



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

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan  
रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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



सत्यमेव जयते

**रजिस्टर्ड डाक ए.डी.द्वारा :-**

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/111/GDM/2019	08/Refund/2019-20	25-09-2019

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

**KCH-EXCUS-000-APP-021-2020**

आदेश का दिनांक / Date of Order:	14.02.2020	जारी करने की तारीख / Date of issue:	14.02.2020
------------------------------------	------------	--	------------

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

**TPL Plastech limited Survey No. 217/2, Bhuj Bhachau Highway, Village Kotda, Tal; Anjar (Kutch),**

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 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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।/  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in 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) नियमवाली, 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 मांग, ब्याज की मांग 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 क्रमशः 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 सार्वजनिक 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 duty demand/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 मांग, ब्याज की मांग 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 क्रमशः 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 सार्वजनिक 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five 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/-

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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five 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/-

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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five 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 Form 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 Commissioner authorizing 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 रूप 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 अर्जी एवं अपील को लागू नहीं होगा।  
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 मामलों में, केन्द्रीय 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 outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी 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 समायाविधि पर या बाद में पारित किए गए हैं। /  
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 OI 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।  
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 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 पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / 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, notwithstanding 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 टिकट 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 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.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://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](http://www.cbec.gov.in).

**:: ORDER-IN-APPEAL ::**

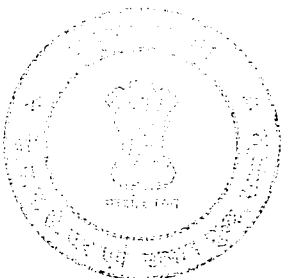
M/s. TPL Plastech Ltd., Survey No. 217/2, Village – Kotda, Kutch, Gujarat (hereinafter referred to as 'Appellant') has filed the present appeal against Order-In-Original No. 08/Refund/2019-20 dated 25.09.2019 (hereinafter referred to as 'the impugned order'), passed by the Assistant Commissioner, CGST Division, Anjar-Bhachau, (hereinafter referred to as "the adjudicating authority").

2. The facts of the case in brief, are that the appellant had filed an application for refund of Rs. 2,78,795/- being the amount of service tax paid towards Ocean Freight under reverse charge mechanism on Imported Consignments on 09.05.2018 & 11.06.2018 after implementation of GST. The appellant was eligible to take Cenvat Credit before GST era; but after implementation of GST they could not take the credit of the service tax paid by them; therefore, appellant have filed refund claim under Section 142 sub section (3) of CGST Act, 2017.

2.1 The adjudicating authority vide impugned order rejected the refund claim on the basis that refund claim does not cover under the provisions of Section 11B of the Central Excise Act, 1944 and Rules framed thereunder as applicable in the Service Tax matters and also not covers under the provisions of the CGST Act, 2017.

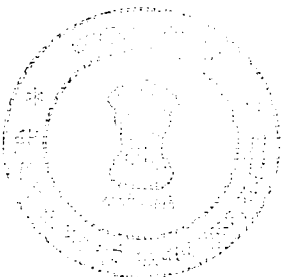
3. Aggrieved, the appellant preferred the present appeal, *interalia*, on the following grounds:

- (i) The Adjudicating Authority has erred in laws as well as on fact by not considering that appellant has paid Service Tax on ocean freight towards transportation of goods from place outside India up to customs station India in accordance with Service Tax Rule 2(1)(d)(i) which is inserted vide Notification No. 16/2017-ST dated 13.04.2017. Service Tax paid on ocean freight was well covered under the definition of Input Service as defined in erstwhile Cenvat Credit Rule 2(1).
- (ii) Service Tax paid under Reverse Charge Mechanism before appointed day i.e. before GST roll out, Cenvat Credit could be easily availed on the basis of tax paid challan as per Cenvat Credit Rules.
- (iii) Service Tax paid under the reverse charge on ocean freight were paid by the appellant in May-2018 and June-2018, when Cenvat Credit Rules, 2004 were not in force and accordingly, Cenvat credit has not accrued before the appointed day, the Appellant can not avail the Cenvat credit, hence the claim of refund of Cenvat credit filed.



*[Handwritten signature]*

- (iv) The finding of the refund sanctioning authority that no CENVAT credit under Cenvat Credit Rules, 2004 was admissible since Service tax on Ocean Freight have been paid after supersession of Cenvat Credit Rules, 2004 is not legally tenable in view of saving clause contained in Section 174(2)(c) of CGST Act, 2017 which specifically provides that repeal of Central Excise Act, 1944 shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the said act.
- (v) Since during post GST period, except through Trans-1, there is no provision to avail Input Tax Credit in Electronic Credit Ledger, in order to uphold the right of availing eligible Cenvat Credit under erstwhile law, procedure to refund the eligible Cenvat Credit in cash is laid down Section 142 (3) of CGST Act,2017. In Section 142 (3) it is very clear that any claim of refund filed before, on or after the appointed date towards refund of Cenvat Credit, duty, tax, interest or any other amount shall be disposed of in accordance with the provisions of existing laws & any amount eventually accrued to be paid in cash only.
- (vi) As per Section 11B(2)(c) of Central Excise Act, 1944 any amount attributable as credit towards duty paid on excisable goods used as inputs are entitled for refund. Similarly, service tax paid on ocean freight towards transportation of goods viz. inputs is well covered under the definition of input services as per Rule 2(1) of Cenvat Credit Rules, 2004 and the amount constitutes eligible credit for refund under Section 11B(2)(c) of Central Excise Act, 1944.
- (vii) That simply because Section 142(3) of the CGST Act, 2017 does not clearly mention about payment made whether before or after the appointed day, it cannot be presumed that it only deals with payment made prior to the appointed day. Moreover, there is no bar under the said Section for claiming refund in respect of which duty or tax which has been paid after the appointed day. If the intention of legislature was to cover only those cases for which payment would have been made prior to the appointed day, the expression "paid under the existing law" appearing in Section 142(3) of the CGST Act, 2017 would have been worded as "paid under the existing law prior to appointed day". In absence of such a wording, it cannot be presumed that it only deals with the payment made before the appointed day, the



N

expression "paid under the existing law" referred in Section 142(3) of the CGST Act, 2017 needs to be interpreted to include "amount paid after the appointed day" and refund of service tax paid on ocean freight paid under reverse charge mechanism needs to be granted in terms of Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017. Appellants rely on case laws registered in the case of Mohit Minerals Pvt. Ltd. versus Union of India registered as (1) 2018 (10) GSTL (424) (Guj) in Gujarat High Court.

4. Hearing was attended by Shri Kamlesh G. Mehta, authorized signatory of the appellant who reiterated Grounds of Appeal memo and requested to consider their written submission and allow the appeal on merit.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal memorandum and written submissions made by the Appellant. The issue to be decided in the present appeal is whether the impugned order rejecting refund claim of Rs. 2,78,795/- is correct, legal and proper or not.

6. The undisputed facts of the case are that the Appellant had paid Service Tax on ocean freight towards transportation of goods from place outside India up to customs station India in accordance with Service Tax Rule 2(1)(d)(i) which is inserted vide Notification No. 16/2017-ST dated 13.04.2017 after implementation of GST i.e. 1.7.2017. Service Tax paid on ocean freight was well covered under the definition of Input Service as defined in erstwhile Cenvat Credit Rule 2(1). Subsequently, the Appellant filed refund claim of Rs. 2,78,795/- under Section 11B of Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017, in respect of Service Tax on ocean freight so paid.

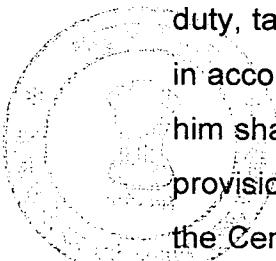
6.1 The refund sanctioning authority rejected the refund claim on the ground that Service Tax on ocean freight were paid from May-2018 to June-2018, when Cenvat Credit Rules, 2004 were not in force and hence, Cenvat credit has not accrued before the appointed day; that the Appellant had paid Service Tax on ocean freight under Reverse Charge Mechanism which does not appear to be covered the definition of existing law for the transition provisions.

6.2 The Appellant contended that Section 174(2)(c) of the CGST Act, 2017 specifically provides that repeal of the Central Excise Act, 1944 shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the said act; that transitional provision contained in Chapter XX of the CGST Act, 2017 does not provide any time limit for which it will be operational; that the expression "paid under the existing law" referred in Section 142(3) of the CGST Act, 2017 needs to be interpreted to include "amount paid after the appointed day" and refund of

Service Tax on ocean freight paid by us under the RCM needs to be granted.

7. I find that the Appellant had availed services of ocean freight towards transportation of goods from place outside India up to customs station India in accordance with Service Tax Rule 2(1)(d)(i) which was inserted vide Notification No. 16/2017-ST dated 13.04.2017 in pre-GST period i.e. before 1.7.2017 without payment of Service Tax at the time of availing services. The Appellant had voluntarily paid service tax on ocean freight towards transportation of goods under the RCM in GST era i.e. after 1.7.2017. These facts are not under dispute. I find that when the Appellant had paid service tax during the period from May-2018 to June-2018, Cenvat Credit Rules, 2004 were not in existence. Further, there is no provision in CGST Act, 2017 for availment of Cenvat credit of service tax paid on ocean freight. Since, Cenvat credit of service tax had not accrued to the Appellant, they were not eligible to avail Cenvat credit itself. Once the Appellant were not eligible to avail Cenvat credit, there is no point on examining whether service tax paid on ocean freight can be refunded in cash or not. It is also worthwhile to mention that in the erstwhile Cenvat Credit Rules, 2004, refund of accumulated Cenvat credit could be refunded only under Rule 5 *ibid* in the circumstances as provided therein. It is beyond doubt that Cenvat credit of service tax paid on ocean freight is not eligible for refund under Rule 5 *ibid* or under any other provisions of Cenvat Credit Rules, 2004. I, therefore, hold that the adjudicating authority has rightly rejected the refund claim filed by the Appellant.

8. Regarding the plea of the appellant to grant them refund of service tax on ocean freight paid by them under RCM under Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017, I find that the Appellant is not eligible for refund under Section 11B of the Central Excise Act, 1944 for the simple reason that even before 1.7.2017 when the Central Excise Act, 1944 was in force, there was no provision to grant refund of service tax paid on ocean freight in cash under Section 11B *ibid*. When refund was not permissible in existing law prior to 1.7.2017, then there is no question of granting refund of service tax paid on ocean freight in cash after 1.7.2017. The refund claim filed under Section 11B of the Central Excise Act, 1944 is, thus, not maintainable. For this reason, I discard this plea of the Appellant as devoid of merit. As regards applicability of the provisions of Section 142(3) of the Central GST Act, 2017, I find that Section 142(3) *ibid* states that the refund filed before, on or after 1.7.2017, for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section-(2) of Section 11B of the Central Excise Act, 1944. These provisions clearly envisage that for getting a refund of eligible credit, the Appellant should follow the procedure of existing law prescribed i.e.



Cenvat Credit Rules, 2004 and any amount eventually accruing to him shall be paid in cash. As discussed by me in para supra, the provisions of erstwhile Cenvat Credit Rules, 2004 did not allow the refund in cash in respect of such Cenvat Credit. Thus, refund claim is also not maintainable under Section 142(3) of the Central GST Act, 2017.

9. I rely upon the order No. 40098/2020 passed by the Hon'ble CESTAT, Chennai in the case of M/s Servo Packaging Limited reported in 2020-VIL-72-CESTAT-CHE-CE, wherein it has been held that,

"8.1 Heard both sides. The only issue to be decided is, "whether the appellant has made out a case for refund under Section 142 (3) *ibid*, of the Customs Duty paid in view of non-fulfilment of its export obligations?"

8.2 None of the decisions relied on by the assessee are dealing with the refund arising on account of failure to comply with export obligation *vis-à-vis* Advance Authorization and therefore, as pointed out by the Ld. Authorized Representative for the Revenue, the same are not applicable to the facts of this case.

9.1 Advance Authorization is issued in terms of paragraph 4.03 of the Foreign Trade Policy [FTP (2015-20)] and the relevant Notification is Notification No. 18/2015-Cus. dated 1st April, 2015. The said Notification exempts materials imported into India against a valid Advance Authorization issued by the Regional Authority in terms of paragraph 4.03 of the FTP subject to the conditions laid down thereunder. One of the conditions, as per clause (iv), is that it requires execution of a bond in case of non-compliance with the conditions specified in that Notification. Further, paragraph 2.35 of the FTP also requires execution of Legal Undertaking (LUT)/Bank Guarantee (BG) : (a) Wherever any duty free import is allowed or where otherwise specifically stated, importer shall execute, Legal Undertaking (LUT)/Bank Guarantee (BG)/Bond with the Customs Authority, as prescribed, before clearance of goods.

9.2 Further, there is no dispute that the above is guided by the Handbook of Procedure ('HBP' for short) and paragraph 4.50 of the HBP prescribes the payment of Customs Duty and interest in case of *bona fide* default in export obligation (EO), as under :

*"(a) Customs duty with interest as notified by DoR to be recovered from Authorisation holder on account of regularisation or enforcement of BG*



*/ LUT, shall be deposited by Authorisation holder in relevant Head of Account of Customs Revenue i.e., "Major Head 0037 - Customs and minor head 001-Import Duties" in prescribed T.R. Challan within 30 days of demand raised by Regional / Customs Authority and documentary evidence shall be produced to this effect to Regional Authority / Customs Authority immediately. Exporter can also make suo motu payment of customs duty and interest based on self/own calculation as per procedure laid down by DoR."*

10. Thus, the availability of CENVAT paid on inputs despite failure to meet with the export obligation may not hold good here since, firstly, it was a conditional import and secondly, such import was to be exclusively used as per FTP. Moreover, such imported inputs cannot be used anywhere else but for export and hence, claiming input credit upon failure would defeat the very purpose/mandate of the Advance Licence. Hence, claim as to the benefit of CENVAT just as a normal import which is suffering duty is also unavailable for the very same reasons, also since the rules/procedures/conditions governing normal import compared to the one under Advance Authorization may vary because of the nature of import.

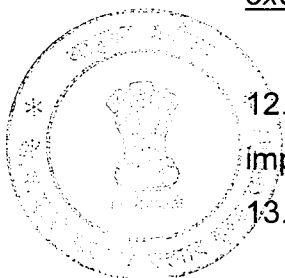
11. The import which would have normally suffered duty having escaped due to the Advance Licence, but such import being a conditional one which ultimately stood unsatisfied, naturally loses the privileges and the only way is to tax the import. The governing Notification No. 18/2015 (*supra*), paragraph 2.35 of the FTP which requires execution of bond, etc., in case of non-fulfilment of export obligation and paragraph 4.50 of the HBP read together would mean that the legislature has visualized the case of non-fulfilment of export obligation, which drives an assessee to paragraph 4.50 of the HBP whereby the payment of duty has been prescribed in case of *bona fide* default in export obligation, which also takes care of voluntary payment of duty with interest as well. Admittedly, the inputs imported have gone into the manufacture of goods meant for export, but the export did not take place. At best, the appellant could have availed the CENVAT Credit, but that would not ipso facto give them any right to claim refund of such credit in cash with the onset of G.S.T. because CENVAT is an option available to an assessee to be exercised and the same cannot be enforced by the CESTAT at this stage.

12. There is no question of refund and therefore, I do not see any impediment in the impugned order.

13. Accordingly, the appeal is dismissed."

9.1 By respectfully following above order, I hold that the Appellant is not eligible

R






for refund of Service Tax paid on ocean freight.


10. I also find that the case law referred by the appellant is not applicable to present case, being not related to situation of present case of refund of service tax paid on ocean freight under Section 11B of Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017.

11. In view of above, I hold that the Appellant is not eligible for refund of service tax on ocean freight paid by them under RCM. I, therefore, uphold the impugned order and reject the appeal.

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

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

  
(GOPI NATH) 14/12/2020  
Commissioner (Appeals)

Attested  
  
(S. D. Sheth) 14/12/2020  
Superintendent

By R.P.A.D.

To,  
M/s. TPL Plastech Limited,  
Survey No. 217/2, Bhuj-Bhachau Highway,  
Village Kotda, Tal – Anjar (Kutch)

Copy to:

1. The Principal Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Kutch Commissionerate, Gandhidham - Kutch.
3. The Assistant Commissioner, GST & Central Excise Division, Anjar - Bhachau (Kutch).
4. Guard File. 