



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

द्वितीय तल, जी एस टी भवन / 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



रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/155 to 158/GDM/2017	ST/270 to 273/2017-18	16.06.2017

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

KCH-EXCUS-000-APP-031-TO-034-2018-19

आदेश का दिनांक / 30.05.2018 जारी करने की तारीख / 31.05.2018
Date of Order: Date of issue:

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

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 Appellant & Respondent :-**
M/s. Bharat Chemical, Shah Avenue- I, Office No. 2, Ward 12B., Gandhidham Kutch

इस आदेश(अपील) से व्यक्ति 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.

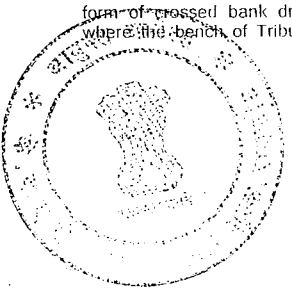
(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधीनस्थ न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है / Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधीनस्थ 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 अधीनस्थ न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए / To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अधीनस्थ न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित निरूपण पत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, व्याज 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 अधीनस्थ 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 अधीनस्थ 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) अधीनस्थ न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर अधिनियम, 1994, के नियम 9(1) के तहत निर्धारित पत्र S.T.-5 में चार प्रतियों में की जा सकती है 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, व्याज 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 अधीनस्थ 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 अधीनस्थ न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा / The appeal under sub section (1) of Section 86 of the Finance Act, 1994 to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied 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 सकेंगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उन्में से एक प्रति प्रामाणिक होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 83 के अंतर्गत, जो कि वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर का भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर जमा के 10 प्रतिशत (10%), जब जमा 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।

- (i) केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "जमा किए गए शुल्क" में निम्न शामिल है
- (ii) धारा 11 डी के अंतर्गत रकम
- (iii) सेनवेट जमा की गई गलत राशि
- (iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रथम वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील की लागू नहीं होगी।

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 निर्धारित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अथवा सर्वोच्च, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त अकाशय, 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 परगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जा इस्तेमाल 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 समायाचिका 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 कि केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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। / 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.

(vii) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी कि लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scripitoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(viii) 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 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-1 in terms of the Court Fee Act,1975, as amended.

(ix) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित 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.

(x) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

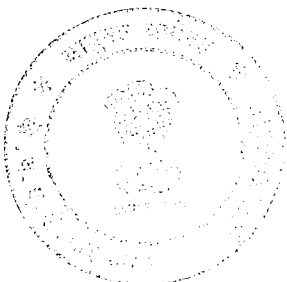
:: ORDER IN APPEAL ::

M/s. Bharat Chemical, Shah Avenue-I, Office No. 2, Ward-12/B, Gandhidham, Kutch (hereinafter referred to as "Appellant") has filed appeals against Orders-In-Original No. ST/270 to 273/2017-18 all dated 16.06.2017 (hereinafter referred to as "the impugned orders") passed by the Assistant Commissioner, Service Tax Division, Gandhidham (hereinafter referred to as "the lower adjudicating authority"). Since the issue involved is common in nature and connected with each other, the same are taken up together for disposal.

Sr. No.	Order-in-Original No. & Date	Amount of refund Rs.	Period Involved
01	ST/270/2017-18 dated 16.06.2017	512,061/-	August, 2016
02	ST/271/2017-18 dated 16.06.2017	291,128/-	June, 2016
03	ST/272/2017-18 dated 16.06.2017	299,707/-	November, 2016
04	ST/273/2017-18 dated 16.06.2017	411,634/-	August, 2016

2. Briefly stated facts of the case are that the Appellant filed refund applications of service tax paid under Notification No. 41/2012-Service Tax dated 29.06.2012 being services consumed for export of salt which was exempted. The lower adjudicating authority rejected refund claims inter alia, on the following grounds that (i) The LEO date is not mentioned in Shipping bills; (ii) copy of bill of lading not submitted; (iii) details of relevant export invoices are not matching with the relevant shipping bills; (iv) supplied Fuel (bunker) to the vessel which arrived at the port and (v) On going through relevant invoices and shipping bills it was found that no goods were exported. The lower adjudicating authority, accordingly, rejected the aforesaid refund claims under Notification No. 41/2012-ST dated 29.06.2012

3. Being aggrieved with the impugned orders, the appellant preferred the present appeals on the grounds that the impugned orders rejecting refund claims cannot be sustained as the same have been passed without serving defect memo, without issuing Show Cause Notice and without granting personal hearing in violation of principles of natural justice



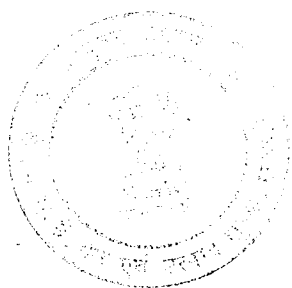
4. Shri Vikas Mehta Consultant, during personal hearing reiterated the grounds of Appeal and submitted that the said letter dated 15.03.2017 was not given to them/received by them; that they did not get any defect Memo or Show Cause Notice from the Department; that no personal hearing notice was received by them nor they were called for personal hearing even verbally; that orders have been passed in violation of principles of natural justice; that the services were provided for export of goods by procuring the services from Service Providers; that they have borne Service Tax incidence; that the appeal should be allowed as neither payment of Service Tax is in doubt nor export of goods is disputed. Personal hearing notice was also sent to the jurisdictional Division, however, none appeared from the Department.

FINDINGS:-

5. I have carefully gone through the facts of the case, impugned order, grounds of appeal and submissions made by appellant. The issue to be decided in the present appeal is as to whether the impugned orders passed by the adjudicating authority rejecting the refund claims of Service Tax paid on procuring services by the Appellant for export of the goods under Notification No. No. 41/2012-St dated 29.06.2012 is proper or otherwise.

6. The Appellant has vehemently contended that before rejecting the refund claims they were neither issued defect memo / Show Cause Notice nor personal hearing notice and therefore, the principles of natural justice have been violated.

7. It is very evident from the impugned orders that neither show cause notice has been issued nor opportunity of personal hearing granted to the Appellant before rejecting the impugned refund claims. The lower adjudicating authority has stated that they had issued letter F. No. ST/Ref/BC/GIM/Div/2016-17 dated 15.03.2017, however, the Appellant has stated that they did not receive any such letter or any defect memo. I find that issuance of Show Cause Notice and granting of personal hearing are obligatory on part of the department / adjudicating authority before passing quasi-judicial order. Even if it is considered that the said letter has been issued non issuance of show cause notice and non-grant of



personal hearing by the adjudicating authority are serious lapse on part of the adjudicating authority. Thus, the rejection of refund claims has to be considered as violation of the principles of natural justice. I rely on the judgment of the Hon'ble Madras High Court in the case of VASTA BIO-TECH PVT. LTD. reported as 2018 (360) E.L.T. 234 (Mad.) wherein at Para 5 to 7 it is held as follows :-

"5. The petitioner's case is that, had a show cause notice been issued to them, they would have explained to the Authority, as regards the discrepancies between the imported goods and the sale invoice, and would have extended full cooperation, and to the said effect, the reply affidavit has been filed to justify their stand. Since the partial rejection of the petitioner's claim for refund results in civil consequence, the principles of natural justice demands that the petitioner be afforded an opportunity. The explanation sought to be given by the respondent, in Para No. 10 of the counter affidavit cannot be countenanced, as the statute does not put a bar for an opportunity being granted, and if statute is silent, then, principles of natural justice has to be read into the statute, so that the assessee has reasonable opportunity to put forth this case.

6. Hence, for the above reasons, the petitioner is directed to treat the impugned order-in-original, insofar as it rejects the petitioner's claim for refund of Rs. 1,85,586/- is concerned, as show cause notice, submit their objections within a period of 30 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the authorized representative of the petitioner and consider the case, as projected by the petitioner and examine as to whether they are entitled for refund of balance amount of Rs. 1,85,586/-. The above direction shall be complied with, within a period of 60 days from the date of receipt of the objections.

7. Accordingly, the Writ Petition stands disposed of. No costs."
[Emphasis supplied]

7.1 I also find that irregularities have been committed by the adjudicating authority by not following the principles of natural justice and the same can be cured only by the adjudicating authority, who flouted it as has been held by the Hon'ble CESTAT in the case of Jagir Singh reported as 1987(28)ELT521(Tri)

" Natural justice- Deficiency of natural justice before original Authority not curable in subsequent proceedings - Principles of natural justice complied with when case remanded not to lower appellate authority but to original authority.

- There can be no quarrel with the cherished proposition of law

that deficiencies of natural justice before the trial Tribunal cannot be cured in subsequent proceedings. Accordingly, as and when occasion has arisen and whenever it has been found by the Appellate Tribunal that an opportunity to defend was not afforded by the trial Tribunal to decide the case de novo after affording a reasonable and proper opportunity to defend. In the instant case, when the appellant filed his appeal against the order of the lower Appellate Authority, i.e. the Board's Order confirming the Order-in-Original and complained that he was not given an opportunity to prove his case regarding the ownership of the contraband gold in question, the Appellate Tribunal immediately set aside that part of the order, which related to the ownership of the gold, and remanding the case to the Adjudicating Authority, that is to say, to the trial Tribunal and not to the lower Appellate Authority.
..... [para 9]"

[Emphasis supplied]

7.2 In view of above, the deficiency of the impugned order crept in at the stage of lower adjudicating authority cannot be cured or set right by the subsequent authority and will have to be corrected by the adjudicating authority only.

8. In the backdrop of non-compliance of principles of natural justice by the lower adjudicating authority, I have no option but to set aside the impugned order and remand back the proceedings to the jurisdictional adjudicating authority, who shall after complying the principles of natural justice pass the appropriate order within 4 months from the date of receipt of this order. I rely upon the judgment of the Hon'ble Madras High Court in the case of Confidence Petroleum India Ltd. reported as 2015 (322) ELT 237 (Mad.) wherein it has been held as under ;-

"4. After hearing the parties, this Court is of the view that the learned Counsel for the petitioner is correct in her submission that the respondents have passed the impugned order behind the back of the petitioner, without affording an opportunity of personal hearing. When the unit at Coimbatore was closed down way back in the year 2009, and thereafter, they have been functioning only from office at Bombay, the respondents were not correct in sending show cause notice to the Coimbatore address and then passing an ex parte order, behind the back of the petitioner therefore, the Order-in-Original dated 30-11-2011 is quashed. Consequently, the recovery notice dated 4-2-2015 is also quashed."

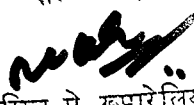
[Emphasis supplied]



9. In view of above, I set aside the impugned orders and allow all four appeals by way of remand with direction to the jurisdictional adjudicating authority to decide the cases within 4 months of receipt of this order and with directions to the appellants to submit their defence reply within 2 months from the receipt of this order treating the allegations contained in Para 2 to 9 of the impugned orders as Show Cause Notices.

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

9. The appeals filed by the appellant are disposed off in above terms.

सत्यधित्त,

 निखिल रे. रूपरेलिया
 अधीक्षक (अपील्स)

(कुमार संतोष)
 आयुक्त (अपील्स)

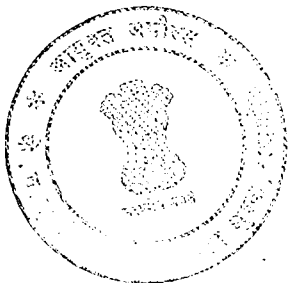
By R.P.A.D.
 To,

M/s. Bharat Chemical,
 Shah Avenue-I,
 Office No. 2,
 Ward-12/B,
 Gandhidham, Kutch.

मे. भारत केमिकल,
 शाह आवेनेयु-1, ऑफिस नो. 2,
 वर्ड नो. 2, गान्धीधाम, कच्छ.

Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Gandhidham, Kutch.
- 3) The Assistant Commissioner, GST & Central Excise, Gandhidham, Kutch.
- ~~4)~~ Guard File.



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