



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



सत्यमेव जयते

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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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/535/RAJ/2010	मूल आदेश सं / O.I.O. No. 41/ST/Ref/2010	दिनांक / Date 28.04.2010
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ख अपील आदेश संख्या (Order-In-Appeal No.):

KCH-EXCUS-000-APP-020-2018-19

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 १०.१०.२०१७ 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 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 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** :-
Friends Salt Works & Allied Industries,, plot No. 160, Maitri Bhavan, Plot No 18, Sector-8, Gandhidham,
इस आदेश(अपील) से व्याथित 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, 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 नियमावली, 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 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 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 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 an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की 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।

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 पेट्री 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-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER-IN-APPEAL ::

Being aggrieved with the Refund Order No. 41/ ST/ Refund/ 2010 dated 28.04.2010 (**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. Friends Salt Works & Allied Industries, Maitri Bhavan, Plot No: 18, Sector 8, Gandhidham 370 201 (Kutch) (**hereinafter referred to as "the appellants"**) have filed the present appeal.

2.1 Briefly stated the appellants filed an application on 30.06.2009 seeking refund of Rs. 4,33,182/- 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 No. V/18-42/ ST/Ref/ 09-10 dated 02.03.2010 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 Adjudicating Authority vide OIO No. 41/ST/ Ref/ 2010 dated 28-04-2010 rejected the refund claim. While rejecting the said refund claim, Adjudicating Authority has observed that appellants neither filed reply to Show Cause Notice nor sought personal hearing; that the claimant sought refund on Agency & Loading charges on the basis of invoices issued by M/s Gautam Freight Pvt. Ltd. and Shubam Shipping Services Pvt. Ltd.; that the claimant sought refund on Priority Berth Hire Charges on the basis of debit note issued by M/s Cross Trade Shipping; that the claimant sought refund of Service Tax on the ground rent of the container on the basis of ground rent note issued by M/s Taipan Shipping Pvt. Ltd.; that the claimant sought refund of Service Tax on the basis of invoices issued by M/s Arya Transport Co. Gandhidham showing to & fro viz. Kandla to Bharapar and back to Kandla though the notification provides for transport of goods from ICD to the port of export only; that to & fro rent is not admissible; that the container numbers shown in the LRs doesn't tally with the details shown in shipping bills; that proof of payment of Service Tax in respect of GTA is not provided by the appellant; that the claimant sought refund of Port dues, pilotage, anchorage, survey, etc. on the basis of issued by M/s Cochin Shipping Company, Mangalore however there is no evidence provided to prove that

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service provider is authorized by port for collection of such charges on behalf of the port; that the claimant sought refund of Service Tax on the invoices issued by M/s SGS and M/s Geochem laboratories however the claimant had not submitted any agreement entered with the buyer or rules or regulations stipulating testing and analysis of the said goods; that above services were not specified as eligible services under Notification No. 41/2007-ST dated 06.10. 2007; that the debit notes and Ground Rent Notes are not a specified document under Rule 4A of the Service Tax Rules,1994; that the shipments for which the refund is claimed were made in the month of May,08 to August,08 which is in contravention of the provisions of Notification No. 41/2007-ST dated 06.10.2007, as per which claim has to be preferred within 60 days from the end of the quarter during which the said goods have been expored; that apart from the above, the claimant has not provided declaration for non availment of Cenvat Credit and duty drawback as required under Notification No. 41/2007-ST dated 06.10.2007.

3. Being aggrieved with the impugned order, the appellants have filed the present appeal No. 535/RAJ/2010 on the grounds that ...

(i) bills issued by M/s Shubham Shipping Services Pvt. Ltd. towards agency charges fall under the Custom House Agent services U/s. 65 (105) (h) of Finance Act, 1994 which has been brought under the eligible services for refund claim vide Notification No. 17/2008-ST dated 01.04.2008; that the services which were rendered by M/s Gautam freight Pvt. Ltd. are towards loading of goods within the port area including payment of port wharfage charges, on behalf of the Appellant which falls under the head Port Services as defined U/s 65 (105) (zn) of Finance Act, 1994 and these services are eligible services for claiming of refund under Notification No. 41/2007 dated 06.10.2007; that the services received from Kandla Port Trust through its agent M/s Cross Trade Shipping towards priority berth hiring charges falls under the category of port services U/s 65 (105) (zn) of Finance Act, 1994;

(ii) the bills issued by Taipan Shipping Pvt. Ltd. for the services of Ground rent Charges fall under the category of Storage & Warehouse service U/s. 65 (105)(zza) of Finance Act, 1994 and are eligible services for refund claim vide Notification No. 41/2007-ST dated 29.11.2007.

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(iii) the service tax in respect of bills issued by M/s Arya transport Co. Gandhidham under the category of Goods Transport Agency falling under section 65 (105) (zzp) of the Finance Act, 1994; that they have enclosed Service Tax Challan with the refund claim as a proof of payment of Service tax; that the container numbers written on the bills issued by said party may not exactly tally with the shipping bill of the cargo exported; that as regards to and fro rate charged by the said party in the bills, the notification provides for transport of goods from the ICD to the port of Export only ; that the Appellant here is craving for the half of the total service tax paid on transportation of the said goods.

(iv) that the services received form Karwar Port through its agent M/s Cochin Shipping Co. towards port dues, Pilotage fees, anchorage fees etc. fall under the category of port services U/s 65(105)(zn) of Finance Act, 1994.

(v) that the Appellant had enclosed copy of Letter of Credit/Contract along with Refund application which stipulate terms and conditions between Importer & Exporter of goods; that as per the term as contained in Letter of Credit the Appellant has to carry out testing and analysis of the goods from such agency as specified which the Appellant had carried out.

(vi) that as per Notification No. 32/2008-ST dated 18.11.2008 the claim period has been extended from 60 days to 6 Months from the end of the relevant quarter for filing refund of Service Tax.

(vii) that the Appellant has not filed any declaration regarding non availment of Cenvat credit and duty drawback in absence of any such stipulation in the Notification No. 41/2007-ST dated 06.10.2007.

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

5. Personal hearing in the matter was scheduled on 31.01.2018 which was postponed to 28.02.2018 & 20.03.2018 at the behest of the applicant. The PH was held on 10.04.2018 which was attended by Shri

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Manish Vora, Chartered Accountant and reiterated the written submission filed at the time of hearing.

6. The appellant vide their letter dated 10.04.2018 has filed submissions wherein they have interalia submitted that...

i) M/s. Shubham Shipping Services Pvt. Ltd. is a Stevedoring, Clearing & Forwarding agent and collected their service charges in the form of agency charges; that Nomenclature agency service are generally used by Custom House Agent for collecting their service charges that the service rendered by said service provider will falls either under the head "Custom house agent service" or under the head "port service" (being a stevedore agent); that both the above services are notified to be an eligible service under the relevant notification; that the description of the service is to be determined not on the basis of phrases used in the invoice but it should be determined on the basis of type of service rendered by the service provider.

ii) M/s Gautam Freight Pvt. Ltd. is Stevedores and Handling agent at Kandla port and provided the service of loading of cargo into the vessel within the port area inclusive of port wharfage charges collected by the port; that the service rendered by said party squarely falls under the head "Port Services" as defined U/s 65 (105) (zn) of Finance Act, 1994 and the said service is notified to be an eligible services under the relevant notification.

iii) M/s Cross Trade Shipping :- The said service provider had claimed reimbursement of Berth Hire charges paid to Kandla Port Trust on behalf of the appellant. Any service rendered by Port authority falls under the parameter of Port service and same is notified to be an eligible service under the relevant notification. As far as refund claim made on the basis of debit notes issued by Cross Trade Shipping are concern, the appellant submit that, the refund is claimed on the basis of invoice issued by Kandla Port Trust to their registered agent M/s. Cross Trade Shipping because as a policy matter port does not deals directly with importer/exporter of goods; that the invoice which is issued by Kandla port trust on the basis of which refund is being claimed contains all the details as prescribed under Rule 4A of Service Tax Rule, 1994.

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(iv) As regards the denial of the refund of the ground rent of containers since the same is not specified as an eligible service under Relevant notification, the appellant agrees that the bill issued by M/s Taipan Shipping Pvt. Ltd. is not in accordance with Rule 4A of Service Tax Rules, 1994 and that the container detention charges which is collected in the form of ground rent is not an eligible service for claiming refund under the relevant notification and therefore the claim of refund to that extent may kindly be rejected.

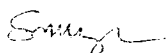
(v) As regards denial of refund of service tax in respect of to and fro transportation charges collected by M/s. Arya Transport Co. on the ground that the notification prescribed transportation of goods from ICD/place of removal to Port of export only & the appellant had not submitted challan evidencing payment of service tax on GTA service, the appellant agrees with the contention of the Learned Adjudicating Officer that they have claimed refund on to and fro transportation charges of containers whereas the relevant notification prescribes the claim of refund only on the transportation expenses incurred from ICD/place of removal to Port of export; that the claim for to and fro expenses was made as the service provider viz. M/s. Arya Transport Co. had issued the consolidated invoice to the appellant; that in absence of the relevant details i.e. the rate of one side of transportation from place of removal to Port of export, the appellant request your honour to kindly restrict the refund claim to 50% of amount claimed under the head "goods transport agency service" as the transportation charges of loaded container would be much higher than that of empty containers; that as regards the contention of the Learned Adjudicating officer that container Nos. which is shown in the LR is not tally with container Nos. mentioned in the Shipping Bill is factually incorrect because the container No. mentioned in the invoice pertaining to various shipping bills claim of which is being made under this refund claim; that as far as non-submission of proof of payment of service tax in respect of GTA service are concern, the appellant submit that, they had submitted a copy of challan evidencing payment of service tax on GTA service to the Learned Adjudicated Officer alongwith their refund application dated 29.06.2009, a copy of which is enclosed.

(vi) The fourth ground on which refund claim came to be denied is that the Appellant has claimed refund of service tax on the basis

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of Invoices issued by M/s. Cochin Shipping Co. whereby the said party has claimed reimbursement of Port dues and service tax from the appellant; that according to the Learned Adjudicating Officer, M/s. Cochin Shipping Co. is not an authorized person to collect such charges on behalf of the port and further the documents through which such charges are collected is not a valid document as per Rule 4A of Service Tax Rules, 1994; that in this regard the appellant submit that Port officer, Karwar had collected port dues and other dues alongwith service tax from M/s. Cochin Shipping Co. on behalf of the appellant and therefore question of authorization of agent by port for collection of such charges does not arise; that port dues and other dues were paid in respect of iron ore fines exported by the appellant through m.v. LISA-J; that it is another fact that a receipt No. 133154 dated 20.03.2008 issued by Port Officer, Karwar, on the basis of which refund is being claimed is not in accordance with Rule 4A of Service Tax Rules, 1994 which is a procedural lapse and same may kindly be condoned taking into consideration the fact that such charges with service tax is collected by Port Officer, Karwar being a Government servant on behalf of Government of India; that in respect of refund claim on the invoices issued by Delta Marine Service, it may be submitted that, invoice was issued in the name of Cochin Shipping Co., being an agent of the appellant for carrying out Technical Inspection and Certification which is notified to be an eligible service under the relevant notification; that the said certification is required to be carried out by the appellant as desired in the Letter of Credit issued by Express well International Ltd., Hongkong, copy of which is enclosed.

(vii) As regards the failure of the appellant to submit either 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 a copy of Letter of Credit (hereinafter referred to as L/C) and in some cases copy of contract which they have received from their buyers; that the L/C is governed by UCP 600 and issued by Bankers of the buyers containing various terms and conditions based on which buyer wants to purchase the goods from the sellers; that the L/C is a written agreement between buyers and sellers stipulating the terms and conditions based on which buyers wants to purchase goods from the seller; that the



appellant has placed on record copy of L/C issued by various Bankers towards supply of goods to overseas buyers; that the appellant have also prepared a summarized statement in tabular form showing Name of the Inspection Agency, Invoice No. & Date, Description of the service received from them (i.e Testing/analysis etc.), whether requirement of such services were stipulated by the relevant L/C and/or contract or not and reference to relevant page No. of L/C and/or Contract and other documents pertaining to invoice issued by Inspection Agency to negate the contention raised by the Learned Adjudicating Officer that the appellant has not submitted written agreement with regards to testing and inspection service received by them; that based on the conditions specified in the L/C and/or Contract, the appellant has carried out testing and analysis of the goods through nominated inspection/testing agencies as specified in the L/C and/or contract; that in such eventuality the contention of the Learned Adjudicating Officer that the appellant has not entered into any agreement with the buyer of the goods which requires testing and analysis of goods is without any base and devoid of merit.

(viii) That as regards the ground for denial of refund that most of the Shipping bills in respect of which claim is filed pertains to May - 2008 to September-2008 and in terms of relevant notification the claim should have been filed within 60 days from the end of the relevant quarter during which the said goods have been exported whereas in the case under consideration the said claim was filed only on 30.06.2009, appellant have drawn attention to the clarification issued by Central Board of Excise & Custom in Circular No. 112/06/2009-ST dated 12.03.2009. They have reproduced the relevant portion of the said circular; that they have relied upon various wherein a view is taken that, if a refund claim is filed within a period of one year from the end of the relevant month in which goods are exported, as specified in Notification No. 17/2009-ST dated 07.07.2009, the claim will be treated as filed within the stipulated time

(ix) As regards the denial of refund claim on the ground that the appellant has not submitted any declaration with regards to non-availment of CENVAT credit and non-availment of Drawback of service tax paid on the specified service under the Custom, Excise &

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Service Tax Draw Back Rules, appellant have submitted that neither they have availed CENVAT credit of service tax nor claimed Drawback of service tax in respect of goods exported by them; that an undertaking to the above effect which was not furnished before the Learned Adjudicating Officer is enclosed herewith.

On the basis of submission made herein above which is duly supported by the documentary evidence available on record, the appellant prayed that Order in Origin passed by Learned Adjudicating Officer may kindly be quash, set-a-side and the appeal of the appellant may kindly be allowed or in alternate may be restored to verify the documents submitted herewith.

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 05/09.08.2010 Adjudicating Authority was asked to submit parawise comments on the points raised by the appellants, but till date the same has not been received.

8. I find that the limited issue 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 a show cause notice No. V/18-42/ST/09-10 dated 02.03.2010 as to why the refund claim of Rs. 4,33,182/- filed by them for the quarter Oct,2008 to December,2008, 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.

10.1 I find that appellant in their Appeal Memorandum have not raised the issue of violation of the principle of natural justice. From the impugned OIO, I find that the prior to rejection of the refund claim, the Adjudicating Authority has not heard the appellant in person. Adjudicating Authority has opined & rejected the refund claim stating that the services for which the refund is claimed by the claimant are not specified as eligible services under Noti. No. 41/2007-ST dated 06.10.2007. Another ground for rejection of the refund by the Adjudicating Authority is that the appellant has not submitted written agreement or Rules & Regulation requiring testing & analysis of goods

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and have also failed to submit any declaration with regards to non-availment of CENVAT credit and non-availment of Drawback of service tax paid on the specified service under the Custom, Excise & Service Tax Drawback Rules. As regards the observation of the Adjudicating Authority that the appellant had not provided copy of the contracts, I find from the written submission of the appellant that they have claimed to have submitted copy Letter of Credit containing the terms and conditions and the said documents submitted by the appellant at the time of filing refund claim have not been taken into consideration during adjudication of the refund claim. Adjudicating Authority has not elaborated at depth as to which services are specified as eligible services under Noti. No. 41/2007-ST dated 06.10.2007 and also not justified how the services for which the refund is claimed by the claimant are not specified as eligible services under Noti. No. 41/ 2007-ST dated 06.10.2007. Thus, I find that the impugned OIO is cryptic and non speaking and is also passed in violation of the principle of natural justice. Further, the appellant have now submitted the written submissions, as discussed at para 6 supra alongwith the evidences/ documents, which are now needed to be verified and the decision regarding admissibility/non- admissibility of the refund claim, after verification of the above submissions/documents is needed to be taken with proper justification/reasons. 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 issue of a show cause notice to explain, to the said person.

10.2 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:

- (i) *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;
- (ii) *Audi alterem partem* – which means to hear the other side;
- (iii) Speaking orders or reasoned decisions.

10.3 Section 33A of the Central Excise Act, 1944 provides opportunity of being heard to a party by the adjudicating authority from

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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 state 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 notice (emphasis supplied).*

11. 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. Adjudicating Authority must mention in the order details of hearing given with a reasonable time.

12. 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.

13. 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

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refund claim of the Appellant on merits after following principles of natural justice. The appellant is also directed to submit their submissions raised 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

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

F. No. V.2/535/RAJ/2010
Place: Ahmedabad.

Dated: 17.05.2018

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

By Speed Post

To,
M/s. Friends Salt Works & Allied Industries,
Maitri Bhavan, Plot No: 18, Sector 8,
Gandhidham 370 201 (Kutch).

[Signature]
COMMISSIONER (APPEALS)
COMMISSIONER, CGST & CEX,
GANDHINAGAR

Copy to:

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