

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(RIP)34/STC-III/2015/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-086-16-17  
दिनांक Date 22.08.2016 जारी करने की तारीख Date of Issue 24/8/16

श्री अभय कुमार श्रीवास्तव, आयुक्त (अपील-I) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by Shri Abhai Kumar Srivastav 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 127/Ref/ST/DC/2015-16 dated : 12.10.2015

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. Arvind Ltd.

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 मैनटल हॉस्पिटल 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 वहां 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 वहां 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 को 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 भेजी 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 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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 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।

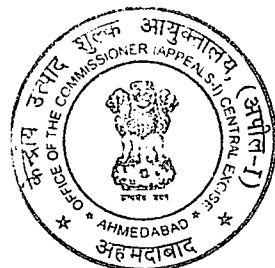
4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 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।



**ORDER-IN-APPEAL**

M/s Arvind Ltd, Naroda Road, Ahmedabad (hereinafter referred to as "the appellant") filed the instant appeal against Order-in-Original No.127/Ref/ST/DC/2015-16 dated 12.10.2015 ('the impugned order') passed by the Deputy Commissioner of Central Excise, Service Tax Division, Gandhinagar, Ahmedabad-III ('the adjudicating authority').

2. Briefly stated, the appellant has filed a refund claim of service tax amounting to Rs. 5,95,608/- before the adjudicating authority on 07.07.2015. The grounds for filing the said refund claim is that the appellant had taken a godown on rent from M/s Mahalaxmi Storehouses Pvt Ltd for storage or warehouse of baled cotton and paid service tax amounting to Rs.5,95,608/- for the service of 'Renting of Immovable Property' received by them for months of July 2014 to December 2014; that as the service by way of storage or warehouse of cotton baled was exempted from the payment of service tax, vide notification No. 06/2014-ST dated 06.07.2014; and that since the appellant had utilized the rented premises for an exempted service, the service tax paid to M/s Mahalaxmi Storehouses Pvt Ltd, for the rented premises under 'renting of immovable property service' 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 storage or warehouse of cotton in baled; that they had paid the service tax to M/s Mahalaxmi Storehouses Pvt Ltd for being provided the service of "Renting of Immovable Property", which was not covered under exemption notification No.06/2014 -ST dated 06.07.2014.

4. Being aggrieved, the appellant has filed the instant appeal on the grounds that the adjudicating authority has interpreted the exemption notification wrongly; that they made exhaustive submissions with evidences to establish beyond doubt that the renting services were in connection with storing of baled cotton; that since the services of warehousing of baled cotton are clearly covered under the exemption notification No.06/2014-ST and once the warehouse is taken on rent, the service may be termed as renting of property "warehouse" by the provider; and that the notification gives exemption to various services, e.g. loading, unloading, packing, storage or warehousing, when rendered in respect of rice/cotton; that the exemption, obviously, is not with reference to category of service; that neither the charge of tax nor the exemption is based upon the category of service.

5. A personal hearing in the matter was held on 26.07.2016. Shri Rahul Bhatt, Chief Manager of the appellant appeared before me and reiterated the submissions advanced in the appeal. He also referred to an order dated 19.07.2016, passed by the Commissioner (Appeals-II) on the issue.

6. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The instant case relates to refund of service tax paid by the appellant to their service provider M/s Mahalaxmi Storehouses Pvt Ltd, who provided the taxable service viz. 'Renting of immovable Property' which the appellant contends was utilized for exempted service viz. "service by way of storage or warehouse of baled cotton".



7. At the outset, I observe that the appellant has utilized a premises on rental basis owned by M/s Mahalaxmi Storehouse Pvt. Ltd for storage of goods needed by them; that for the said rented premises, they paid service tax to M/s Mahalaxmi Storehouses Pvt. Ltd under service category of "renting of immovable property" during the period from July 2014 to December 2014. I further observe that the appellant has sought the refund in question under Sr.No.40 of the notification *ibid* on the grounds that they had utilized the said rented property for storage or warehouse of baled cotton.

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 supersession of notification number 12/2012- Service Tax, dated the 17<sup>th</sup> 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 17<sup>th</sup> 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 Service provided to United Nations or specified International Organization.
- 2 .....
- 39 Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

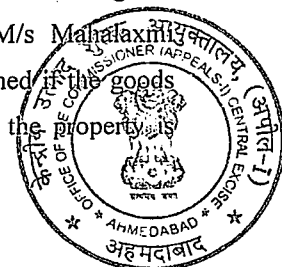
(Sr. No.40 below amended by Notification No.06/2014-ST)

40. Service by way of loading, unloading, packing, storage or warehouse of rice, cotton ginned or baled.

9. The above notification exempts taxable service by way of loading, unloading, packing and storage or warehouse of rice, cotton, ginned or baled. The said notification makes it clear that service availed in connection with storage or warehouse of cotton ginned or baled is exempted from payment of service tax. Hence, no service tax is payable if the service was by way of storage or warehouse of cotton, ginned or baled.

10. The appellant has claimed the refund of service tax paid on rented godown under the head renting of immovable property by stating that they had utilized the said rented godown for storage or warehouse of baled cotton. The adjudicating authority has rejected the said claim by holding that the refund sought is of service tax discharged on "renting of immovable property" and not on the service exempted vide Sr. No. 40 of the notification *ibid*. It appears that the adjudicating authority has erred in arriving at such a finding.

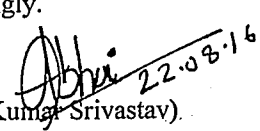
11. In order to claim the benefit under the Sr. No. 40 of the said notification, the condition to be followed is that only rice or cotton in ginned or baled form should be stored or warehoused in such premises. In the instant case, it is not forthcoming if the appellant had used the said rented premises only for the purpose of storage or warehouse of baled cotton, as specified in the notification *ibid*. The appellant has stated in their appeal that they had made submissions before the adjudicating authority with evidences to establish that the godown was rented in connection with storing the baled cotton. I observe that no such evidence with documentary proof has been brought forth in the appeal memorandum or during the course of personal hearing so as to establish that they had used the said rented godown only for the purpose of storage or warehouse of cotton, ginned or baled. Further, in the invoice issued by M/s Mahalaxmi Storehouse Pvt Ltd and insurance policy of the rented godown, it is not mentioned in the goods stored by the appellant were cotton, ginned or baled. In the insurance policy, the property is



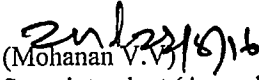
treated as a cotton godown – for storing all type of raw materials like cotton yarns, finished goods like cloth etc. Needless to mention that services provided for warehousing cotton yarns, cotton cloth or other finished cotton goods are not covered under the notification. In the given circumstances, it is apparent that the appellant has failed to provide documentary evidence to fulfill the condition of the said exemption notification *ibid*. As has already been mentioned, the refund claim can only be sanctioned if it is proved to the satisfaction of the department that the rented godown was used for storage or warehouse of goods specified in the notification *ibid*.

12. The adjudicating authority is directed to reexamine the claim in the light of the above directions. The appellant is at liberty to provide documents, etc. to support his claim that the godown was used only for storage of goods specified in Sr. No. 40 of the notification under consideration. Accordingly, the order passed by the adjudicating authority is set aside and the case is remanded to the adjudicating authority. The appeal is disposed of accordingly.

Date: 22.08.2016

  
(Abhai Kumar Srivastav)  
Commissioner (Appeals-I)  
Central Excise, Ahmedabad.

Attested

  
(Mohanan V. V.)  
Superintendent (Appeals-I)  
Central Excise, Ahmedabad

R.P.A.D

To  
M/s Arvind Ltd,  
Naroda Road, Ahmedabad

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, S.T Division, Gandhinagar, Ahmedabad-III
5. Guard file.
6. P.A.



