



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

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/330/RAJ/2017	मूल आदेश सं / O.I.O. No. V.74(18)122/Refund/2016- 17	दिनांक / Date 21.04.2017
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ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-081-2018-19

आदेश का दिनांक / Date of Order:	03.05.2018	जारी करने की तारीख / Date of issue:	14.05.2018
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Passed by **Shri Gopi Nath, Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री गोपी नाथ, अपर महानिदेशक ऑडिट, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Gopi Nath, Additional Director General of Audit, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ 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 / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**
1.M/s Royal Recycling Industries, Plot No. 347, GIDC Phase - II, Dared, Jamnagar ,

इस आदेश(अपील) से व्याथत 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 असारवा अहमदाबाद- ३८००१६ को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd 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) 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 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 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 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 प्रतियों 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 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 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 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 को पुनरीक्षण आवेदन :**

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर 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 क्रेडिट 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 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 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 केंद्रीय 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 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 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 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. Royal Recycling Industries, Plot No. 347, GIDC, Phase-II, Dared, Jamnagar (hereinafter referred to as 'the appellant') has filed the present appeal against the letter dated 21.4.2017 issued from F.No.V.74(18)122/Rebate/2016-17 (hereinafter referred to as "the impugned order") of the Deputy Commissioner of Central Excise & Service Tax, Division-Jamnagar (hereinafter referred to as "the Rebate Sanctioning Authority").

2. The issue in brief is that the appellant is a partnership firm; 100% EOU; registered with the office of the Development Commissioner, KSEZ, Gandhidham; engaged in the business of export of manufactured and processed Ferrous and Non Ferrous Metal products mainly Brass Parts items viz. Brass Sanitary Parts, Brass Electric Parts, Brass Billets and Brass Ingots etc. and import of Mixed Metal Scrap, Mixed Cable Scrap and other items; registered with O/o the Superintendent, Service Tax-Jamnagar since 28.1.2005 as a service recipient under a) Transportation of Good by Road Or GTA Service and B) Legal Consultancy Service vide Service Tax registration NO. AADFR234NST001. The appellant used specified service for export of goods i.e. a) Road Transport Service for transporting the goods from the place of removal to the in ICD b) Custom House Agents Services for the Export of Goods c) Banking and Financing Service and paid service tax on the above said services. For the Service Tax amounting to Rs.1,67,453/- paid for the aforesaid services, the appellant filed the application of Refund on dated 21.3.2017 under the procedure specified in Paragraph 3 of the Notification No. 41/2012-ST dated 29.6.2012 read with section 93A of the Finance Act, 1994 for the period April 2015 to March-2016. While scrutiny of the aforesaid Refund claim, the Rebate Sanctioning Authority found that Refund claim of Rs.1,48,390/- was filed beyond the prescribed period i.e. one year period stipulated in Condition at Para 3(g) of the Notification No 41/2012-ST dated 29.6.2012 and accordingly appellant breached the condition of the Notification No. 41/2012-ST dated 26.9.2012, thereby made themselves in-eligible for the above said Refund claimed amount. Further, for the Refund claim of Rs. 19,063/-, it was found to be



not admissible in view of the breach of Condition at Para 1(c) of the Notification No. 41/2012-ST dated 29.6.2012 and accordingly the Refund claim of Rs. 1,67,453/- were returned to the appellant under the impugned order dated 21.4.2017 to comply with the discrepancies been pointed out.

3. Being aggrieved by the impugned order, the Appellant filed the present appeal, inter alia, mainly on the following grounds;

➤ **For Refund claim of Rs. 1,48,390/-**

- I. Due to some unavoidable circumstances, the appellant filed the application for the Refund of service tax after the one year from the date of export of said goods.
- II. Requested to condone the delay caused by them as their claim are very genuine in all other aspect.
- III. when their claim of Refund is genuine , it can not be denied only because it is barred by limitation of time period. Relied on the judgment pronounced by the Madras High Court in case of STI India Ltd. Vs Commissioner of Cus. & C.Ex. Indore[CEO 2008 MP 180]
- IV. there is merely procedural lapse in putting the claim of the Refund of service tax and as per their view , substantial benefit can not be denied for procedural lapse. Relied on the following judgment
 - a. M/s Manubhai & Co. Vs. CST Ahmedabad passed by the CESTAT Ahmedabad as on 17.9.2010(Appeal No ST/440/09)
 - b. M/s Gran Overseas Ltd. Vs CCC,Delhi(2017 TMI 234-CESTAT New Delhi)
 - c. CCE Pune Vs. Chandrashekhar Exports(2015(11) TMI 1112-CESTAT Mumbai)
- V. The Rebate sanctioning authority was to verify their claim in terms of Para 3(k) of the Notification No. 41/2012-ST ; Condition of one year prescribed in Paragraph 3(g) of the Notification NO. 41/2012-ST is procedural.

➤ **For Remaining amount of Refund claim of Rs. 19,063/-**

- VI. As per their interpretation of the paragraph 2 , the maximum allowable Refund of Service tax to the appellant is as per Paragraph 2 i.e. Refund of service tax as percentage of the FOB value of the goods specified in the Schedule annexed to the Notification NO. 41/2012-ST

VII. It was not the intention of the legislature that the appellant was not at all allowed Refund of service tax when such difference w.r.t. amount arrived at under Para 2 & 3 is less than twenty percentage

4. Hearing in the matter was held on 23.2.2018, which was attended by Shri Bharat R Oza, Chartered Accountant, Advocate, who reiterated the submissions of appeal memo and also filed additional Submissions for consideration.

4.1 The appellant vide his additional submission dated 23.2.2018 have mainly reiterated their grounds of appeal memorandum; submitted copies of the judgment they referred and relied upon in their appeal memo; and also the copy of the Refund claim papers.

5. I have carefully gone through the facts of the case, impugned order, appeal memorandum and written as well as oral submissions made by the appellant including at the time of personal hearing.

5.1 I find that the word "Refund" has been used by the Deputy Commissioner of Central Excise and Service Tax, Division-Jamnagar in the impugned order F.No.V.74(18)122/Rebate/2016-17 dated 21.4.2017 issued for rejecting the claim of the appellant. The Appellant too in their application for rebate claim and appeal memo have used the word "Refund" everywhere. While going through the records of the appeal it is observed that the claim does not pertain to refund under section 11B of the Central Excise Act, 1944 as made applicable to service tax under Section 83 of the Finance Act, 1994, but the rebate governed under Section 93A of the Finance Act, 1994 read with the Notification No. 41/2012-ST dated 26.9.2012.

5.2 For jumping to any conclusion and for better appreciation of the issue, I feel appropriate to reproduce the relevant portion of the Notification 41/2012-ST dated 29.6.2012 which is as under:



> **Para-3**

“ (3) the Rebate shall be claimed in the following manner, namely :-

(g) the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.

Explanation. - For the purposes of this clause the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962);”

➤ **Para -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; ”

5.3 Now Issue before me to decide in the present appeal are;

- i) Whether Rebate sanctioning authority has rightly returned the claim of Rebate amounting to Rs.1,48,390/- on the ground of limitation;
- ii) Whether Rebate sanctioning authority has rightly returned the claim of Rebate Rs.19,063/- on the ground that it was not admissible in view of breach of Condition given at Para 1(c) of the Notification No. 41/2012-ST dated 29.6.2012.

For Rebate claim of Rs. 1,48,390/-

5.4 First I take up the issue of limitation. It is undisputed that the Rebate claim was filed on dated. 21.3.2017 for the relevant shipping bills (as listed and enclosed as Annexure-1 to the Rebate Claim) wherein date of let export ranging from 13.4.2015 to 17.3.2016 and for only Shipping Bill No. 6653228/22.3.2016 let export is of dated 22.3.2016. Accordingly, the Rebate Sanctioning Authority has observed that Rebate claims of Rs.1,48,390/- attributed to those shipping bills wherein the date of let export ranging from 13.4.2015 to 17.3.2016 were filed beyond the

prescribed time limit of one year. I further find that at Para -3 of the Notification No. 41/2012-ST dated 26.9.2012, the Rebate claim is to be filed by the exporter within one year from the date of export and as per the explanation given thereof in the above referred para, the date of export would be the **date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962) i.e.** date of let export order. And thereby the appellant failed to submit his Rebate claim within the time period prescribed. I have gone through the Shipping Bill wise details given in the Annexure-1 annexed to the rebate application Form A1 of the Appellant.(Details are reproduced below for ready reference)

Annexure-1

Sr.No.	Shipping Bill No.	Date of Let Export	Date of Filing Rebate claim	Delay in Days
1	8980307	13.4.2015	21.3.2017	343
2	9144563	21.4.2015	21.3.2017	333
3	9539957	12.5.2015	21.3.2017	314
4	9723161	21.5.2015	21.3.2017	304
5	1010070	4.6.2015	21.3.2017	291
6	1008270	4.6.2015	21.3.2017	291
7	1081552	8.6.2015	21.3.2017	287
8	1430687	25.6.2015	21.3.2017	270
9	1811488	14.7.2015	21.3.2017	251
10	2124092	30.7.2015	21.3.2017	235
11	2494876	18.8.2015	21.3.2017	216
12	2738093	31.8.2015	21.3.2017	203
13	2804405	3.9.2015	21.3.2017	200
14	No details are available in Annexure-1 i.e. Details of Refund Claim annexed to the Refund Form A 1			
15	3407455	6.10.2015	21.3.2017	167
16	3554920	14.10.2015	21.3.2017	159
17	3561207	14.10.2015	21.3.2017	159
18	No details are available in Annexure-1 i.e. Details of Refund Claim annexed to the Refund Form A 1			
19	3775996	26.10.2015	21.3.2017	147
20	3953271	4.11.2015	21.3.2017	138
21	4290888	24.11.2015	21.3.2017	118
22	No details are available in Annexure-1 i.e. Details of Refund Claim annexed to the Refund Form A 1			
23	4971141	28.12.2015	21.3.2017	99
24	5133354	6.1.2016	21.3.2017	75
25	5521587	28.1.2016	21.3.2017	53

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26	5663530	3.2.2016	21.3.2017	47
27	6227055	2.3.2016	21.3.2017	20
28	No details are available in Annexure-1 i.e. Details of Refund Claim annexed to the Refund Form A 1			
29	6332496	8.3.2016	21.3.2017	14
30	6525079	17.3.2016	21.3.2017	5
31	6653228	22.3.2016	21.3.2017	No Delay

In this regard, the appellant has put forth before me that due to some unavoidable circumstances they could not file the Rebate within the prescribed time limit. This argument is not acceptable in view of the fact that excluding Shipping Bill No. 6653228, the default of delay filing of Rebate claims occurred and the default is ranging from 5 days to 343 days. Further, I do not find on records that the delay was caused for want of some requisite documents from the department. In view of this I hold that the Rebate Sanctioning Authority had rightly observed that Rebate claim is not admissible as the claim has not been filed within the prescribed time limit of one year.

5.4.1 Further, appellant contended that it was merely a procedural lapse and substantial benefit cannot be denied for procedural lapse in view of the following judgment.

1. M/s Manubhai & Co. Vs. CST Ahmedabad passed by the CESTAT Ahmedabad as on 17.9.2010 (Appeal No ST/440/09)
2. M/s Gran Overseas Ltd. Vs CCC, Delhi (2017 TMI 234-CESTAT New Delhi)
3. CCE Pune Vs. Chandrashekar Exports (2015(11) TMI 1112-CESTAT Mumbai)

In this regard that I find that the provision of time limit are mandatory and a statutory authority can not transverse beyond the confines of law and can not grant relief by bypassing the bar of limitation. I relied on judgment in case of Miles India Limited Vs Assistant Collector of Customs [1987 (30) E.L.T. 641 (S.C.)].

[Judgment]. - *After the matter was heard for some time and it was indicated that the Customs Authorities, acting under the Act, were justified in disallowing the claim for Rebate as they were bound by the period of limitation provided therefor under Section 27(1) of the Customs Act, 1962,*

5.4.2 Further the Judgement quoted by the appellant would not help in view of the Hon`ble Supreme Court of India in case of

Union of India Vs Kirloskar Pneumatic Company[1996 (84) E.L.T. 401 (S.C.)] where in Hon`ble apex court held that High Court, can not direct the adjudicating authorities (who are creatures of the Act) to ignore the limit and act contrary to the law.

"10. Yet the question is whether it is permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Article 226/227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. May be the High Court or a Civil Court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived....."

In view of the fact and my observation in the preceding paras, I hold that the Rebate Sanctioning Authority has rightly hold that Rebate claim is not admissible being time barred.

For Rebate claim of Rs. 19,063/-

5.5 Further, for the 2nd contention attributed to claim in respect to Shipping bill No. 6653228/- Dated 22.3.2016, I find that the impugned order is non-speaking on this issue as it does not transpire from the impugned order whether the Rebate Sanctioning Authority is of the view that appellant was not eligible to claim Rebate as per Paragraph 3 but eligible to claim Rebate under Paragraph 2 **or** Appellant is not at all eligible for any single rupees of Rebate. In this regard, I find that the appellant own its own prematurely concluded that Rebate Sanctioning Authority is of the opinion that Rebate is not admissible at all and filed appeal in this regard. In view of this I hold that the action of the appellant is pre-mature and rather to filing an appeal, the appellant was to comply with the query raised and should have asked for the speaking order in this regard. Simultaneously, action of the Rebate Sanctioning Authority is also not justified looking to the fact that If the above lapse was substantive in nature, why the Rebate Sanctioning Authority did not reject the Rebate Claims after following the principle of natural justice for the ineligible amount? **or** reduce/restrict the claim to the eligible amount rather than to ask the appellant to comply with the query in this regard.? Why the claim was returned unsanctioned?



5.5.1 In view of my observation in the preceding para 5.4, The appellant is directed to re-submit their Rebate claim along with their compliance to the query raised by the Rebate Sanctioning Authority in this regard and also to provide the requisite documents, if any required by the Rebate Sanctioning Authority. As the Rebate claim in question in respect to the Shipping Bill No. 6653228/- Dated 22.3.2016 were filed within the prescribed time period of one year, I direct the Rebate Sanctioning Authority to re-consider the same and sanction the Rebate claim, if otherwise admissible, after following the principle of natural justice. The Rebate Sanctioning Authority is also directed to issue speaking order in accordance with law.

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

6. The appeal filed by the appellant stands disposed off in above terms.

सत्यापित,
गोपी नाथ
(4/10/2018)
प्रदीप सोपट
अधीक्षक (अपील्स)

अधीक्षक (अपील्स)
गोपी नाथ 3/5/18

अपर महानिदेशक ऑडिट / आयुक्त (अपील्स)

By Regd. Post A.D. /Speed Post

F.No.V2/330/RAJ/2017

Dated .5.2018

M/s. Royal Recycling Industries,

Plot No. 347,

GIDC, Phase-II,

Dared, Jamnagar

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner (Appeals), Central Taxes, Rajkot.
- 3) The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
- 4) The Assistant/Deputy Commissioner, GST & Central Excise, Division.....,Jamnagar.
- 5) The Superintendent, Range-....., GST & Central Excise, Division.....,Jamnagar.
- 6) Guard File.
- 7) Guard File for O/o the Additional Director General (Audit),Ahmedabad Zonal Unit, Ahmedabad.

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