 or on the basis of documents as per the procedure specified in Para 3. In other words, the first procedure, as stipulated in Para 2 of the said Notification allows rebate of service tax paid on eligible input services **as a percentage value of the declared Free on Board (FOB) value of the export goods** on the basis of rate specified in the schedule, which is to be claimed from Customs authorities. The other procedure as stipulated in Para 3 is that the rebate may be claimed **on the service tax actually paid** on any specified service on the basis of duty certified documents, which is to be claimed from Central Excise authorities. However, despite these two options, the option to claim rebate of Service Tax under Para 3 is restricted to the extent that rebate of Service Tax under Para 3 on the basis of documents can be claimed only when the difference between the amount of rebate under Para 2 and Para 3 is more than 20% of the rebate

available under Para 2. I find that while the main intention in the Notification is to grant the rebate of Service Tax, claiming of rebate under Para 2 is encouraged and the rebate of Service Tax under Para 3 is allowed only when amount of rebate filed under Para 3 on the basis of actual payment of Service Tax is higher by 20% as compared to the amount of rebate under Para 2.

7.2 Further, since the claim under Para 2 is in terms of already fixed rates for each item in the Schedule of the Notification itself, it is prima facie hassle-free procedure for getting the rebate of service tax from the customs authorities. The rebate of service tax under Para 3 is admissible only on the basis of documents evidencing payment of actual service tax which certainly requires proper record keeping and other efforts on the part of the claimant. However, option to file claim under Para 3 is not open ended and it can be filed under this Para only if the difference between the amount of rebate admissible under Para 2 and under Para 3 is not lesser than 20% of rebate admissible under Para 2.

8. The appellant has contended that they have claimed refund of Service Tax pertaining to rebate under Notification No. 41/2012-ST which is a beneficial legislation intended to promote the exports by granting exemption to the Service Tax paid on various Services utilized by an exporter during the course of exports of the goods and that substantive benefit should not be denied for any procedural infraction. The service tax for which the rebate has been claimed by them are specified services and that Service Tax has been paid by them.

I find that the refund sanctioning authority has rightly rejected the refund claim with the observation that the rebate under the procedure specified in Paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in Paragraph 2 and Paragraph 3 is less than 20% of the rebate available under the procedure specified in Paragraph 2 and as per the calculation, the conditions as stipulated in the Notification has not been fulfilled by the appellant. The Notification No. 41/2012-S.T provides two options for claiming the rebate of Service Tax and the appellant can choose whichever is beneficial to them, however, they cannot ignore the conditions laid down

in the Notification for claiming the rebate. A Notification is a law enacted by the Government of India and where the statute provides a condition to be fulfilled for availing the benefit of a particular Notification, the provisions must be complied with as a mandatory requirement of law and if the said condition is not strictly adhered to then the Notification itself becomes meaningless.

8.1 As discussed above, there is no dispute that in the instant case the rebate claim is not maintainable under Para 3 as the difference between the amount of rebate claimed under Para 3 and the amount of rebate which could be admissible under Para 2 is below 20%. The appellant has vehemently contended that if rebate claim is not maintainable under Para 3 of the Notification, the same should be granted under Para 2 of the said Notification. In this regard, it has already been discussed above that rebate of service tax under Para 2 can be claimed only from Customs authorities after complying with the procedure laid down under the above notification and rebate of service tax under Para 2 cannot be granted by the Central Excise authorities as customs authorities have only been entrusted under Notification No. 41/2012-S.T. to disburse rebate of service tax as per rates specified in the Schedule. Since this restriction is specified in the notification itself, it cannot be relaxed, as claimed by the appellant. Considering these facts and legal restrictions inbuilt in the Notification No. 41/2012-S.T., I reject the appellant's plea. In this regard, I place reliance on the decision of the Revisionary Authority in the case of M/s United Exports as reported in 2018 (364) E.L.T. 1163 (G.O.I.) as per Order No. 11/2018-S.T., dated 1-3-2018 in F. No. 196/35/ST/2016-RA wherein it has been held as under-

> *"5. On mere reading of the Notification No. 41/2012-S.T., it is evident that an option is given to the claimant either to claim rebate of service tax under Para 2 or Para 3 of the said notification. The rebate claim under Para 2 is required to be filed with the concerned Custom House along with shipping bills as per rates specified for different items in the Schedule to the above notification. Whereas the rebate claim of service tax under Para 3 is to be claimed from the jurisdictional Assistant/Deputy Commissioner of Central Excise on the basis of actual service tax paid on the input services or inputs used in the exported*

goods and the procedure for the same is entirely different. Thus, claimant is given liberty for choosing the most beneficial option in terms of more amount and convenience. Since the claim under Para 2 is in terms of already fixed rates for each item in the Schedule of the notification itself, it is prima facie hassle-free procedure for getting the rebate of service tax at earliest from the customs authorities. On the other hand rebate of service tax under Para 3 is admissible only on the basis of documents evidencing payment of actual service tax which certainly requires proper record keeping and other efforts on the part of the claimant. However, option to file claim under Para 3 is not open ended and it can be filed under this Para only if the difference between the amount of rebate admissible under Para 2 and under Para 3 is not lesser than 20% of rebate admissible under Para 2.

6. As discussed above, there is no dispute that in the instant case the rebate claims are not maintainable under Para 3 as the difference between the amount of rebate claimed under Para 3 and the amount of rebate which could be admissible under Para 2 is undoubtedly below 20%. This fact has not been questioned by the applicant also in their revision application. As regards the issue whether the rebate of service tax can still be granted under Para 2, it is already discussed above that rebate of service tax under Para 2 can be claimed only from Customs authorities after complying with the procedure laid down under the above notification and rebate of service tax under Para 2 cannot be granted by the Central Excise authorities as customs authorities have only been entrusted under Notification No. 41/2012-S.T. to disburse rebate of service tax as per rates specified in the Schedule a like drawback of duty of customs. Since this restriction is specified in the notification itself, it cannot be relaxed even when the rejected amount of rebate of service tax is lesser than the amount admissible under Para 2 of the notification, as claimed by the applicant, Considering these facts and legal restrictions inbuilt in the Notification No. 41/2012-S.T., the Government finds that Commissioner (Appeals) has rightly set aside the applicant's appeal before him and no interference from the Government is warranted."

9. Further, I find that the case laws submitted by the appellant do not have relevance to the legal facts explained in the above discussions and findings. Therefore, the said case laws do not hold good in the instant

case.

10. In view of my discussions and findings above, I hold that the refund sanctioning authority has correctly rejected their refund claim. I, therefore, uphold the impugned order and reject the appeal.

10.1 अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

10.1 The appeal filed by the Appellant is disposed off as above.

सत्यापित

अ. अ. अय्यर
अधीक्षक (अपील)

(Gopi Nath) 29/11/2019
Commissioner(Appeals)

By Regd. Post

To, **M/s Welspun Corp Limited,** **Welspun City, Versamedi,** **Anjar,** **Kutch-370110.**	सेवा में, **मे. वेलस्पन कॉर्प लिमिटेड,** **वेलस्पन सिटि, वेर्सामेडी, अंजार,** **कच्छ-370110**

प्रति:-

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