



::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 / 2<sup>nd</sup> Floor, GST Bhavan  
रेस कोर्स रिंग रोड / Race Course Ring Road  
राजकोट / Rajkot - 360 001



सत्यमेव जयते

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रजिस्टर्ड डाक ए.डी.द्वारा:-

DIN-20211264SX0000666A2B

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/12 /GDM /2021	04/UrbanRef/2020-21	01-12-2020

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

**KCH-EXCUS-000-APP-262-2021**

आदेश का दिनांक /

Date of Order:

17.12.2021

जारी करने की तारीख /

Date of issue:

21.12.2021

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 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.Welspun Corp. Limited, Welspun City, Village-Versamedi, Taluka-Anjar, District-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) सामान्य शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रांत 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 मामलों 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- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> 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 fees 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/-.



- (ii) विल अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवली, 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.
- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपील 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 जर्माना विवादित है, या जर्माना, जब केवल जर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
  - सेनबेट जमा की ली गई गलत राशि
  - सेनबेट 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 अर्ज़ी 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 की 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, 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 (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.
  - 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 छूटी 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 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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 ङंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की 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 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-I 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](http://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](http://www.cbec.gov.in).



**:: ORDER-IN-APPEAL ::**

M/s Welspun Corp Ltd, Village: Varsamedi, District: Kutch (*hereinafter referred to as "Appellant"*) has filed Appeal No. V2/12/GDM/2021 against Order-in-Original No. 4/UrbanRef/2020-21 dated 1.12.2020 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST & Central Excise, Gandhidham Urban Division, Gandhidham Commissionerate (*hereinafter referred to as 'refund sanctioning authority'*).

2. The facts of the case, in brief, are that the appellant was engaged in the manufacture of pipes and bends and was registered with Central Excise Department.

2.1. The services of transportation of goods by a vessel from a place outside India upto Custom station was earlier exempt from levy of service tax by virtue of Exemption Notification No. 25/2012-ST dated 20.6.2012. The said exemption was withdrawn vide Notification No. 1/2017-ST dated 12.1.2017. Further, Notification No. 30/2012-ST dated 20.6.2012 was amended vide Notification No. 3/2017-ST dated 12.1.2017 to provide that service tax was to be discharged on ocean freight service by Shipping line or their agents in India on reverse charge basis with effect from 22.1.2017. Notification No. 30/2012-ST dated 20.6.2012 was further amended vide Notification No. 15/2017-ST dated 13.4.2017 to provide that service tax on ocean freight service was to be discharged by importer of goods on reverse charge basis.

2.2 The Appellant had filed refund claim for an amount of Rs. 36,64,387/- before the refund sanctioning authority under Section 11B of the Central Excise Act, 1944 on 7.8.2020 on the basis of decision rendered by the Hon'ble Gujarat High Court in the case of SAL Steel Ltd reported as 2020 (37) GSTL 3 (Guj.).

3. The refund claim was rejected by the refund sanctioning authority vide the impugned order by observing that the documents submitted by the Applicant along with refund claims were not supporting that service tax paid under Challan has been paid on ocean freight and that the person who paid / passed on incidence of service tax has not taken benefit of Cenvat credit, drawback etc. The claim was also rejected on the grounds of unjust enrichment.

4. Being Aggrieved, the Appellant has filed the present appeal, *inter alia*, on the grounds that,



(i) That there is no mismatch in the refund amount claimed in respect of ACT Infraport Ltd. The correct refund amount claimed by them is Rs.12,22,503/-, which is evident from the corresponding Certificate of Payment of Tax dated 06.07.2017, wherein it is clearly declared that Rs.12,22,503/- is the amount recovered from the Appellant as service tax along with cess. Further the same amount of Rs.12,22,503/- is provided in the Statement quantifying the amount of tax reimbursed/borne by the Appellant. The amount in the debit note issued by MNK & Co. was calculated based on the prevailing exchange rate, which would have undergone a change. That the tax liability is to be determined as per the tax payment challan. That the relevant amount of service tax paid, reimbursed and claimed as refund is Rs. 12,22,503/- and this amount tallies with the amount being reflected as service tax in the corresponding challan dated 22.03.2017, the Certificate dated 06.07.2017 and the Refund claim in respect of the vessel MV Fortune.

(ii) The other ground on which the Appellant's claim has been rejected is that the Appellant has not produced a copy of the agreement and/or invoices between MNK & Co. and Asia Shipping. That Asia Shipping is the foreign shipping line's agent, who recovered money from their Appellant's agent MNK & Co., who has later recovered the same from the Appellant. There was no agreement between MNK & Co. and Asia Shipping. This ground was not raised in SCN, and therefore the finding of the Respondent is beyond the scope of the Show Cause Notice. Further, the submission of the Appellant that Asia Shipping Service paid the impugned service tax and recovered the same from MNK & Co., which has in turn recovered it from the Appellant, which is clearly evident from the Certificates dated 20.06.2017 and 15.07.2017 issued by MNK & Co to the Appellant wherein MNK & Co. has specifically provided the reference numbers of the corresponding challans vide which Asia Shipping paid the service tax. This reference to the challans under reference, in the certificate, clearly establishes the required link between the Appellant, MNK & Co., and Asia Shipping. Therefore it is evident that the challans paid and enclosed with refund claim are the challans paid on the above services only. Similarly the finding that the Invoice cum receipts issued by MNK & Co. to the Appellant is without the details of the chain documents do not hold any merit in light of the above connecting link between the relevant documents as established vide the certificates issued by MNK & Co. to the appellant.





(iii) That the Respondent has rejected the refund claim on the fresh ground that the documents submitted by the appellant along with refund claim are not supporting that the person who paid/passed incidence of the impugned service tax has not taken benefits of cenvat credit, drawback, etc. The Respondent has travelled beyond the scope of SCN to reject the refund claim on the basis of a fresh ground which it ought not to have done, in view of the law laid down by the Apex Court in the case of Carborandum Universal Ltd. 2008 (223) ELT A94 (SC).

(iv) That the Respondent has relied on the CESTAT order in the case of Crompton Greaves Limited to hold that Chartered Accountant's certificate is not a conclusive proof of having not passed on duty incidence to the customers. It is the 'incidence of duty' and not 'duty' as such which is required to be shown to have not been passed on, from the sale records, balance sheets and other related documents. Although it had furnished evidence to the effect that the amount of tax for which refund was claimed by it was not recovered by it from its customers and has been shown as a receivable in its books of accounts, the Respondent has not considered the same while arriving at the conclusion that the CA Certificate was not sufficient evidence that the incidence of duty had not been passed on. The Appellant is once again copy of the ledger account of Service Tax Receivable and a certificate from their Chartered Accountant certifying that the incidence of the service tax in question has not been passed on and relied upon following case laws:

- a) Business Overseas Corporation - 2015 (317) E.L.T. 637 (Tri.-Del.)
- b) Deepak International - 2014 (304) E.L.T. 438 (Tri.-Del.)
- c) Shankar Printing Mills - 2015 (391) E.L.T. 295 (Tri.-Del.)
- d) Binkaia Synthetics Ltd. - 2013 (294) E.L.T. 156 (Tri.-Ahmd.)

(v) That Chartered Accountant certificate is to be given due evidentiary value especially when the said tax, which is alleged by the Revenue to have been recovered from customers, is reflected in balance sheet of the Appellant as loan and advances recoverable from the Department.

(vi) That the CESTAT order relied upon by the Respondent in para 15 of the impugned order was passed much prior to the above decisions of Tribunals referred by the Appellant. Hence, in the face of documentary evidences available on record, namely, copies of the SAP ledger of Service tax receivable and a Chartered Accountant Certificate stating that the



incidence of duty had not been passed on, the finding that the claim for refund was hit by doctrine of unjust enrichment cannot be sustained.

5. Hearing in the matter was conducted on 8.10.2021 in virtual mode through video conferencing with prior consent of the Appellant. Ms. Isha Shah, Advocate, Shri Suresh Darak, President, and Shri Surender Mehta, Associate VP, appeared on behalf of the Appellant and reiterated submissions made in appeal memorandum.

6. I have carefully gone through the facts of the cases, the impugned order, the appeal memorandum and the submissions made during the personal hearing. The issue to be decided in the present appeal is whether rejection of refund claim in this case by the refund sanctioning authority is correct, legal and proper or not.

7. On perusal of the records, I find that the Appellant had filed refund claim under Section 11B of the Act before the refund sanctioning authority on the grounds that they erroneously discharged service tax on ocean transportation service. The refund sanctioning authority observed that the refund claim was admissible on merit in view of decision rendered by the Hon'ble Gujarat High Court in the case of SAL Steel Ltd reported as 2020 (37) GSTL 3 (Guj.) but rejected the refund claim on the grounds that (i) the documents submitted by the Appellant along with refund claim did not evidence that service tax had actually been discharged on ocean freight and (ii) the person who paid / passed on incidence of service tax has not taken benefit of Cenvat credit, drawback etc. and (iii) the refund claim failed the test of unjust enrichment.

8. I find that the Appellant had filed refund claim in respect of service tax on ocean freight reimbursed to M/s ACT Infraport Ltd and M/s MNK & Co, which is examined as under:

8.1 I find that M/s ACT Infraport Ltd had issued debit note to the Appellant for payment of service tax of Rs. 12,49,553/- on freight for transportation of goods by MV Fortune Hero. The refund sanctioning authority observed that there was mismatch in service tax amount shown in debit note and corresponding service tax challan paid by M/s ACT Infraport Ltd. Further, service tax was paid by M/s ACT Infraport Ltd under the head 'Transport of Coastal Goods and goods through National Waterways and Inland waters' but Hon'ble Gujarat High court has only held levy of service tax *ultra vires* on ocean freight payable for transport of goods by vessel from a place outside India upto place of Customs Station in India. Hence, the Appellant was not eligible for refund of said amount. The Appellant has contended that they had claimed service tax as shown in service tax challan





certificates, establishes the required link between the Appellant, M/s MNK & Co., and M/s Asia Shipping Services.

8.2.2 I have examined the documents produced by the Appellant in the form of (i) invoices issued to them by M/s. MNK & Co. (ii) service tax Challans of M/s Asia Shipping Services and (iii) certificate issued by M/s. MNK & Co about payment of service tax for transportation of goods by vessels MV SSI Pride and MV TS Delta. I find that in the said certificates issued by M/s MNK & Co, it is mentioned that service tax was paid by them in respect of transportation of goods imported by the Appellant. However, the Appellant has not produced any invoice issued by M/s Asia Shipping Service to M/s MNK & Co. In absence of such an invoice, it is not possible to confirm that what was paid by M/s Asia Shipping Service was in respect of service tax on ocean freight service and pertaining to import made by the Appellant. I also find that liability to pay service tax on ocean freight at the material time was on Shipping Line's agent in terms of Notification No. 3/2017-ST dated 12.1.2017. The Appellant has not produced any evidence to the effect that M/s Asia Shipping Services, who was reportedly foreign Shipping Line's agent, has not recovered service tax from their Shipping Line or any other person. I, therefore, remand the matter to the refund sanctioning authority to process the refund claim afresh on this issue with a direction to the Appellant to produce the documentary evidences as discussed supra before the refund sanctioning authority.

9. Now I examine whether unjust enrichment is applicable in the present case or not. I find that the refund sanctioning authority held that the refund claim failed the test of unjust enrichment by observing that Chartered Accountant's Certificate is not a conclusive proof of having not passed on duty of incidence to the customers and that it is the incidence of duty and not duty as such which is required to be shown to have not been passed on from the sale records, balance sheet and other related records. On the other hand, the Appellant has contended that they had furnished evidence to the effect that the amount of tax for which refund was claimed by it was not recovered by it from its customers and was shown as a receivable in its books of accounts, however, the refund sanctioning authority has not considered the same. The Appellant further contended that Chartered Accountant certificate is to be given due evidentiary value especially when the said tax, which is alleged by the Revenue to have been recovered from customers, is reflected in balance sheet of the Appellant as loan and advances recoverable from the Department.





9.1 I have examined CA certificate dated 22.10.2020 issued by M/S SOG & Associates contained in appeal memorandum, wherein it has been certified that incidence of service tax of Rs. 36,64,387/- has not been passed on directly or indirectly to any person and that the said amount has been shown as 'service tax recoverable' in the books of accounts of the Company. I find that in the said Certificate, it is not mentioned in which year the service tax amount was shown as recoverable in books of accounts of the Appellant. I, therefore, direct the Appellant to produce copies of Balance Sheet of relevant period before the refund sanctioning authority in *de novo* proceedings. The *de novo* order shall be passed after following the principles of natural justice.

10. In view of above, I set aside the impugned order and dispose the appeal by way of remand for *de novo* proceedings.

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

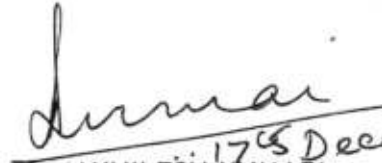
11. The appeal filed by the appellants is disposed off as above.

सत्यापित,



विपुल शाह

अधीक्षक (अपील)

  
(AKHILESH KUMAR)  
Commissioner (Appeals)

By R.P.A.D.

To, M/s Welspun Corp Ltd, Welspun City, Village Varsamedi - 370110, Taluka Anjar, District Kutch.	सेवा में, वेलस्पन कॉर्प लिमिटेड, वेलस्पन सिटी, वरसामेडी, तालुका अंजार, जिल्ला कच्छ ।
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प्रतिक्रिया :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जातकारी 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 (शहरी) मण्डल, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।

तर्क कोइला



