



::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

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रजिस्टर्ड डाक ए.डी.द्वारा:-DIN-20211064SX0000366983

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|---|--|-----------------------------|-----------------|
| क | अपील / फाइल संख्या/ Appeal / File No. | मूल आदेश सं / O.I.O. No. | दिनांक/ Date |
| | V2/2/EA2/RAJ/2010 | 165/2009-10 | 30.09.2020 |

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

KCH-EXCUS-000-APP-241-2021

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|------------------------------------|------------|--|------------|
| आदेश का दिनांक / Date of Order: | 21.10.2021 | जारी करने की तारीख / Date of issue: | 21.10.2021 |
|------------------------------------|------------|--|------------|

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सुजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :
घ अपीलकर्ता/प्रतिवादी का नाम एवं पता /Name & Address of the Appellant/Respondent :-

M/s. Mid India Power and Steel Ltd., Plot No. 332, GIDC, Phase-II, Mithirohar Industrial Area, Gandhidham-Kutch.

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। /
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिमेट) की पश्चिम क्षेत्रीय पीठ, 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) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 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 रजिस्ट्रार 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। स्वयं 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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र 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, 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 रजिस्ट्रार 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। स्वयं 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 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 of 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 (सेन्टेट) 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 इस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 की 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 प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

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 पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक 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:
- 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
 - 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 (रिवेट) 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.
 - 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.
 - मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
 - उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद 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.
 - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
 - यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी, की लिखा पत्री 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 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.
 - 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-1 in terms of the Court Fee Act, 1975, as amended.
 - 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.
 - उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.



:: ORDER-IN-APPEAL ::

The Deputy Commissioner, erstwhile Central Excise Division, Gandhidham has filed Appeal Nos. V2/2/EA2/RAJ/2010 on behalf of the Commissioner, erstwhile Central Excise, Rajkot (*hereinafter referred to as "Appellant Department"*) in pursuance of the direction and authorization issued under sub-section(2) of Section 35E of the Central Excise Act,1944 against Refund Order No. 165/2009-10 dated 17.11.2009 passed by the Deputy Commissioner, erstwhile Central Excise Division, Gandhidham (*hereinafter referred to as "refund sanctioning authority"*) in the case of M/s Mid India Power and Steel Ltd, Gandhidham (Now M/s Shreeyam Power and Steel Industries Ltd) (*hereinafter referred to as 'Respondent'*).

2. The facts of the case, in brief, are that the Respondent was engaged in the manufacture of excisable goods falling under Chapter No. 72 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AAACM7130LXM001. The Respondent was availing benefit of exemption under Notification No. 39/2001-CE dated 31.07.2001, as amended (*hereinafter referred to as 'said notification'*). As per scheme of the said Notification, exemption was granted by way of refund of Central Excise duty paid in cash through PLA as per prescribed rates and refund was subject to condition that the manufacturer has to first utilize all Cenvat credit available to them on the last day of month under consideration for payment of duty on goods cleared during such month and pay only the balance amount in cash.

3. The Respondent had filed Refund applications for the months of August, 2008 and September,2008 for refund of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA in terms of notification *supra* on clearance of finished goods manufactured by them. The refund sanctioning authority vide Refund Order No. 174/2008-09 dated 21.10.2008 and No. 207/2008-09 dated 4.12.2008 partially restricted the refund claims, *inter alia*, on the grounds that the Respondent had cleared the exported goods under claim of rebate but as per Notification No. 37/2007-CE(NT) dated 17.9.2007, rebate is not admissible, if benefit of Notification No. 39/2001-CE dated 31.7.2001 is availed.

3.1 Being aggrieved, the Respondent preferred appeal before the then Commissioner (Appeals), Central Excise, Rajkot who vide his Order-in-Appeal No. 358-359/Raj/2009 dated 27.4.2009, *inter alia*, held that the Respondent was eligible for refund of Rs. 57,31,054/-. The said Order-in-Appeal was



reviewed by the Department and appeal No. E/1374/2009 was filed before the CESTAT, Ahmedabad along with Stay application. The Hon'ble Tribunal vide Order No. S/1541/WZB/AHD/2009 dated 5.11.2009 allowed the stay petition during pendency of appeal.

3.2 Pursuant to Order-in-Appeal dated 27.4.2009 *supra*, the refund sanctioning authority, *inter alia*, sanctioned refund of Rs. 57,31,054/- to the Respondent vide the impugned order.

4. The impugned order was reviewed by the Appellant Department and appeal has been filed on the grounds that,

(i) As per condition prescribed vide Para 2(h) of Notification No. 19/2004-CE(NT) dated 6.9.2004 inserted vide Notification No. 37/2007-CE(NT) dated 17.9.2007, it is clear that the rebate of duty paid on exported goods manufactured by the unit availing the benefit of Notification No 39/2001-CE dated 31.07.2001 is not allowed in any manner whether directly or indirectly. The Appellate Authority's order appears to be silent on this aspect and has not considered the fact that the assessee has exported the goods under rebate under Rule 18 of the Central Excise Rules, 2002 by utilizing Cenvat Credit which was payable for clearance under Notification No. 39 / 2001-CE dated 31.07.2001.

(ii) In the present case, the assessee has utilized the Cenvat Credit of Rs. 57,31,054/- for payment of duty on export, whereas, the assessee should have utilized the same first for payment of duty on for goods cleared under Notification No. 39/2001-CE dated 31.07.2001 as amended. As per Notification No. 19/2004-CE (NT) dated 06.09.2004 as amended, the benefit of rebate under rule 18 of Central Excise Rules, 2002 is not allowed to the unit availing benefit under Notification No. 39/2001-CE dated 31.07.2001, and accordingly, the assessee should have cleared the goods for export under bond or letter of undertaking. By deliberately choosing to utilize Cenvat Credit for export, the assessee has violated the condition of Notification No. 39/2001-CE dated 31.07.2001 by not utilizing the Cenvat Credit completely before paying duty through the PLA.

(iii) As per notification No. 37/2007 dated 17.09.2007, the excisable goods manufactured and cleared by availing the benefit of specified area based exemption Notification are not eligible for rebate of duty paid when exported and as such, such excisable goods that are cleared from



the factory on or after 17.09.2007 are permitted to be exported only under bond.

(iv) The CESTAT vide Order No. S/1541/WZB/AHD/2009 dated 5.11.2009 has allowed stay petition filed by the Revenue during the pendency of appeal.

(v) The impugned order deserves to be set aside.

5. The Appeal was transferred to callbook in view of pendency of appeal No. E/1374/2009 filed by the Department against Order-in-Appeal dated 27.4.2009 before the CESTAT, Ahmedabad. The said appeal was retrieved from callbook in view of Order No. A/12414/2021 dated 28.9.2021 passed by the Hon'ble CESTAT, Ahmedabad.

6. Hearing in the matter was scheduled in virtual mode through video conferencing on 20.10.2021 and communicated to the Respondent. M/s Shreeyam Power and Steel Industries Ltd vide their letter dated 18.10.2021 informed that name of their firm was changed from M/s Mid India Power and Steel Industries Ltd to M/s Ruchi Power and Steel Industries Ltd on 9.9.2010 and it was again changed to M/s Shreeyam Power and Steel Industries Ltd on 14.12.2011 and submitted copies of certificate issued by ROC, Mumbai. In hearing, Shri Vijay Unde, General Manager (F & A) appeared on behalf of the Respondent and stated that in view of the Hon'ble Tribunal's Order in the matter, they do not want to pursue the appeal and requested for its withdrawal.

7. I have carefully gone through the facts of the case, impugned order and submissions made by the Appellant Department in appeal memorandum. The issue to be decided in the present appeal is whether the refund sanctioning authority has correctly sanctioned refund of Rs. 57,31,054/- or not ?

8. On perusal of the records, I find that the Respondent was availing the benefit of area based Exemption Notification No. 39/2001-CE dated 31.7.2001, as amended. The Respondent had filed Refund claims for the months of August, 2008 and September, 2008 for refund of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA in terms of notification *supra* on clearance of finished goods manufactured by them. The refund sanctioning authority partially restricted the refund claims, *inter alia*, on the grounds that the Respondent had cleared the exported goods under claim of



rebate but as per Notification No. 37/2007-CE(NT) dated 17.9.2007, rebate is not admissible, if benefit of Notification No. 39/2001-CE dated 31.7.2001 is availed. On an appeal, the then Commissioner (Appeals), Central Excise, Rajkot vide his Order-in-Appeal dated 27.4.2009, *inter alia*, held that the Respondent was eligible for refund of Rs. 57,31,054/-. The refund sanctioning authority sanctioned refund of Rs. 57,31,054/- vide the impugned order by following the directions contained in Order-in-Appeal dated 27.4.2009.

8.1 The Appellant Department has contended that the Respondent had utilized the Cenvat Credit of Rs. 57,31,054/- for payment of duty on export, whereas, the assessee should have utilized the same first for payment of duty on for goods cleared under Notification No. 39/2001-CE dated 31.07.2001 as amended. As per Notification No. 19/2004-CE (NT) dated 06.09.2004 as amended, the benefit of rebate under rule 18 of Central Excise Rules, 2002 is not allowed to the unit availing benefit under Notification No. 39/2001-CE dated 31.07.2001, and accordingly, the Respondent should have cleared the goods for export under bond or letter of undertaking. It is further contended that by deliberately choosing to utilize Cenvat Credit for export, the Respondent has violated the condition of Notification No. 39/2001-CE dated 31.07.2001 by not utilizing the Cenvat Credit completely before paying duty through the PLA.

9. I find that refund was sanctioned to the Respondent as per the directions contained in Order-in-Appeal dated 27.4.2009. The said Order-in-Appeal was challenged by the Department before the CESTAT, Ahmedabad. I find that the Hon'ble CESTAT, Ahmedabad has decided the said appeal vide Order No. A/12414/2021 dated 28.9.2021 holding that the Respondent was not eligible for rebate and remanded the matter to the adjudicating authority with a direction to pass fresh order in light of amendment notification No. 37/2007-CE(NT) dated 17.9.2007 and decision passed by the Hon'ble Gujarat High Court in the case of Welspun Corporation Ltd reported as 2014 (301) ELT 33 (Guj.). The relevant portion of the said Order is reproduced as under:

"3. We have carefully considered the submission made by both the sides and perused the records. We find as per the amendment notification no. 37/07 C.E. N.T. dated 7.09.2007, respondent is clearly ineligible for rebate under Rule 18 in respect of exports from their unit which is under area based exemption. This issue has been settled in the case of Welspun Corporation Ltd. (supra). Accordingly, the finding given by the learned Commissioner (Appeals) is not correct. Respondent is not entitled for rebate. Accordingly, the impugned order is modified to this extent. The matter is remanded to Adjudicating Authority to pass an order afresh in the light of amendment notification as well as the Hon'ble Gujarat High Court's decision in the case



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of Welspun Corporation Ltd. Appeal(supra) is disposed of by way of remand to the Adjudicating Authority. CO also stands disposed off.”

10. In view of the above, since the Order-in-Appeal dated 27.4.2009, on the basis of which the refund of Rs. 57,31,054/- was sanctioned by the refund sanctioning authority vide the impugned order, has itself been set aside by the Tribunal and matter has been remanded to the refund sanctioning authority for fresh adjudication, I find it fit to remand the present appeal also to the refund sanctioning authority with a direction to decide the eligibility of refund of Rs. 57,31,054/- in terms of CESTAT's Order dated 28.9.2021 *supra*.

11. In view of above, I set aside the impugned order and dispose off the appeal by way of remand.

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

12. The appeal filed by the Appellant Department is disposed off as above.

सत्यापित,
V/S
विपुल शाह
अधीक्षक (अपील)

Akhilesh Kumar
21st October, 2021.
(AKHILESH KUMAR)
Commissioner (Appeals)

By R.P.A.D.

To,
M/s Mid India Power and Steel Ltd
(Now M/s Shreeyam Power and Steel
Industries Ltd)
Plot No.332, GIDC Phase-II,
Mithirohar Industrial Area,
Gandhidham,
District : Kutch.

प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम (ग्राम्य) मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



