



::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. V2/107 /GDM/2017	मूल आदेश सं / O.I.O. No. ST/156/2017-18	दिनांक / Date 21-04-2017
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ख अपील आदेश संख्या (Order-In-Appeal No.):

KCH-EXCUS-000-APP-013-2018-19

आदेश का दिनांक / Date of Order:	10.05.2018	जारी करने की तारीख / Date of issue:	16.05.2018
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Passed by **Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar.**

अधिसूचना संख्या २६१७ दिनांक (टी.एन) .शु.उ.के-२०१७/१० २०१७.के साथ पढ़े बोर्ड ऑफिस आदेश सं . दिनां .टी.एस-२०१७/०५क १६के अनुसरण में २०१७.११., श्री सुनील कुमार सिंह ,आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क,, गांधीनगर, को वित्त अधिनियम १९९४ की धारा८५केन्द्रीय उत्पाद शुल्क , के ३५ की धारा १९४४ अधिनियमअंतर्गत 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 17.10.217 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar, 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/ भावनगर। 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/ Bhavnagar :
घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellants & Respondent :-**

M/s Adani Wilmar Ltd., Survey No. 169, Plot No. 03,Adani Port Road,Mundra(Kutch),Gujarat

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 अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा 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 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 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 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 हैं

- (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 :**

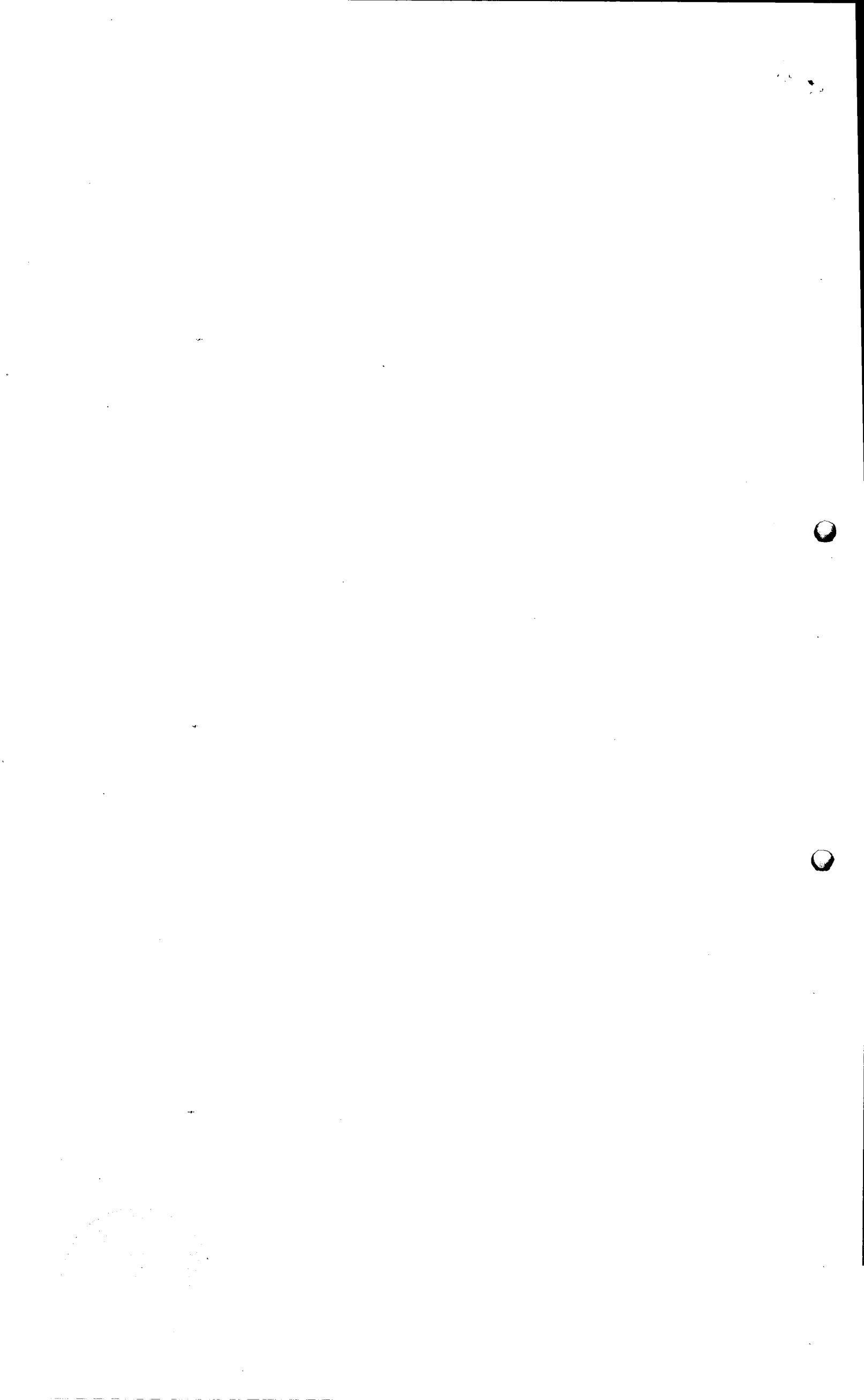
Revision application to Government of India:

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 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 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

The subject appeal no. 107/GDM/2017 is filed on 12.06.2017 by M/s Adani Wilmar Ltd., Survey No. 169, Plot No. 03, Adani Port Road, Mundra (Kutch), Gujarat (hereinafter referred to as 'the appellant') against Order in Original No. ST/156/2017-18 dated 21.04.2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Service Tax, Division Gandhidham-Kutch (hereinafter referred to as 'adjudicating authority').

2. The facts of the case in brief are that the appellant had filed a refund claimed, detailed below in table, under Notification No. 17/2009-ST dated 07.07.2009 (hereinafter referred to as 'the said notification').

Amount (Rs.)	Date of Filing
35,38,001	21.09.2010

The appellant had filed refund claim in respect of the premises and places which were not registered with Service Tax Department. The lower authority vide OIO No. 443/ST/REF/2011 dated 30.12.2011 rejected the refund claim on the ground that the refund had been claimed in respect of the premises and places which were not registered with Service Tax Department. Aggrieved with the said OIO, the appellant had preferred appeal before Commissioner Appeal on the ground that principles of natural justice was not followed by lower authority. However, the Commissioner (Appeals) vide OIA No. 761 to 764/ 2012/COMMR(A)(RBT)(RAJ) dated 03.09.2012 dismissed their appeal holding that the issue failed on the main and vital ground of Non-registration as, though the act of obtaining registration was administrative in nature, its consequences were not surely not administrative. Further, aggrieved with this OIA, the appellant preferred appeal before Tribunal, Ahmedabad. The Tribunal vide Order No. A/1120-1123/2015 dated 28.07.2015 allowed the appeals by way of remand holding that there was no clarity of fact in the instant case as both the authorities below had not dealt with the case in a proper manner. The Tribunal further held that the appellant claimed that they had paid the service tax on behalf of other branches.

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3. Therefore, in view of the direction of Hon'ble Tribunal, the adjudicating authority has decided the refund claims of the appellant vide impugned order wherein he again rejected the refund claim of Rs.35,38,001/- on the ground that the branches from where the goods were exported, were not Centralized Registered with Service Tax Range at Mundra, during material period, and therefore, the claims made under notification no. 17/2009-ST dated 07.07.2009, were not admissible to the appellant. The adjudicating authority observed that since the claimant had flouted the conditions / provisions of the law one of claiming refunds without registering their branches for which they were claiming refunds during the material time and another is non-observance of the conditions of the said Notification, the appellant failed to act in the manner prescribed under the act and the said Notification and therefore, the adjudicating authority held that the appellant was not eligible for refund claim.

4. Being aggrieved with the impugned order, the appellant has preferred present appeal basically on the following ground:

- (i) The appellant produced evidence as regards registration of the branches under central excise registration. However, the adjudicating authority without referring to any evidence observed that the branches were not registered. The department has issued centralized registration certificate, issued on 07.03.2012 but was effective from 2006. Hence, the claim of the appellant was correctly maintainable before the adjudicating authority. However, in the impugned order no reasons are shown for not accepting the said subsequent registration. The impugned order is not correct and not tenable as the branches in question are already registered under the centralized registration and copy of registration certificate was submitted.
- (ii) The have already submitted registration certificate, returns and other document showing specifically that the registration is centralized including Indore Branch. The tax, filing of returns and assessment thereof is accepted by the department at Mundra without any murmur whereas in respect of refund the same office suddenly question the registration aspects. The department had adopted different yardsticks for collecting taxes and for refunding.
- (iii) The question of registration, with reference to claim of refund is only the administrative convenience and such administrative aspect cannot be made the basis for rejection of refund which is a substantial right

due to the appellant. The refund is in respect of services consumed and utilized in respect of goods. The fact of export, payment of tax and utilization of services in respect of goods exported are not in doubt. The goods are to be exported not to be taxed and thus, rejection of refund is incorrect.

(iv) Having accepted 'centralized' status of registration the department cannot treat the same otherwise and that too for immediate purpose of rejection of refund claim.

5. Personal hearing in the matter was fixed on 23.03.2018. The appellant vide letter dated 22.03.2018 requested for adjournment. Accordingly, the next personal hearing in the matter was fixed on 05.04.2018. However, none appeared for personal hearing. Another date for personal hearing was fixed on 4.5.2018 which was subsequently rescheduled on 02.05.2018 as per the request of Shri S. J. Vyas, advocate of appellant. The personal hearing in the matter was held on 2.5.2018 which was attended by Shri Shridev Vyas, advocate on behalf of the appellant. Shri Vyas has pleaded that adjudicating authority had not examined the refund claim despite the fact that centralized registration certificate was there in the documents issued from Assistant Commissioner in-charge AR-4, Mundra, Gandhinagar. However, he has rejected refund claim in a totally non-speaking manner injudiciously. So, he requested to set aside the order in the light of appeal filed.

6. I have carefully gone through the impugned order passed by adjudicating authority, the submission made by the appellant in the appeal memorandum as well as by the advocate of the appellant at the time of personal hearing. I find that the limited issue to be decided is - 'whether the appellant was eligible for Refund of Service Tax paid by them on services utilized for export of their goods, or not'.

7. It is observed that the adjudicating authority has rejected the refund claim for service tax paid on services on the ground that the appellant has not complied with all the parameter prescribed under Notification No. 17/2009-ST dated 7.7.2009 as the branches of the appellant from where the goods had been exported were not registered with Service Tax Range at Mundra during material time.

8. However, from the Final Order No. A/11120-11123/2015 dated



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28.07.2015 of the Hon'ble CESTAT, Ahmedabad, it is observed that Hon'ble Tribunal at Para 2 and Para 3 of the said order has specifically observed that:

"2. After hearing both the sides and on perusal of the records, we find that the appellant were engaged in the manufacture of Refined Edible Oil and export of the final product through their various branches all over the country. The main contention of the learned Advocate is that the appellant paid the Service Tax in respect of activities of various branches. They claimed refund of Service Tax of services availed by various branches for export of goods. He fairly submits that the adjudicating authority had not given proper opportunity of hearing before passing the order. It is contended that the Commissioner (Appeals) had proceeded on the basis that Centralized Registration certificate has not incorporated the names of all the branches.

3. We find that there is no clarity of facts in the instant case. Both the authorities below have not dealt with the case in a proper manner. The appellant claimed that they have paid the Service Tax on behalf of other branches. In view of the above, we set-aside the impugned orders. Matter is remanded back to the adjudicating authority to decide afresh, after considering the submissions of the appellants. Needless to say that the adjudicating authority shall give proper opportunity of hearing before passing the order. All the appeals are allowed by way of remand."

8.1 It is observed that in spite of the fact that there is explicit direction of the Hon'ble Tribunal, the adjudicating authority has rejected refund claim of the appellant on the ground of non-registration of branches in the centralized registration certificate of the appellant, which is factually incorrect. The adjudicating authority has not followed the directions given by Hon'ble Tribunal and has made cryptic findings to reject the refund claims without discussing significant aspects of the case. He should have act in judicious manner while deciding the admissibility / non-admissibility of refund to the appellant in terms of Notification No.17/2009-ST dated 07.07.2009.

8.2 From the Registration Certificate (Form ST-2) submitted by the appellant with their appeal memorandum, it is observed that they are holding centralized registration for various branches spread across India, including for Indore Branch. In the said Registration Certificate, the date of issue of Original ST-2 is mentioned as 07/08/2006 and date of last amendment of ST-2 mentioned as 07/03/2012. Hence, it is not forthcoming from this Registration Certificate whether these branches were included in the Registration Certificate on or before the appellant had filed refund claims in respect of services involved of the goods exported on 21.09.2010 for Rs.35,38,001/-. Therefore, this vital and factual aspect is required to be examined by the adjudicating authority from the office records being in-charge of AR-4, Mundra, Gandhidham and then to ascertain the eligibility of refund in terms of Notification No. 17/2009-ST dated 07.07.2009.


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9. Therefore, in view of above discussion, I set aside the impugned order and allow the appeal by way of remand the matter back to adjudicating authority with a direction to adjudicating authority to decide the matter afresh on merit, in terms of Notification No. 17/2009-ST dated 07.07.2009, by following natural justice, and to pass reasoned and speaking order. The appellant is also directed to submit all relevant documents along with their written submissions at the earliest so as to enable adjudicating authority to decide all aspects involved in the matter on merits.

10. For remanding the case back to adjudicating authority, I also rely upon the case law of Honda Seil Power Products Ltd.- 2013 (287) ELT 353 (Tri. Del.) wherein a similar view has been taken as regard inherent power of the appellate authority to remit back the matters under the provisions of Section 35A(3) of the Central Excise Act, 1944. Further, Hon'ble Gujarat High Court, in Tax Appeal No. 276 of 2014, in the case of Associated Hotels Ltd. has held that even after amendment in Section 35A ibid after 10-05-2011, Commissioner of Central Excise would retain the powers of remand.

11. The appeal filed by the appellant stand disposed off in above terms.

सत्यमेव जयते,
आर. एन. मीणा
अधीक्षक (अपील्स)

Sunil Kumar Singh 10.5.18
(Sunil Kumar Singh)
Commissioner (Appeals)/
Commissioner,
CGST & Central Excise,
Gandhinagar

By Regd. Post AD

F. No.: V2/107/GDM/2017

Date: 10.05.2018

To,
M/s. AdaniWilmar Limited,
Vill. Dhrub,
Mundra- Kutch-370 421.

Copy to:

- (1) The Chief Commissioner, CGST & Central Excise, Ahmedabad.
- (2) The Commissioner (Appeals), CGST & Central Excise, Rajkot
- (3) The Commissioner, CGST & Central Excise, Kutch (Gandhidham)
- (4) The Assistant Commissioner, CGST & C. Ex., Division _____
- (5) The Assistant Commissioner (Systems), CGST, Rajkot.
- (6) The Superintendent, CGST & Central Excise AR-_____.
- (7) PA to Commissioner of CGST & Central Excise, Gandhinagar.
- (8) Guard file.



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