

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील-I) का कार्यालय केन्द्रीय उत्पाद शुल्क :
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद- 380015.

क फाइल संख्या : File No : V2(MRS)40/STC-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-182-16-17
दिनांक Date 23.12.2016 जारी करने की तारीख Date of Issue 24/12/16

श्री उमाशंकर, आयुक्त (अपील-I) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by Shri Uma Shankar Commissioner (Appeals-I) Central Excise
Ahmedabad

ग _____ आयुक्त केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश सं
_____ दिनांक : _____ से सृजित

Arising out of Order-in-Original No 126/Ref/ST/DC/2015-16 dated : 08.10.2015

Issued by: Deputy Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

घ अपीलकर्ता / प्रतिवादी का नाम एवं पता Name & Address of The Appellants/Respondents

M/s. Rajesh Shantilal Adani

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal to Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-

Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9(1)के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) 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 of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is 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.



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धारा (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.7 में की जा सकेंगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 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 Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjuration authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. 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.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, 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 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(4)(i) 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।

(4)(i) 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

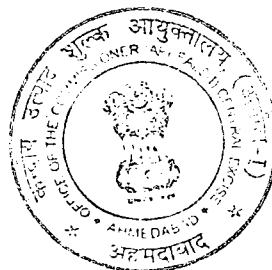
Shri Rajesh Shantilal Adani, Shantinagar, Near Kantam Party Plot Cross Road, Rajpath-Bopal Road, Bodakdev, Ahmedabad (hereinafter referred to as "the appellant"), has filed the present appeal against the Order-in-Original No 126/Ref/ST/DC/2015-16 (hereinafter referred to as the 'impugned order') passed by the Deputy Commissioner of Central Excise, Service Tax Division, Gandhinagar (hereinafter referred to as 'adjudicating authority').

2. Briefly stated, the appellant has filed a refund claim of service tax amounting to Rs. 30,345/- before the adjudicating authority on 17.04.2015. The grounds for filing the said refund claim is that the appellant had utilized services viz. erection, commissioning or installation of original works pertaining to construction of single residential unit from service provider namely Sitaram Yadav and paid service tax amounting to Rs.30,345/-; that the service by way of construction, erection, commissioning or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex was exempted from the payment of service tax, vide notification No. 25/2012-ST dated 20.06.2012 as amended; and that since the appellant had utilized the said services for an exempted service, the service tax paid to Sitaram Yadav, for the services viz. erection, commissioning or installation of original works pertaining to construction of single residential unit, is being sought as refund.

3. The claim was rejected by the adjudicating authority on the grounds that the notification exempts only the service by way of erection, commissioning or installation of original works pertaining to construction of single residential; that the appellant had paid service tax to Sitaram Yadav for being provided the service of Manpower supply which is not exempted vide notification No.25/2012-ST.

4. Being aggrieved, the appellant has filed the present appeal on the grounds that the adjudicating authority has wrongly observed that the service provided has provided Manpower recruitment service to the appellant and was not covered under the exemption notification; that post July 2012, the service tax law does not have categories of service and the categories are strictly for accounting purpose of the department; that the exemption notification gives exemption to service by way of construction. erection, commissioning or installation of original works pertaining to construction of single residential unit, thus the description of service by its nature is exempted and not by its category; that the invoice issued by the service provider clearly shows that the labour charges incurred was for various service in connection with construction of single unit residential;

5. A personal hearing in the case was granted on 11.08.2016, 13/14.09.2015, 18.10.2016 and 20.12.2016. However, the appellant did not avail the opportunity of the same. As per provisions of the Section 35 of the Central Excise Act, 1944, adjournment of hearing shall be granted three times. In the instant case, neither the appellant avail the opportunity of personal hearing no sought any adjournment. Therefore, the case is taken for decision ex-parte.



6. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum. The instant case relates to refund of service tax paid by the appellant to their service provider Sitaram Yadav, who provided the taxable service viz. "Supply of Manpower Recruitment" which the appellant contends was utilized for exempted service viz. erection, commissioning or installation of original works pertaining to construction of single residential.

7. At the outset, I observe that the appellant had filed the refund claim of service tax paid by their service provider- Sitaram Yadav on the ground that as per exemption Notification No. 25/2012-ST dated 20.06.2012, the service provider was not supposed to pay Service Tax and therefore, no Service tax would have been collected from the appellant by the service provider. I further observe that the appellant has sought the refund in question under Sr.No.14 of the notification *ibid* on the grounds that they had utilized the labours for erection, commissioning or installation of original works pertaining to construction of single residential unit.

8. The notification No.25/2012-ST dated 20.06.2012, as amended by notification No.06/2014-ST dated 06.07.2014, states that:

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in suppression of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely:-

1. *Services provided to the United Nations or a specified international organization;*

2.

3.

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) an airport, port or railways, including monorail or metro;

(b) a single residential unit otherwise than as a part of a residential complex;

(c)

9. The above notification exempts taxable service by way of construction, erection, commissioning or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex. The said notification makes it clear that service availed in connection with construction, erection, commissioning or installation of original works pertaining to a single residential unit exempted from payment of service tax. Hence, no service tax is payable if the service rendered by way of construction, erection, commissioning or installation of original works pertaining to a single residential unit. In other words, it is quite clear to comprehend that whether the service provider opt for the exemption or not, the services provided under the above notification are exempted from payment of service tax.



10. The appellant has claimed the refund of service tax paid on service utilized for construction, erection, commissioning or installation of original works pertaining to a single residential unit. The adjudicating authority has rejected the said claim by holding that the refund sought by the appellant is of service tax discharged on "Manpower recruitment service" and not on the service exempted vide Sr. No. 14 of the notification *ibid*. It appears that the adjudicating authority has erred in arriving at such a finding. The adjudicating authority, in the impugned order, has verified the circumstances of the refund claims in light of the service providers instead of the appellant. The adjudicating authority, keeping in mind the Notification No. 25/2012-ST dated 20.06.2012, should have granted the refunds after proper verification of documents of the appellant.

11. Thus, in view of discussion at Para 9 above and in the fitness of things, it would be just and proper to remand the matter to the Adjudicating Authority to give independent findings on the said issue raised by the appellant before me and also such other material that may be produced by the appellant in support of his contention. In the event of such materials being placed before the Adjudicating Authority, the same shall be considered in accordance with law. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of his contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority.

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 23/12/2016

Attested

मोहनान V.V
(Mohan V.V)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

To,
Shri Rajesh Shantilal Adani,
Shantinagar, Near Kantam Party Plot Cross Road,
Rajpath- Bopal Road, Bodakdev,
Ahmedabad

Copy to:

1. The Chief Commissioner of Central Excise Zone, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III.
3. The Additional Commissioner,(Systems) Central Excise, Ahmedabad -II I
4. The Dy./Asstt. Commissioner, Central Excise, Gandhinagar
5. Guard file
6. P. A. file.





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