आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
. ☎ 07926305065- टेलेफैक्स07926305136

DIN: 20231064SW000031843D

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2445/2023-APPEAL/6973

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-114/2023-24**
दिनाँक Date : **25-09-2023** जारी करने की तारीख Date of Issue 05.10.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **32/AC/Dem/NA/2022-23** दिनाँक:**14.12.2022** , issued by The Deputy Commissioner, CGST Division-V, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
M/s.Grainspan Nutrients Pvt. Ltd.,Survey No. 299/1-2-3, & 300/3 & 303,Bavla Bagodara Highway, NH 8A,Nr. Bhamasara, Ahmedabad

2. Respondent
The Deputy Commissioner, CGST Division-V, Ahmedabad North,2nd Floor, Shajanand Arcade, Nr. Helmet Circle, Memnagar, Ahmedabad-380052

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number 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 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे 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 adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, 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."

ORDER IN APPEAL

M/s. Grainspan Nutrients Pvt. Ltd., Survey No. 299/1-2-3 & 300/3 & 303, N.H.-8A, Bavla Bagodara Highway, Nr. Bhamasara, Ahmedabad-382345 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 32/AC/ Dem/NA/2022-23 dated 14.12.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-V, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant claimed refund of service tax paid on the specified services used in export of their goods. They filed two refund claims in terms of Notification No. 41/2012-ST dated 29.06.2012, which were sanctioned by the refund sanctioning authority. However, CERA auditors observed that the appellant had exported food stuff i.e. "Corn Flour/Corn Grit" which attracted nil rate of duty and that the refund was claimed under Notification No.41/2012-ST in respect of transportation services by rail. They observed that in terms of Section 68(2) of the F.A., 1994, the appellant being a service recipient was liable to pay service tax on reverse charge basis. Further, the GTA services by way of transportation of foods grains were exempted by virtue of Sr. No. 20 & 21 of Notification No.25/2012-ST dated 20.6.2012. Therefore, the refund sanctioned to appellant in terms of Notification No. 41/2012-ST was erroneous.

Table-A

OIO No.	Period	Refund claimed	Refund sanctioned
25/Refund/V/16-17	October,2015 to December,2015	6,36,386/-	6,31,334/-
29/Refund/V/16-17	January, 2016 to March,2016	7,35,159/-	7,35,159/-
		TOTAL	13,66,493/-

2.1 A Show Cause Notice (SCN) No. V/01-44/Grainspan/CERA/17-18 dated 26.2.2019 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.5,35,990/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.5,35,990/-was confirmed alongwith interest.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant preferred the present appeal on the grounds elaborated below:-

- The appellant has received the services of the goods transportation and paid the Service Tax on the amount charged on the face of the invoices issued by the service provider. Copy of sample invoices submitted. The appellant has claimed the rebate on the taxable services used for the export of goods as per the Notification No. 41/2012 dated 29.06.2012. The rebate of the amount of Service Tax paid on the Transportation services, Handling services, Inspection services, Supervision services, Port services, CHA services, Banking and financial services. The rebate claimed by the appellant is as per the Notification no. 41/2012 dated 29.06.2012 on the basis of Service Tax paid on taxable services used in relation the export of

goods or services. The rebate amount claimed should be not less than the actual amount of service tax paid by the appellant. Further, the notification also clarifies that the application is required to be filed within one year from the date of export and if the amount of refund claimed is more than 0.5% of the FOB value of the export then certificate from chartered accountant who audits the annual account of the appellant is required. The rebate is claimed under Notification No. 41/2012 only for the amount of taxable services used for the export of goods and have claimed refund for the period of October-2015 to March- 2016.

- In the refund order No. 25/Refund/V/16-17 dated 05.01.2017 and 29/Refund/V/16-17 dated 06.02.2017, the report of the range Superintendent based on his verification contained relevant paras as follows: -

  "The assessee is a manufacture exporter and the service received by them were used by them for the export. The assessee, in respect of the subject claim, has submitted a certificate. The assessee has filed the refund for the Service Tax paid on specified services usedfor export."

  "The assessee has furnished the invoices in original issued by the service providers. They have also submitted ledger and bank statements where in the details of payment viz date and amount paid to service provider have been mentioned."

- Thus, the rebate was granted to the appellant is after verification of all the documents and following the procedure required as per Notification 41/2012-ST dated 29.06.2012.

- Further, the appellant has provided the clarification received from the service provider (herein referred as CONCOR), wherein it is stated that *" it is the common practice of CONCOR to mention all the notifications on which they are availing exemption on each invoice irrespective of fact that aforesaid notifications cover the services mentioned in the invoices. We have not availed the mega exemption notification no. 25/2012 and any abatement under notification number 26/2012 on the invoices under question. We have paid full tax on the services which finds mention on the invoices and deposited the service tax"* as stated by CONCOR a service provider. However, this clarification was not accepted by the adjudicating authority on the ground that the payment of Service Tax made and the reply was evasive and not to the point. Such argument is not acceptable as the payment has been made to the service provider i.e. CONCOR India Ltd. by the appellant and the appellant in the declaration received from the service provider stated that the service provider has not availed any benefit of the exemption.

- Further referring to clarification submitted by the appellant, the OIO states even if GTA service is taxable service, the Service Tax liability would cast upon the service recipient. Further, under Notification no. 41/2012/ST, refund claim can be filed by merchant exporter or manufacturer exporter. Hence any tax paid by service provider on its own, the refund thereof will not be governed by the said Notification. The above contention of the adjudicating authority is not acceptable

as the transport services availed from the CONCOR India Ltd. on which Service Tax liability has been discharged by the service provider on forward basis and not by the service recipient on reverse charge basis. They placed reliance on following case laws:-

a) M/s. Cronimet Alloys India Limited -2013 (7) TM/ 593 - CESTAT BANGALORE,
b) M/s. Mahadev Tubes Vs. Commissioner of Central Excise, Vapi, Ahmedabad Tribunal
c) Meetut - II Vs. Geeta Industries Pvt. Ltd., CESTAT Delhi

- The onus to prove exemption is on the supplier of services and not on the recipient of the services. Appellant has received the services and has paid them consideration along with Service Tax charged by them. Appellant has paid the Service Tax amount in good faith that service provider will deposit the Service Tax with Government after collecting with him. And in the given case, service provider himself has submitted that Service Tax has been duly deposited by him with Government.

- Further, the contention that exemption for the entry No. 20 and 21 of Notification No.25/2012-ST dated 20.06.2012 if availed by the service provider then the rebate of the same cannot be claimed under notification 41/2012-ST dated 29.06.2012. The above contention cannot be held true as the appellant has paid the Service Tax to the service provider and it was not possible for the service provider to verify whether the exemption under entry No. 20 and 21 has been availed by the service provider. So, the appellant cannot be held responsible for the acts of the service provider as the appellant has claimed rebate of the amount of service tax only after the payment made to the service provider. Reliance placed on Apex Court decision passed in case of "Commissioner of Customs (Import), Mumbai Vs. M/s Dilipkumar" which stated that the burden to prove the exemption is on service provider and not on service recipient. The appellant cannot be held responsible for the acts of service provider i.e. here Concor India Ltd.

- As per Sec: 75 of Finance Act, 1994, interest shall be payable by the person who has failed to credit Tax to the account of Central Government within prescribed time. In the present case, appellant is not liable to pay Service Tax, therefore Section 75 relating to interest shall not be made applicable.

5. Personal hearing in the matter was held on 28.08.2023. Shri Amrin Alwani and Shri Prakash Joshi, both Chartered Accountants appeared on behalf of the appellant. They reiterated the submissions made in the appeal memorandum. They submitted that the appellant had availed transportation services from CONCOR on which service tax was collected and paid by CONCOR. However, since CONCOR in their invoices had erroneously mentioned regarding exemption notification, the adjudicating authority has demanded the erroneously claimed refund. They submitted that based in the CERA Audit, CONCOR was asked to clarify the issue and they have clarified the issue vide letter dated 11.02.2019 but the same was not considered by the adjudicating authority in the impugned order. Since tax was paid and even if the notification exemption was availed by CONCOR, the appellant in no way concerned with the same. Therefore, they

requested to set-aside the order, demanding erroneous refund claim. They therefore requested to set-aside the impugned order demanding the erroneous refund claim.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum, as well as the submissions made at the time of personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.5,35,990/- confirmed alongwith interest in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

The demand pertains to the period F.Y. 2015-16.

6.1 On going through the facts of the case, it is observed that the department has proposed on the grounds that the appellant had exported 'Corn Four/Corn Grit' which is an agricultural produce. In terms of Sr. No. 20 & 21 of the Notification No.25/2012-ST dated 20.6.2012 the 'Services by way of transportation by rail or a vessel from one place in India to another' and 'Services provided by a goods transport agency by way of transport in a goods carriage' of agricultural produce is exempted, therefore, the appellant was not required to discharge any tax on such services as they were exempted. Hence, the refund of tax paid as service recipient of GTA service from CONCOR claimed under Notification No. 41/2012-ST in respect of above exempted services is not admissible.

6.2 To examine the issue relevant text of Notification No. 25/2012-ST is re-produced below:-

Notification No.25/2012-ST dated 20.6.2012

20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods –

(h) agricultural produce;

21. Services provided by a goods transport agency by way of transport in a goods carriage of,–

(a) agricultural produce;
(b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees; or
(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;
(d) milk,salt and food grain including flours, pulses and rice;
(e) chemical fertilizer, organic manure and oilcakes;

In terms of Notification No.25/2012-ST, the transportation of agricultural produce by rail or by GTA are exempted from the whole of the service tax leviable thereon under Section 66B of the said Act. So, in terms of above notification CONCOR was not required discharge any tax liability. However, M/s. CONCOR vide letter dated 11.02.2019 to the Assistant Commissioner, Division-V, Ahmedabad North had clarified that they have discharged the Service tax and SBC shown in the invoices and the same has been reported in their ST-3 Returns and have also deposited the tax on time. Further, they clarified that they have not availed the benefit of above notification or abatement under

Notification No.26/2012 on the disputed invoices; that they have paid entire service tax mentioned in the invoices. I find that when the payment of tax collected & deposited by the service provider was never disputed by the department, so at this stage they cannot deny the refund of tax paid by the appellant to the service provider. Because the above exemption was for the service provider which they have not availed. Thus, the department cannot dispute refund of such tax if the same was not disputed on payment.

6.3 Once it is established that M/s. CONCOR have not availed the exemption under aforesaid notification, department cannot deny the refund when the appellant has paid the service tax to the service provider (M/s. CONCOR) and the same was subsequently deposited by the later. I find that Hon'ble CESTAT, Ahmedabad in the case of Balaji Multiflex Pvt. Ltd.- 2019 (370) E.L.T. 773 (Tri. - Ahmd.) has held that the assessee or service provider had option to whether avail exemption notification or otherwise - If service provider opted not to avail exemption under notification and paid Service Tax on entire value including material cost, no objection can be raised either on payment of Service Tax and consequent availment of credit by service recipient for availing Cenvat credit - Assessee entitled to credit - Rule 14 of Cenvat Credit Rules, 2004. Relevant text is re-produced below.

> *"4. On careful consideration of the submission made by both the sides and the perusal of the records, I find that the appellant have availed the Cenvat credit of service tax paid by the job worker, firstly, the appellant is entitled for the Cenvat credit of the amount of service tax paid by the service provider irrespective whether it was payable or not. Secondly, the service provider has to pay service tax on gross value of the service including the material cost as per Section 67 of the Finance Act, 1994, which provides that service provider is required to pay service tax on gross value of the service. No exclusion in respect of the value of the goods is provided, it is only by the Notification the abatement to the extent of the value of the goods is provided. It is the option the assessee or the service provider whether he wants to avail the exemption Notification or otherwise. Therefore, if the service provider has opted not to avail the exemption Notification No. 12/2003-S.T. and paid the service tax on the entire value including material cost, no objection can be raised either on the payment of service Tax and consequently, on the part of the service recipient for availing the Cenvat credit. Unlike Section 5A of Central Excise Act, 1944, no such provision is made in service tax law regarding compulsion on availing exemption notification, therefore, service provider is at liberty either to pay service tax on the entire gross value or on the concessional rate. Therefore, the service tax paid by the service provider on the gross value which includes the material cost cannot be disputed consequently eligibility to Cenvat credit on the said service tax can also not be objected on the part of the appellant."*

6.4 Similar view was taken by Hon'ble CESTAT, Mumbai in the case of RAYMOND UCO DENIM PVT. LTD.- 2017 (7) G.S.T.L. 346 (Tri. - Mum.) wherein it was held that there is no restriction for payment of Service Tax on exempted service - If service provider chooses to pay Service Tax, it shall be available as Cenvat credit to recipient of service - Credit admissible - Rule 2(l) of Cenvat Credit Rules, 2002. *[para 5].*

6.5 Applying the analogy of said decisions, I find that recovery of rebate of the tax paid on input services used in exports cannot be made from the appellant merely on the grounds that these specified services were exempted vide Notification No.25/2012-ST. The appellant in the instant case was granted the rebate of service tax paid on the taxable services which are received by them and used for export of goods. So long as there is no violation of the conditions prescribed in Notification No.41/2012-ST dated 29.06.2012, I find that the department cannot recover the tax rebate simply because the service provider has collect and paid tax on the exempted goods. Demand if any should have been raised at the end of the service provider i.e. CONCOR and not the appellant. The service recipient is not required to examine the exemption available to the service

provider, hence, they cannot be held responsible for the act of the service provider. Even otherwise, any tax collected on exempted goods has to be refunded if claimed by the service provider so this is clearly a case of revenue neutrality.

6.6 Further, I find that the adjudicating authority has travelled beyond the scope of the SCN by giving a finding that even if GTA service is held taxable the service tax liability was on the service recipient under RCM. The notice does not propose any demand on the appellant as a recipient of GTA service in fact the demand is proposed on the grounds that the appellant was granted erroneous rebate of tax paid on exempted services. Hence, the above finding of the adjudicating authority is not justifiable. In view of the above discussion and findings, I find that the recovery of Service tax amount of Rs.5,35,990/- us not sustainable in law.

7. When the demand does not sustain, question of interest also does not arise. Accordingly, I find that the impugned order confirming the service tax demand of Rs.5,35,990/- alongwith interest is not sustainable on merits.

8. In view of the above discussion, I set-aside the impugned order and allow the appeal of the appellant.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Attested

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

Date: 11.09.2023

By RPAD/SPEED POST

To,
M/s. Grainspan Nutrients Pvt. Ltd.,
Survey No. 299/1-2-3 & 300/3 & 303,
N.H.-8A, Bavla Bagodara Highway, Nr. Bhamasara,
Ahmedabad-382345

Appellant

The Assistant Commissioner
CGST, Division-V, Ahmedabad North

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
4. Guard File.