



::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



सत्यमेव जयते

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी.द्वारा:-

DIN-20211264SX000000FEF8

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/1 /EA2/GDM /2021	05&06/Mundra/C.Ex/Refund/20-21	14-10-2020

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

KCH-EXCUS-000-APP-261-2021

आदेश का दिनांक / Date of Order:	17.12.2021	जारी करने की तारीख / Date of issue:	21.12.2021
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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 सृजित: /
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. Jindal Saw Ltd. (Integrated Pipe Unit), Village- Samagogha, Taluka- Mundra, Kutch (Gujarat)

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

(A) रोमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण क प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का 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 (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 का 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 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/- रुपये 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 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/- रुपये 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 Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलार्थी 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 अपीलार्थी 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 अपीलार्थी 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 रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
 - सेनवेट जमा की ली गई गलत राशि
 - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलार्थी प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को 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 :
- 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 को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौधी 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 (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.
 - 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.
 - सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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 प्रतियाँ प्रपत्र संख्या EA-8 में, जो की 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 प्रतियाँ 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 O.I.O 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 पट्टी कार्य से बचने के लिए यथास्थिति अपीलार्थी न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case if the order covers various umbers 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 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.
 - सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी 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 अपीलार्थी 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 Assistant Commissioner, CGST Division, Mundra has filed the present Appeal No. V2/01/EA2/GDM/2021 in pursuance of the direction and authorization issued by the Commissioner, Central GST & Central Excise, Gandhidham (hereinafter referred to as "Appellant Department") under Section 35E(2) of the Central Excise Act, 1944 (hereinafter referred to as 'Act') against Order-in-Original No. 05 & 06/Mundra/C. Ex/refund/20-21 dated 14.10.2021 passed by the Assistant Commissioner, CGST Division: Mundra (hereinafter referred to as 'Refund Sanctioning Authority') in the case of M/s Jindal Saw Limited (Integrated Pipe Unit), Village: Samagogha, Taluka - Mundra Kutch (hereinafter referred to as 'Respondent').

2. The facts of the case, in brief, are that the Respondent had imported raw materials under various Bills of Entry without payment of duty under Advance Licenses. They have used raw material into manufacture of their finished goods to meet their export obligation and they have applied to DGFT for redemption of Advance Licenses. Subsequently, the Respondent have paid duties foregone by making payment of Basic Customs Duty(BCD) of Rs.4,76,761/-, Countervailing Duty(CVD) of Rs.8,93,848/- and SAD of Rs.3,22,929/-, along with interest vide two Challans Nos. 2679 and 2860 both dated 06.03.2020. The Respondent has filed refund claims of Rs.12,16,777/- in respect of CVD and SAD paid by them. After scrutiny of refund claim, the refund sanctioning authority sanctioned the refund claim of Rs.12,16,777/- under Section 142 of CGST Act, 2017 and also under Section 11B of Central Excise Act, 1944 to the Respondent vide the impugned order.

3. The impugned order was reviewed by the Appellant Department and appeal has been filed on various grounds, *inter alia*, as below:-

(i) That on examination of the records submitted by the Respondent available with the jurisdictional Assistant Commissioner, it was observed that export obligation has not been fulfilled by the Respondent as detailed below:

	Import Qty. (MTs)	Export Qty. (MTs.)	Actual Export (MTs)	Short Export (MTs)
Advance License No. 0510399755 dated 19.09.2016	1201.000	1143.8200		
Import/Export Obligation	1191.8600	1135.1151	1126.265	8.8501

In view of the above, the Respondent having not fulfilled the export obligation, they have rightly suffered the Customs duty because of duty



free import;

(ii) That they relied upon the decision of Tribunal Chennai in the case of M/s. Servo Packaging Ltd. Vs. Commissioner of GST & C. Ex. Puducherry reported in 2020 (373) ELT 550 (Tribunal Chennai) wherein it has been held that refund of CVD and SAD of imported inputs under Advance authorization and gone into manufacturing of goods meant for export not taken place is not admissible. In the said judgement, the Tribunal observed that there is no dispute that paragraph 4.50 of HBP (Handbook of Procedures) prescribes the payment of Customs duty and interest in case of bonafide default in Export Obligation (EO) which reads as under:

“(a) Customs duty with interest as notified by DoR to be recovered from Authorization holder on account of regularization or enforcement of BG/LUT, shall be deposited by the Authorization holder in relevant Head of Account of Customs Revenue i.e. “Major Head 037 – Customs and Minor Head 001 – Import Duties” in prescribed TR Challan within 30 days of demand raised by Regional/Customs Authority/Customs Authority immediately. Exporter can also make suo moto payment of Customs Duty and interest based on self/own calculation as per procedure laid down by DoR”

(ii) That the availability of CENVAT paid on inputs despite failure to meet the export obligation may not hold good here since firstly, it was a conditional import and secondly, such import was to be exclusively used as per FTP; that such imported inputs cannot be used anywhere else but for export and hence claiming input credit upon failure would defeat the very purpose/mandate of the Advance License; that hence claims as to the benefit of CENVAT just as a normal import which is suffering duty is also unavailable for the very same reason, also since the rules / procedures / conditions governing normal import compared to one under Advance Authorization may vary because of the nature of import'

(iii) That the import which would have normally suffered duty having escaped due to the Advance License, but such import being a conditional one which ultimately still unsatisfied naturally losses the privileges and the only way is to tax the import. The governing Notification No. 18/2015 Paragraph 2.35 of the FTP which requires execution of bond etc. in case of non-fulfillment of export obligation and paragraph 4.50 of the HBP read together would mean that the Legislature has visualized the case of non-fulfillment of export obligation, which drives an claimant to paragraph 4.50 of the HBP whereby the payment of duty has been prescribed in case of bona fide



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default in export obligation, which also takes care of voluntary payment of duty with interest as well; that admittedly the inputs imported have gone into the manufacture of goods meant for export, but the export did not take place; that the Respondent could have availed the Cenvat Credit but would not ipso facto give them any right to claim refund of such credit in case with the onset of GST because CENVAT is an option available to an assessee to be exercised.

(iv) That therefore, the impugned order allowing the refund of CVD and SAD of Rs.12,16,777/- without ascertaining the facts that the subject issue does not pertain to excess imports but rather it pertains to short exports against actual quantity imported and subsequently non-fulfillment of export obligation is erroneous and not in consonance with law.

4. The Respondent vide letter/cross objection dated 25.05.2021 submitted that the departmental appeal deserves to be dismissed on the following grounds:

(i) That the impugned order correctly narrated the facts and therefore, the amount is refundable to them according to Section 142 (6)(a) of CGST Act, 2017;

(ii) that the facts of the decision of Tribunal in the case of M/s. Servo Packaging Limited as relied upon by the department, are different from the facts of the Respondent; that it was not case of the respondent where the differential duties are payable only on account of non-fulfillment of export obligation but it was the case where at the time of import the norms have not been fixed in SION and the import was made on technical expertise basis and subsequently applied for fixation of norms, therefore, the judgement relied upon by the department is not relevant in their case.

(iii) That it was not case where the respondent has imported the inputs in excess; that there are only one or two inputs where the inputs were imported in excess of the export obligation fulfilled and that too it was very meagre quantity i.e. 0.78% of the total quantity of import which could not be utilized and hence, the respondent suo-moto discharged the duties;

(iv) That in another case, out of import of 13 inputs only two inputs where there was an excess import to the tune of 5% and 11% and the respondent without waiting for the notice from DGFT, bonafide deposited the duties along with interest as applicable; that in this case norms committee fixed norms only after the inputs were imported;



(v) That in terms of Para 4.15 of the Hand Book of Procedure the respondent is allowed to import of goods by giving an undertaking where the norms are not fixed by the norms committee;

(vi) that in terms of Para 4.09 of FTP, the minimum value addition is 15%;

(vii) That this is not case where any DGFT personnel or any Customs personnel has detected and only then the respondent has deposited the tax, it is the case where the respondent suo-moto calculated and deposited the tax along with interest which proves the bonafide of the respondent and therefore, this is fit case where the refund has rightly allowed by the Assistant Commissioner;

5. Personal hearing in virtual mode was held on 15.11.2021. Shri K. C. Gupta, Head Indirect Tax, and Shri Baldev Dewan, DGM, Indirect Tax, have attended the personal hearing on behalf of the Respondent and reiterated the submissions made in cross-objection to appeal. They further stated that they would make additional written submission.

5.1 The Respondent vide their mail dated 30.11.2021 submitted additional submission wherein it has been contended as under:

(i) That there is no short fall for fulfilment of export obligation against both advance authorisations as the export obligation has been fulfilled in terms of value but there is a short fall in terms of export of quantity under advance authorisations and that too for a very meagre quantity and the same can be regularized by making the payment of duty along with interest;

(ii) That Para 4.49 of Handbook of Procedure states that in case there is any default on account of import/export the same can be regularized by making the differential duty; they quoted relevant portion of para 4.49;

(iii) That authorisation holders liable to pay Customs Duty + SAD along with interest on the export imports/all imports would have been eligible to avail Cenvat Credit of the CVD and SAD paid at the time of closure of the advance authorisation license.

(iv) That upon the introduction of GST with effect from 01.07.2017, the levy of CVD and SAD of Customs were subsumed into GST and IGST was levied in its place; that the advance authorisations scheme was, however, not amended to require imports to pay IGST instead on CVD and SAD at the time of closure of their licenses; that leads to a situation where they were required to discharge CVD and SAD but they unable to claim Cenvat



Credit; that there is no provisions under GST law for availing credit of CVD and SAD and therefore, they filed refund claim which is permissible under Section 143 CGST Act, 2017.

(v) That Section 142 of CGST Act, 2017 prescribes miscellaneous transition provisions which provides every claim for refund of Cenvat Credit claimed under the existing law shall be disposed if in accordance with the provisions of the existing law itself and therefore, they applied for refund of CVD and SAD as per the existing law;

(vi) That admitted fact remains on record is that the entire customs duty with respect to the inputs imported by them stands fully deposited by them along with interest; that these admitted facts are sufficient to hold that they became entitled to avail Cenvat Credit of the CVD/SAD paid by them on the imported inputs in terms of Rule 3 of Cenvat Credit Rules, 2004;

(vii) That as regards, the decision of Tribunal in the case of Servo Packaging by the department, they submitted that the Tribunal observed that the since the payment of duty was made due to non-fulfilment of export obligations under FTP, the claim as to be benefit of Cenvat Credit by treating the import as normal import is unavailable; that this view of the Tribunal may not be legally correct as on payment of duty along with interest, import made under the Advance Authorisation Scheme acquire the same status as normal imports; that this however, only on obiter in the judgement and therefore not finding;

(viii) That they relied upon the decision of Tribunal of Principal Bench, New Delhi in the case of M/s. Flexi Caps and Polymers Pvt. Ltd. Vs. Commissioner, CGST and Central Excise Indore reported in 2021-TIOL-611-CESTAT-DEL.

6. I have carefully gone through the facts of the case, the impugned order, grounds of appeal filed by Department and cross objections and submission made at the time of personal hearing and also additional submission made by the respondent. The issue to be decided in the present appeal is whether the impugned order allowing refund claim of Rs.12,16,777/-, is correct, legal and proper or otherwise.

7. On going through the records, I find that the respondent had imported certain raw materials under Advance Licenses without payment of duties in pre-GST period but since the Respondent could not fulfill their export obligation against such import within stipulated period, they chose to forego the Advance License benefits and paid applicable Basic Customs duty, CVD and SAD after implementation of GST i.e. 1.7.2017. Subsequently, the Respondent filed refund



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claims of Rs. 12,16,777/- under Section 11B of Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017, in respect of CVD & SAD so paid.

8. The refund sanctioning authority allowed the refund claim on the ground that the Respondent has paid duty on the excess goods imported on the strength of the two advance licenses and while sanctioning the refund claim, the refund sanctioning authority has taken recourse to the Section 142 of CGST Act, 2017 and Section 11B of the Central Excise Act, 1944.

9. The Department-Appellant filed the present appeal wherein it has been contended that the Respondent had not fulfilled the export obligation, they have rightly suffered Customs duty because of the duty free import; that they relied upon the decision of the Tribunal in the case of M/s. Servo Packaging Ltd. V/s. Commr of CGST and Central Excise Puducherry reported in 2020 (373) ELT 550 (Tri. Chennai) wherein it has been held that refund of CVD and SAD of imported inputs under Advance Authorisation and gone into manufacturing of goods meant for export, but export not taken place is not admissible; that the subject issue does not pertain to excess imports but rather it pertains to short exports against the actual quantity imported and subsequently results into non-fulfillment of export obligation and therefore the refund is erroneous and not in consonance with the law.

10. The Respondent contended that after the implementation of GST Act from 01.07.2017, the Cenvat Credit Rules, 2004 ceased to exist and therefore they did not claim credit of tax paid relating to existing law and there is no provision under GST Act to avail the credit of tax paid under the existing law as credit under GST; that their refund is covered under Section 142(3) of CGST Act, 2017; that they also submitted that Section 142 (3) of the CGST Act, 2017 provides that every claim for refund of Cenvat Credit claimed under the existing law shall be disposed in accordance with the provisions of existing law itself and therefore, they applied for refund of CVD and SAD as per the existing law; that they also referred the Section 142(6)(a) of CGST Act, 2017

11. I find that the raw materials imported by the Respondent under Advance Licenses Scheme in pre-GST period is not under dispute. Similarly, payment of CVD and SAD on the said raw materials after 01.07.2017 is also not disputed. The Respondent had filed refund claim under Section 11B of the Central Excise Act, 1944 and Section 142 (3) of the CGST Act, 2017 in respect of CVD and SAD paid on raw materials which were imported before 01.07.2017. The Respondent has relied upon the decision of Tribunal, New Delhi in the case of M/s. Flexi Caps and Polymers Pvt. Ltd. V/s. Commissioner, CGST and Central Excise, Indore reported in 2021-TIOL-611-CESTAT-DEL wherein the identical matter has been



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decided in the favour of the assessee in terms of the provisions of Section 142 of the GST Act, 2017. However, I find that the decision of the Tribunal in the case of M/s. Servo Packaging Ltd. V/s. Commr of CGST and Central Excise Puducherry reported in 2020 (373) ELT 550 (Tri. Chennai) has not been distinguished in the case of M/s. Flexi Caps and Polymers Pvt. Ltd., as relied upon by the Respondent. It would be in the interest of justice that the facts of the case in both the judgements be examined by the adjudicating authority and decide their applicability to the present case.

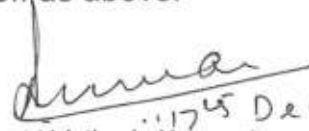
12. In view of the above, I remand the matter to the refund sanctioning authority with a direction to decide the refund claim of the Respondent afresh considering both the aforesaid decisions and the applicability of the decision in the case of M/s. Flexi Caps supra to the facts of the present case.

13. I set aside the impugned order and dispose the appeal filed by the Appellant Department by way of remand to refund sanctioning authority.

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

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


जतिन कुडालया
अधीक्षक.


11/12/21
(Akhilesh Kumar)
Commissioner (Appeals)

By R.P.A.D.

To, M/s Jindal Saw Limited (Integrated Pipe Unit), Village - Samagogha, Taluka-Mundra, Kutch - (Gujarat) - 370	सेवा में, मेस्सर्स जिंदाल सॉ लिमिटेड (इंटेग्रेटेड पाइप यूनिट), गाम - समाघोघा, तालुका मुँदरा, कच्छ - गुजरात 370 415
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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, मुँदरा मण्डल, मुँदरा, को आवश्यक कार्यवाही हेतु।

4) गार्ड फाइल।



