

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(CHA)35/STC-III/2015/Appeal-I
V2(CHA)36/STC-III/2015/Appeal-I 15/01/9
ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-035 to 036-16-17
दिनांक Date 27.05.2016 जारी करने की तारीख Date of Issue 13/6/16

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 123 to 125/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. Roop Telesonic Ultrasonic 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 :-

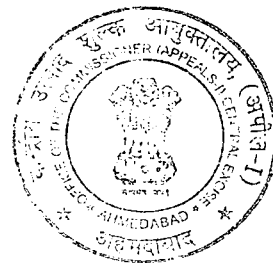
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, 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 और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और 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, 1984 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, बशर्ते 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 बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

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,

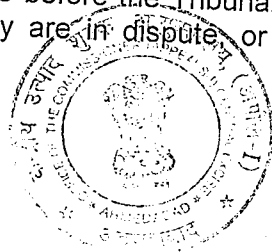
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 संदर्भ में, 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

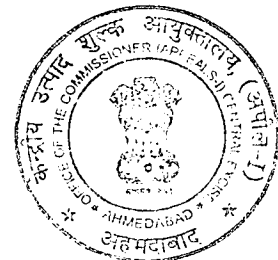
Following two appeals have been filed by **M/s Roop Telesonic Ultrasonix Limited (SEZ), Plot No.22, GIDC Electronics Park, SEZ, Kolavada Road, Gandhinagar** (hereinafter referred to as "the appellant") against Order-in-Original No.123 to 125/Ref/ST/DC/2015-16 dated 08.10.2015 (hereinafter referred to as "the impugned order" passed by the Deputy Commissioner of Central Excise, Gandhinagar Division, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

S No	Appeal No.	Amount involved
1	35/STC-III/15-16	Rs.45,657/-
2	36/STC-III/15-16	Rs.1,07,905/-

2. Facts of the case is that the appellant had filed refund claim amounting to Rs.23,845/-, Rs.21,812/- and Rs.1,07,905/- before the adjudicating authority under Notification NO.40/2012-ST dated 20.06.2012 in respect of service tax paid on the specified services namely Cargo Handling Services, Transport of Goods by Road, C & F Agent etc... which was wholly consumed/used for the authorized operation of SEZ unit/Developer. The above said refund claim was rejected by the adjudicating authority, by issuing show cause notices, on the grounds that (i) the notification under which the appellant had preferred the refund claim has been superseded by Notification No.12/2013-ST dated 01.07.2013 and (ii) the appellant has not filed application for registration under Central Excise Act or Finance Act before filing of the said refund claim as per condition prescribed under the said notification No.12/2013-ST.

3. Being aggrieved, the appellant has preferred the above said two appeals on the grounds that the adjudicating authority has rejected the refund claim on the grounds that they have not obtained registration with the department and such act on the part of the appellant being a procedural lapse and substantial benefit cannot be denied; that the provisions provided under the notification No.1/2013-ST are only 'manner' and such 'manner' cannot be interpreted as 'condition'; that in the present case the appellant has applied for service tax registration which was issued before issue of impugned order and therefore, non submission of registration application is only a procedural lapse.

4. A personal hearing in the matter was held on 23.05.2016 and Shri R.R.Dave, consultant appeared for the same. He reiterated the submissions made in the appeal and further stated that the refund was rejected because of DTA unit did not had Service Tax Registration.



5. I have gone through the appeal memorandum and submissions made by the appellant. The limited point to be decided in the matter is relating to eligibility of refund amount under notification No.12/2013-ST dated 01.07.2013.

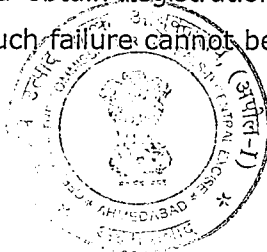
5.1 The adjudicating authority has rejected the refund claim in question on the ground that:

- (i) *the notification under which the appellant had preferred the refund claim has been superseded by Notification No.12/2013-ST dated 01.07.2013; and*
- (ii) *the appellant has not filed application for registration under Central Excise Act or Finance Act before filing of the said refund claim as per condition prescribed under the said notification No.12/2013-ST.*

5.2 The above fact was not disputed in the matter. The appellant's contention is that failure to file application for registration under Central Excise Act or Finance Act is a procedural lapse and for such lapse substantial benefit cannot be rejected. The appellant had filed their refund claims under Notification No.40/2012-ST dated 20.12.2012 which has been superseded by Notification No.12/2013-ST dated 01.07.2013. Therefore, refund matter relating specified services used for authorized operation in SEZ unit are required to be filed under notification No.12/2013-ST and follow the procedures and conditions as prescribed under the said notification. Para 3 (III)(g) of the said notification states that:-

- (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)....
 - (b)..
 - (c) *the SEZ Unit or Developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made there under, or the said Act or the rules made there under, shall file the claim for refund to the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, the as the case may be, in Form A-4;*
 - (d) to (f).....
 - (g) *the SEZ Unit or the Developer who is not so registered under the provisions referred to in clause (c), shall, before filing a claim for refund under this notification, make an application for registration under rule 4 of the Service Tax Rules, 1994.*

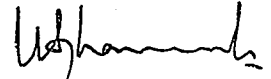
5.3 On close perusal of the above notification, I find that the adjudicating authority has rightly observed that there was failure to fulfill condition of the said notification by the appellant which appears as mandatory. According to the condition of the notification *ibid*, the appellant is required to file application for registration before filing of refund claim but in this case which they failed to do. In other words, the appellant should obtain registration under Service Tax Act before filing such refund claim. Such failure cannot be



brushed aside since the appellant is engaged in the line of manufacture and credit availed on specified services mentioned above was within the exclusive knowledge of the appellant. Therefore, the argument of the appellant is baseless for non-fulfillment of mandatory condition of the notification.

5.4 In view of above discussion, I do not find any merit to interfere the impugned order passed by the adjudicating authority and the said impugned order is up held.

5.5 Both the appeals filed by the appellant are rejected.



(UMA SHANKER)
COMMISSIONER (APPEAL-I)
CENTRAL EXCISE, AHMEDABAD

Date: 27/05/2016

Attested

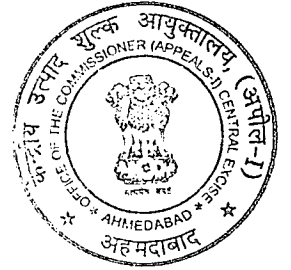


(Mohanan V.V)

Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D

To,
M/s Roop Telesonic Ultrasonix Limited (SEZ),
Plot No.22, GIDC Electronics Park,
SEZ, Kolavada Road, Gandhinagar



Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, Division-Gandhinagar, Ahmedabad-III
5. Guard file.
6. P.A file.
7. V2(CCHA)36/STC-III/15-16

