

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

क फाइल संख्या : File No : V2(ST)0108/A-II/2017-18

ख अपील आदेश संख्या : Order-In-Appeal No..AHM-EXCUS-003-APP-82-17-18

दिनांक Date : 28.08.2017 जारी करने की तारीख Date of Issue 20/9/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

G. file

Passed by Shri Uma Shanker Commissioner (Appeals)

ग आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं  
दिनांक : से सृजित

Arising out of Order-in-Original No STC/Ref/05/DK Jangid/DC/Div-V/17-18 Dated 30.05.2017 Issued  
by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. Shree Shyam Construction co. Ahmedabad

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 :-

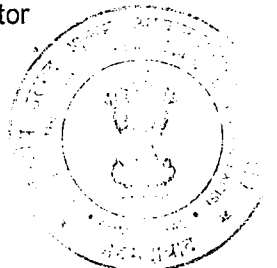
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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, New Mental Hospital Compound, Meghani Nagar, 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 accompany ed 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 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-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फॉर्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form 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 (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. / Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) 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 adjudication 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 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 रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल हैं -

(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;

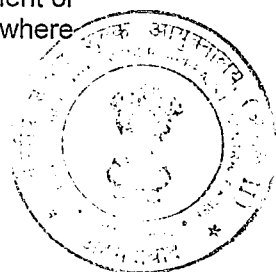
(ii) amount of erroneous Cenvat Credit taken;

(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(1) 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(1) 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.

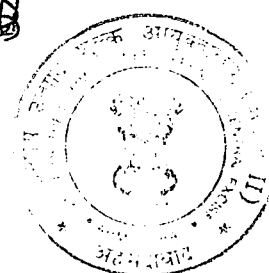


**ORDER IN APPEAL**

M/s. Shree Shyam Construction Company, Sarangpur Kot Ni Rang, 1154, Nr. Sarangpur Gate, Sarangpur, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number STC/Ref/05/DK Jangid/DC/Div-V/17-18 dated 30.05.2016 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, Division-V, Service Tax, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);


2. The facts of the case, in brief, are that the appellants were engaged in providing services under the category of 'Construction services other than Residential Complex, including Commercial/Industrial Buildings or Civil Structures' and hold valid registration number AIQPA7305QSD001. The appellants had filed a refund claim of ₹23,88,414/- on 15.11.2016, before the Deputy Commissioner (Tech), Service Tax, H.Q., Ahmedabad, which was subsequently sent to the adjudicating authority on 20.02.2017. The said refund claim was filed under Section 102 of the Finance Act, 2016 read with the Finance Act, 1994 and rules made there under. During scrutiny of the claim, it was noticed that the claim was time barred. Thus, a show cause notice, dated 27.03.2017, was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, rejected the entire claim of refund of ₹23,88,414/-.

3. Being aggrieved with the impugned order, the appellants preferred the present appeal before me. The appellants argued that the adjudicating authority has wrongly rejected the refund claim of ₹23,88,414/- vide the impugned order which is not sustainable at all. They further stated that the benefit of Mega Exemption Notification number 25/2012-ST dated 30.06.2012 was withdrawn from 39 group of services vide Notification number 6/2015-ST dated 01.03.2015 and thus, the appellants started to charge Service Tax from the Military Engineering Service (*hereinafter referred to as 'MES'*) and deposited in the government exchequer. Later on, the said exemption was restored for the contracts concluded prior to 01.03.2015 and thus, they were eligible for the said refund. However, the appellants quoted, the adjudicating authority has rejected the claim on the ground of limitation. They stated that the claim was received by the department on 15.11.2016 while the time limit of the claim had expired on 13.11.2016. The appellants argued that they had dispatched the claim on 12.11.2016 but was received by the department on 15.11.2016. They further quoted that as the service was exempt from Service Tax, the tax paid by them was not duty but deposit and hence, time limit should not have been



4. Personal hearing in the case was granted on 17.08.2017 wherein Shri Praveen Agarwal, Proprietor, appeared before me and reiterated the contents of the grounds of appeal.

6. Now, the main issue remains to me is whether the adjudicating authority has rightly rejected the claim on the ground of limitation, or otherwise. I find that the adjudicating authority has not denied the legitimacy of the refund claim in terms of Mega Exemption Notification number 25/2012-ST dated 30.06.2012. The claim was rejected only on the ground that it was delayed by only one day. Thus, I start with the question that whether limitation under Section 102 of the Finance Act, 2016 is applicable to a service that is exempted by notification. In this regard, I would like to quote the contents of Section 102 mentioned in Chapter V (Service Tax) of the Finance Bill 2016, as below;



(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;

(b) a structure meant predominantly for use as--

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

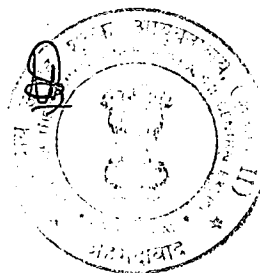
(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act, under a contract entered into before the 1<sup>st</sup> day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

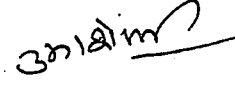
Thus, it is very clear that the appellants were supposed to apply for the refund within a period of six months from enactment of the law. The appellants have argued against the impugned order in light of the provisions of Section 11B. They have stated that the provision of time limit, under Section 11B, will not be applicable to them as the amount paid by them in the government exchequer is to be treated as deposit and not duty. In support of their claim they have quoted the verdict of Hon'ble Supreme Court in the case of Union of India vs. ITC Ltd. However, the conditions of Section 11B are not applicable to the present case as the appellants had filed the claim under Section 102 of the Finance Act, 2016 mentioned above. Section 102 ibid, begins with the non-obstante clause and therefore, any other provisions contrary to what is stated therein will not be applicable. Therefore, the judgment of Hon'ble Supreme Court in the case of Union of India vs. ITC Ltd. will not be applicable to the present case. As the appellants had filed the refund claim beyond the time limit prescribed under Section 102 of the Finance Act, 2016, I proclaim that they are not eligible for the refund amount of ₹23,88,414/-. In view of the above, I find that the adjudicating authority has rightly rejected the claim as time bar under Section 102 of the Finance Act, 2016.

7. Therefore, I do not find any reason to interfere in the impugned order and in view of above discussions, I up held the impugned order passed by the adjudicating authority and reject the appeal filed by the appellants.




8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

8. The appeals filed by the appellant stand disposed off in above terms.

  
(उमा शंकर)

CENTRAL TAX (Appeals),  
AHMEDABAD.

ATTESTED

  
(S. DUTTA)

SUPERINTENDENT,  
CENTRAL TAX (APPEALS),  
AHMEDABAD.

To,  
M/s. Shree Shyam Construction Company,  
Sarangpur Kot Ni Rang, 1154,  
Nr. Sarangpur Gate, Sarangpur,  
Ahmedabad

**Copy to:**

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad (South).
- 3) The Dy./Asst. Commissioner, Central Tax, Division-I (Rakhial), Ahmedabad (South).
- 4) The Asst. Commissioner (System), Central Tax, Ahmedabad (South).
- 5) Guard File.
- 6) P.A. File.

