

	<p align="center">::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,</p>	
	<p align="center">द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road, राजकोट / Rajkot - 360 001 Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com</p>	

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/533/RAJ/2010	मूल आदेश सं / O.I.O. No. 43/ST/Ref/2010	दिनांक / Date 29.04.2010
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ख अपील आदेश संख्या (Order-In-Appeal No.):

KCH-EXCUS-000-APP-019-2018-19

आदेश का दिनांक / Date of Order:	17.05.2018	जारी करने की तारीख / Date of issue:	23.05.2018
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Passed by **Shri Sunil Kumar Singh, Commissioner, CGST & CX, Gandhinagar**

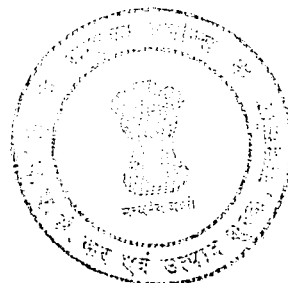
अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री सुनील कुमार सिंह, आयुक्त, केन्द्रीय वस्तु व सेवाकर, गांधीनगर को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९९४ की धारा ३५ के अंतर्गत दर्ज 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 Sunil Kumar Singh, Commissioner, CGST & CX, 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। 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 :-**
M/s. Kutch Salt & Allied Industries Ltd. plot No. 160, Maitri Bhawan, Plot No 13, Sector-8, -Gandhidham,

इस आदेश(अपील) से व्याथेत 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- 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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रूपए, 5,000/- रूपए अथवा 10,000/- रूपए 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/- रूपए 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 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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिरा 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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रूपए, 5,000/- रूपए अथवा 10,000/- रूपए 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/- रूपए 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 नियमावली, 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 रूपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं

- धारा 11 डी के अंतर्गत रकम
- सेनवेट जमा की ली गई गलत राशि
- 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 प्राधिकरण के समक्ष विचारधीन 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 :

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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.

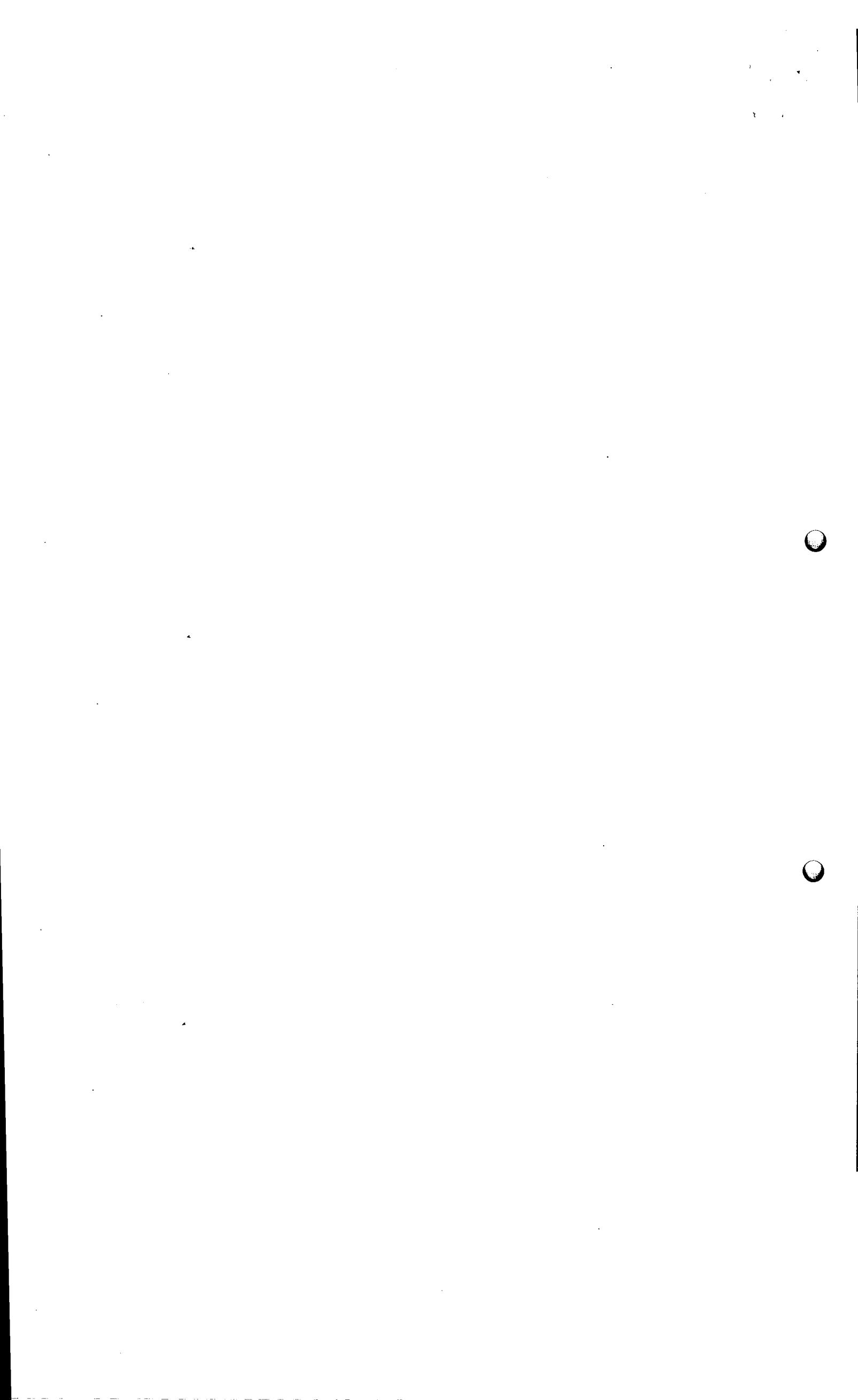
(C) भारत सरकार को पुनरीक्षण आवेदन :

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 इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 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। /
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 पढ़ी 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, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 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 ::

Being aggrieved with the Refund Order No. 43/ST/Refund/2010 dated 29.04.2010 (hereinafter referred to as the "impugned order") passed by the then Assistant Commissioner, Service Tax Division, Rajkot (hereinafter referred to as "the Adjudicating Authority") M/s. Kutch Salt & Allied Industries Ltd., Maitri Bhavan, Plot No: 18, Sector 8, Gandhidham 370 201 (Kutch) (hereinafter referred to as "the appellant") have filed the present appeal.

2.1 The issue involved in the matter, in brief, is that the appellant filed an application on 29.06.2009 seeking refund of Rs. 9,89,645/- being the Service Tax paid on the services used for the export during the quarter **Oct. 2008 to December, 2008**, under Notification No: 41/2007-Service Tax dated 06.10.2007, as amended, with the Adjudicating Authority. The Adjudicating Authority issued Show Cause Notice dated 06.10.2007 wherein it was proposed to reject the claim of refund on the grounds that they have not fulfilled the conditions prescribed under Notification No: 41/2007-Service Tax dated 06.10.2007, as amended.

2.2 The appellant neither filed reply to Show Cause Notice nor appeared for personal hearing before Adjudicating Authority. The Adjudicating Authority vide his impugned order rejected the refund claim of the appellant. The brief of reasons for rejection is as under:-

- (i) The appellant sought refund of service tax on the basis of debit notes dated 26.03.2008 issued by M/s Alvares and Thomas, Manglore and Debit notes is not specified documents under Rule 4A of Service tax Rules, 1994.
- (ii) The appellant sought refund of service tax on the basis of invoice issued by M/s TCRC, M/s SGS India Pvt.Ltd and M/s Geochem Laboratories Pvt. Ltd. The appellant has not submitted any written agreement entered into with buyer or rules or regulations stipulating testing's and analysis of the said goods. Therefore, the appellant has not fulfilled the conditions of Notification No. 41/2007-ST dated 06.10.2008.
- (iii) The appellant sought refund of service tax on the basis of transpiration charges invoice issued by M/s Tungabhadra Logistics. The said invoices were relating to the period April-July,2008. The appellant has not submitted evidence to prove that the same goods were exported.
- (iv) The appellant sought refund of service tax on the basis of debit notes issued by M/s Cross Trade Shipping, Gandhidham. The service provided are under category of Vessel Berthing Charges which are not falling under exempted category of service specified in Notification No. 41/2007-ST dated 06.10.2007 and also Debit notes is not specified documents under Rule 4A of Service tax Rules, 1994.
- (v) The appellant sought refund of service tax on the basis of debit notes issued by M/s Aspinwall and Co. Ltd. The service provided as shown as "renewal Fees for area insdie NMP" which are not falling under exempted category of service

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specified in Notification No. 41/2007-ST dated 06.10.2007 and also Debit notes is not specified documents under Rule 4A of Service tax Rules, 1994.

(vi) The appellant has filed declaration for non availment of Cenvat Credit of Service tax and has not provided declaration regarding non availment of drawback of service tax paid.

3. Being aggrieved with the impugned order, the appellant have filed the present appeal no. 533/RAJ/2010 on the grounds that ...

(i) As regards Debit notes, they have stated that Export application clearly shows the name of the Appellant who is exporting the goods alongwith other details. As regards service tax charged in debit notes, they stated that receipt is issued in the name of the agent M/s Alvares and Thomas for collection of Service tax from Appellant.

(ii) The appellant had already enclosed copy of Letter of Credit/Contract alongwith Refund application which stipulate terms and conditions between Importer and Exporter of goods.

(iii) As regards refund of service tax in respect of bills issued by M/s tungbhadra logistics, the appellant stated that these bill relates to April, May July 2018 but the goods were exported in claimed period. The port also charges monthly rentals for the area allotted inside port including the service tax, which is also claimed as refund by them.

(iv) The priority berth hiring charges falls under the category of port service u/s 65 (105)(zn) of Finance Act, 1994 and was collected by Kandla Port Trust.

(v) M/s Aspinwall and Co. is paying service tax on behalf of the appellant and in turn issuing debit notes to the Appellant. The service provided by the New maglore port are falling under Section 65(105)(zn) of the Finance Act, 1994, which is an eligible category as per notification no. 41/2207-St dated 6.10.2007.

(vi) Appellant has not filed declaration regarding non availment of Cenvat credit and duty drawback in absence of any such stipulation in the Notification no. 41/2007-St dated 6.10.2007.

4. The said appeal was transferred to call book in the month of August, 2010 on the basis of the Tax Appeal No. 353 of 2010 filed by the Department in the Hon'ble High Court of Gujarat against the order of Tribunal, as reported at 2010(17)S.T.R. 134 (Tri. Ahmedabad) in the case of Cadila Health Care Ltd. v/s Commissioner of Central Excise, Ahmedabad. Subsequently, the said appeal was retrieved from call book on 28.09.2017.

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5. Personal hearing in the matter was held on 10.04.2018 which was attended by Shri Manish Vora, Chartered Accountant during which they reiterated the submissions made in their appeal and also submit additional submissions.

6. The appellant vide their letter dated 10.04.2018 has filed additional submissions wherein they submitted as under:-

(i) They have submitted that they have claimed the refund not on the basis of debit note issued by M/s. Alvares & Thomas, but on the basis of Export Application filed by them with the Port Officer, Karwar Port. Export Application filed with the refund claim clearly shows the details viz; name of the Appellant who is exporting the goods, name of the vessel through which such goods are exported, name of the Commodity, Quantity, Destination Port etc. Regarding Service Tax, same is being collected by issuing separate receipt in the name of M/s. Alvares & Thomas by giving reference of the Vessel for which it is being collected. Since the Port deals with the Exporter/Importer through its Registered Agent only, the Receipt is being issued in the name of the registered agent i.e. M/s. Alvares & Thomas for collection of Service Tax from the Exporter i.e. the Appellant. It may also be submitted that as the refund was claimed on the basis of receipt issued by Port Officer, Karwar and not on the basis of debit note issued by registered agent, question of making any submission to the effect that whether debit note is a valid document or not does not arise.

(ii) As regards submission of written agreement or Rules & Regulation requiring testing & analysis of goods, the Appellant submit that vide their refund application dated 29.06.2009 they have furnished copies of Letter of Credit (hereinafter referred to as L/C) containing various terms and conditions. L/C is a written agreement between buyers and sellers stipulating the terms and conditions based on which buyers wants to purchase the goods from the seller. Based on the conditions specified in the L/C, the appellant has carried out testing and analysis of the goods through nominated inspection/ testing agencies as specified in the L/C. In such eventuality the contention of the Learned Adjudicating Officer that the appellant has not furnished any agreement with the buyer of the goods which requires testing and analysis of goods is without any base and devoid of merit and deserves to be rejected at thrash hold.

(iii) As regards refund of service tax on the invoices issued by M/s Tungbhadra Logistics for transportation of iron ore, the appellant has submitted that they have exported 23100 WMT iron ore fines through m.v. PARASKEVI-II to China via New Mangalore Port in the month of November, 2008. Prior to arrival of vessel, the appellant has to accumulate the stock in advance so that they can avoid possibility of demurrage that can be occurred due to non-readiness of cargo after the vessel arrived at berth. It is because of this reason only the appellant has accumulated the stock in the port area some where in the month of April to June-2008 by transporting the same through M/s. Tungbhadra Logistics. However, as the deal with the

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overseas buyer was not concluded during this period, the appellant had to wait upto the month of October-2008 for exporting this goods.

(iv) As regards refund of service tax on the basis of debit notes issued by M/s. Cross Trade Shipping which is not a valid document for claiming refund under Rule 4A of Service Tax Rule, 1994 and the services rendered are shown as vessel berthing charges which is not notified as an eligible service under the relevant notification, the appellant has submitted that they have claimed refund of service tax not on the basis of debit note issued by M/s. Cross Trade Shipping but on the basis of marine invoice issued by Kandla Port Trust in favour of registered agent i.e. Cross Trade Shipping. At this juncture the appellant submit that Port Authority does not deals directly with importer/exporter of goods but it deals through the registered Agent which in the case under consideration is Cross Trade Shipping. Now coming to the question whether vessel berthing charges is an eligible service or not, the appellant invite the attention of towards Section 65(82) of the Finance Act, 1994 according to which any service provided within the port area either by the port or any person authorized by the port are falls under the head "port service". As far as issue of validity of debit note are concern, the appellant submit that they have claimed refund on the basis of marine bill issued by Kandla Port Trust and not on the basis of debit note issued by registered agent .

(v) As regards refund of service tax on "renewal fees and the claim was made on the basis of debit note issued by M/s. Aspinall & Co., the appellant has submitted that M/s. New Mangalore Port Trust had allotted 4000 Sq. Mtrs unpaved yard inside port area for storage of Iron ore to the appellant through the registered agent for which port had collected their monthly charges in the form of rent inclusive of service tax from the appellant. It is on these rental charges the appellant had paid service tax to the port authority for which refund claim has been filed. As the service for storage of cargo are provided inside the port area by New Mangalore Port Trust, the same is squarely falls U/s. 65(82) of the Finance Act, 1994 and notified to be an eligible service under Sr. No. 2 of the relevant notification. As far as question of claiming refund through debit note issued by registered agent are concern, the appellant has submitted the port authority does not deals directly with importer and exporter but it deals through the registered agents only because of which port authority had raised invoices or receipts in the name of their registered agent who in turn issued the debit notes in the name of appellant.

(vi) The last ground on which refund claim came to be denied is that the appellant has not submitted any declaration with regards to non-availment of CENVAT credit and non-availment of Draw back. In this regard the appellant has submitted that neither they have availed CENVAT credit nor they have claimed Drawback of service tax in respect of goods exported by them. An undertaking to the above effect which was not furnished before the Learned Adjudicating Officer is enclosed herewith.

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(v) The appellant vide their letter dated 01.05.2018 has filed further submissions wherein they submitted as under:-

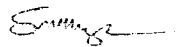
Port Service :-The appellant has reiterated that any service provided within the Port area irrespective of type/nature of service provided, would squarely falls under the head "Port Services" and eligible for refund under Sr. No. 2 of the Notification No. 41/2007-ST dated 06.10.2007. In this regard they have relied upon many Judicial precedents.

Technical Testing & Analysis Service :- As far as granting of refund on Technical Testing & Analysis Service are concern, they have submitted that activity of Supervision, Weighment, Sampling, Stuffing, Analysis & Inspection are part and parcel of Technical Testing & Analysis Services carried out by Testing Agency and notified as an eligible service for claiming of refund under the relevant notification. Further the submission of Purchase Order and Testing Certificate, confirming the necessary testing & analysis carried out by the exporter alongwith the refund claim would deemed as compliance of the conditions as noted. They have relied on many judicial pronouncements in the matter.

Goods Transport Agency :- They would also like to place on record that where there is export of cargo in bulk (i.e. more than 6000 Mts of cargo) and covered by one or more shipping bill, the same could not be transported by a single lorry and required to be aggregated at Port premises before shipping document could be prepared. In such circumstances compliance of conditions as prescribed in the relevant notification under the heading "Goods Transport Agency Service" should be ascertain broadly by co-relating evidence of transport and service tax paid on such transportation charges and quantity exported. In such situation it is not possible to mention in each and every lorry receipt details as prescribed under the head "Goods Transport Agency" in the relevant notification. In this regard they rely upon many judicial pronouncements on the relevant issue.

Procedural Violation :- The appellant has referred decision rendered by Cestat Principal Bench, New Delhi in the case of Jain Grani Marmo (P) Ltd. Vs. Commissioner of Central Excise, Jaipur, 2016 (45) S.T.R. 430 (Tri. Del.) wherein it is held that "if some of the conditions of the notification have not been complied with, such lapse should be considered as procedural lapse, for which the substantive right of the appellant to claim the benefit of refund as an exporter should not be denied/disallowed".

7. I have carefully gone through the appeal memorandum. I find that since the appeal is against rejection of refund claim, there is no need for compliance to requirement of Section 35F(i) of Central Excise Act, 1944. I also find that vide letter dated 05.08.2010 Authority was asked to submit parawise comments on the points raised by the appellant, but till date the same has not been received.



8. I find that only point required to be decided in this case is whether the impugned order rejecting the refund claim is just and proper or otherwise.

9. I find that appellant was served with show cause notice on 24.02.2010 as to why the refund claim of Rs. 9,89,645/- filed by them should not be rejected under notification No. 41/2007-ST dated 06.10.2007 as amended. The appellant did not submit written reply in the matter nor sought any personal hearing. On going through the impugned order, I find that the Adjudicating Authority has passed the order without giving proper natural justice to the appellant. In their Appeal Memorandum, Appellant have not raised any argument for violation of the principle of natural justice. But it is fact that the Adjudicating Authority has not given sufficient chance of personal hearing to the appellant and issued the impugned order without hearing the appellant personally or without taking into record the submission of appellant. The rules of natural justice do not supplant the law of the land but only supplement it. It is now firmly established that in the absence of express provisions in any statute dispensing with the observance of the natural justice, such principles will have to be observed in all judicial, quasi-judicial and administrative proceedings which involve civil consequences to the parties. Natural justice recognizes three principles:

Nemo debet esse iudex in propria causa – which means that nobody shall be a judge in his own or in a cause in which he is interested;

Audi alteram partem – which means to hear the other side;

Speaking orders or reasoned decisions.

Section 33A of the Central Excise Act, 1944 provides opportunity of being heard to a party by the adjudicating authority from time to time with grant of adjournment to the party not more than three times. Further, CBEC vide its Circular No. 1053/ 2/ 2017-CX dated 10.03.2017, has further on the question of personal hearing has clarified as follows:

“14.3 Personal Hearing: After having given a fair opportunity to the noticee for replying to the show cause notice, the adjudicating authority may proceed to fix a date and time for personal hearing in the case and request the assessee to appear before him for a personal hearing by himself or through an authorized representative. At least three opportunities of personal hearing should be given with sufficient interval of time so that the noticee may avail opportunity of being heard. Separate communications should be made to the noticee for each opportunity of personal hearing. In fact separate letter for each hearing / extension should be issued at sufficient interval. The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding adjourn the hearing for reasons to be recorded in writing. However, no such adjournment shall be granted more than three times to a noticee (emphasis supplied)”.

10. I find that the refund claim was filed for Technical Inspection and Analysis Service, Transportation service and Port Service which were used for in connection of export. The Adjudicating Authority has rejected the refund claim of Rs. 9,89,645/-

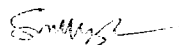
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mainly because of non fulfillment of conditions of Notification No. 41/2007-ST dated 06.10.2008 and violation of Rule 4A of Service tax Rules.

11. As regards refund claim in respect of above services, it was held by Adjudicating Authority that debit notes is not a specified documents under Rule 4A of Service tax Rules, 1994; that no written agreement was submitted by the appellant and thereby they have not fulfilled the conditions of Notification no. 41/2007-St dated 06.10.2008; that refund claim for transportation charges related to different period and there is no evidence to prove that the same goods were exported ; that charges paid in respect of services viz. Vessel Berthing Charges and "Renewal Fees for area inside NMPT" were not specified as eligible for refund under notification no. 41/2007-ST dated 06.10.2007 and documents in respect of Services provided are not in pursuance of Rule 4A of Service Tax Rules. However, on going through the submission of the appellant I find that the appellant has provided copy Letter of Credit, copy contract containing the terms and conditions in some cases, summarized statements along with all details while filling the refund claim. I find that the Adjudicating Authority has not properly scrutinized the details provided by the appellant at the time of filling the claim and simply reject the refund claim mentioning that they have not fulfilled the conditions of Notification no. 41/2007-St dated 06.10.2008 and service rendered were not specified as eligible for refund under notification no. 41/2007-ST dated 06.10.2007. JAC has opined & rejected the refund claim stating that the appellant has not fulfilled the conditions of Notification no. 41/2007-ST and services for which the refund is claimed by the appellant are not specified as eligible services under Noti. No. 41/2007-ST dated 06.10.2007. However, he has not elaborated as to which services are specified as eligible services and which conditions have not fulfilled under Noti. No. 41/2007-ST dated 06.10.2007. Also, I find that the Adjudicating Authority has not elaborated how there is violation of Rule 4A and in the impugned order.

12. In view of the above, I find that the documents submitted by the appellant are required be verified and the decision taken needed to be justified with proper reasons/ discussions. Thus, I find that the impugned OIO is cryptic and non speaking and is in violation of the principle of natural justice. In large number of decisions, various higher appellate authorities have held that grant of refund is a quasi-judicial proceedings and application for refund filed by any person cannot be rejected without giving proper natural justice to the said person.

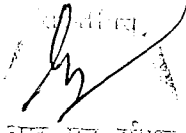
13. Therefore, to meet the ends of justice, I set-aside the impugned order of the Adjudicating Authority on the grounds that it has been passed without observing the principles of natural justice and is non -speaking, in light of the decision in the case of Singh Alloys (P) Ltd. – 2012 (284) ELT 97 (Tri. Delhi), and remand the matter back to Adjudicating Authority, with a direction to decide the matter afresh on merits by following principles of natural justice and also justify/ issue a speaking order with respect to the said refund claim in terms of Notification No. 41/2007-ST dated 06.10.2007.




14. In holding this, 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.

15. Accordingly, without expressing any opinion on admissibility of the refund or otherwise, the appeal of the Appellant is disposed by way of remand with a direction to the Adjudicating Authority to decide the refund claim of the Appellant on merits after following principles of natural justice. The appellant is also directed to submit their submissions made in the present grounds of appeal before the adjudicating authority, so as to enable adjudicating authority to decide all aspects involved in the matter on merits

16. The appeal is accordingly disposed off in above terms.


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अ. ए. सी. ए. सी. (अ. ए. सी. ए. सी.)


(SUNIL KUMAR SINGH)
COMMISSIONER (APPEALS)/
COMMISSIONER, CGST & CEX,
GANDHINAGAR

F. No. V.2/533/RAJ/2010

Place:-Ahmedabad

Date:- 17.05.2018

By speed post/HD

To,

M/s. The Kutch Salt and Allied Industries Ltd,

Maitri Bhavan,

Plot No: 18, Sector 8,

Gandhidham 370 201 (Kutch)

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner (Appeal), CGST and Central Excise Rajkot.
- 3) The Commissioner, GST & Central Excise, Kutch.
- 4) The Assistant Commissioner, GST & CEX, Gandhidham Urban.
- 5) The Assistant Commissioner(Systems), CGST, Rajkot.
- 6) The Superintendent, GCAST and Central Excise, AR Gandhidham,
- 7) PA to Commissioner CGST and Central Excise Gandhinagar.
- 8) Guard File.