

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)26/STC-III/2016/Appeal-I
V2(MRS)27/STC-III/2016/Appeal-I
V2(MRS)28/STC-III/2016/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-280 to 282-16-17
दिनांक Date 29.03.2017 जारी करने की तारीख Date of Issue 3/4/17

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 01/Ref/ST/DC/2016-17, 02/Ref/ST/DC/2016-17
03/Ref/ST/DC/2016-17 dated 05.04.2016 Issued by:
Deputy Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

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

M/s. Aqualine Properties Private Limited

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, मेघानी 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 सकेगी 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 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्त कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए 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 बशर्त 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

M/s. Aqualine Properties Private Limited, Near Mahavirpuram, Old Koba Rayasan Road, Village Koba, Gandhinagar- 382 009[for short - 'appellant'] has filed three appeals, the details of which are as follows :

Sr. No.	OIO No. and date	Amt of refund	Period involved	Date on which refund filed
1	1/Ref/ST/DC/16-17 dated 5.4.2016	Rs. 5,88,781/-	1/2014 to 3/2014	21.1.2016
2	2/Ref/ST/DC/16-17 dated 5.4.2016	Rs. 2,20,058/-	4/2014 to 6/2014	21.1.2016
3	3/Ref/ST/DC/16-17 dated 5.4.2016	Rs. 4,70,721/-	10/2013 to 12/2013	21.1.2016

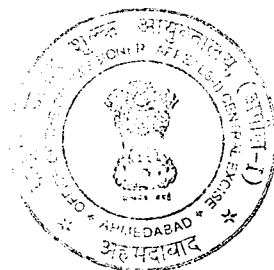
The aforementioned refund claims filed by the appellant under notification No. 12/2013-ST dated 1.7.2013, were rejected by the Deputy Commissioner, Service Tax Division, Gandhinagar, on the grounds of limitation. As the issue involved in all these three appeals are same, they are being taken up together.

2. Feeling aggrieved, the appellant has filed this appeal against the rejection of refund, on the grounds that:

- in order to encourage the scheme of export and also to achieve the objectives laid down under section 26 of the SEZ Act, 2005, the Deputy Commissioner has been provided with powers to condone the delay in filing the refund claim;
- that they wish to rely on the following case laws viz Madhav Steel [2010-TIOL-575-HC], Mangalore Chemcials 2002-TIOL-234-SC], Formika India [2002-TIOL-599-SC], Modern Process Printers [2006 (204) ELT 632] and Converg (India) Private Limited 2009(16) STR 198];
- that they had satisfied all the conditions of the notification except filing of claim within time;
- that the delay was because of genuine reason that their employee had resigned and had not informed of any pending work .

3. Personal hearing in the matter was held on 15.3.2017, wherein Mr. Amogh Patankar, Mrs. Preeti Yadav and Mr Bhavin Panchasara, appeared on behalf of the appellant. Shri Patankar, reiterated the grounds of appeal and submitted that their earlier and subsequent claims were within time. He also drew my attention to para 3(iii)(e) of the notification *ibid*, which empowers a JAC/DC to allow extension in filing refund claim.

4. I have gone through the facts of the case, the appellant's grounds of appeal. and the oral submissions made during the course of personal hearing. The issue involved is rejection of refund claim filed by the appellant in respect of service tax and education cess paid on specified services received and used for authorized operation in the SEZ during the periods mentioned in the table *supra*. The primary question to be decided in the present appeal is, whether the refunds filed by the appellant are hit by limitation or otherwise.



5. I find that the only issue on which the refunds stand rejected is that the refund were filed beyond the stipulated time as prescribed under para 3(iii)(e) of notification No. 12/2013-ST dated 1.7.2013. The relevant extracts are reproduced below for ease of reference:

(III) The refund of service tax on (i) the specified services that are not exclusively used for authorised operation, or (ii) the specified services on which ab initio exemption is admissible but not claimed, shall be allowed subject to the following procedure and conditions, namely :-

(a) to (d).....

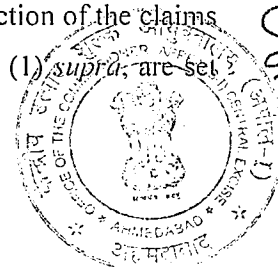
(e) the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

I find that notification No. 12/2013-ST dated 1.7.2013, exempts the services on which service tax is leviable, received by a developer and used for authorized operation from the whole of service tax, education cess, etc by way of refund. As per the conditions prescribed in the said notification, the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such developer or SEZ unit to the registered service provider or such extended period as the AC / DC shall permit.

6. On going through the OIO mentioned at Sr. No. 1 of the table supra. I find that the payments were made between January to March 2014, in respect of the OIO mentioned at Sr. No. 2, the payments were made between April to June 2014 and in respect of the OIO mentioned at Sr. No.3, the payments were made between October to December 2013. So the last date for filing refunds was 30.1.2015, 29.4.2015 and 30.10.2014, respectively. However, since the refund claims were filed on 21.1.2016, the adjudicating authority rejected the same on limitation of time.

7. The main ground of the appellant is that the adjudicating authority did not exercise his discretion granted under para 3(iii)(e) of notification No. 12/2013-ST dated 1.7.2013. The appellant has quoted a number of case laws to substantiate his claim. I am in agreement with the averment of the appellant that the adjudicating authority should have used his discretion and extended the period for filing the refund claim on reasonable cause being shown. I find that in their submission before me they have shown the reason for not filing the refund claim in time. When the notification itself empowers the sanctioning authority to condone such a delay, the adjudicating authority should have exercised his discretion since it was a procedural condition of technical nature which was violated and not a substantive condition.

9. I further find that the refund claims have been rejected on limitation without going into the merits of the claim. Since I have already held that the rejection of the claims on limitation is not legally tenable, the impugned OIOs as listed in para (1) *supra*, are set



aside and the appeals are allowed by way of remand with a direction to the adjudicating authority to examine the refund claims on merit.

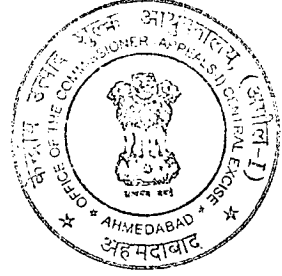
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
10. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)
आयुक्त (अपील्स - I)

Date : 29.03.2017
Attested

Vinod Lukose
(Vinod Lukose)
Superintendent (Appeal-I),
Central Excise,
Ahmedabad.



By RPAD.

To,
M/s. Aqualine Properties Private Limited,
Near Mahavirpuram,
Old Koba Rayasan Road,
Village Koba, Gandhinagar- 382 009
Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Commissioner, Central Excise, Ahmedabad-III.
3. The Deputy/Assistant Commissioner, Service Tax Division, Gandhinagar, Ahmedabad-III.
4. The Assistant Commissioner, System, Ahmedabad-III.
5. Guard File.
6. P.A.

