



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय कर शुल्कभवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015



7th Floor, Central Excise Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)64/A-II/2017-18 / 420-24
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-240-17-18
दिनांक Date : 27-12-2017 जारी करने की तारीख Date of Issue 22/1/18

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-01/Refund/58/AC/DMA/2016-17 Dated
07.02.2017 Issued by Assistant Commr STC, Service Tax, Div-I, Ahmedabad

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

M/s. DMA Projects 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 :-

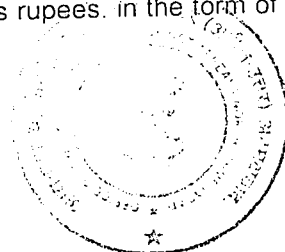
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल 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 न्यायापीठ स्थित है, वहाँ के नागिक सार्वजनिक क्षेत्र बैंक के न्यायापीठ 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 कम 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 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 दत्त 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 लाना 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 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 अर्ज़ी 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,

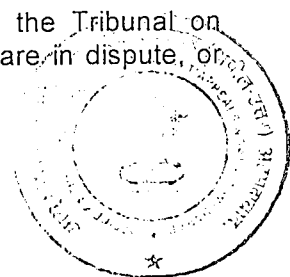
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



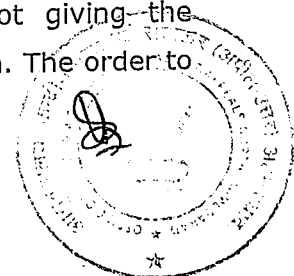
ORDER IN APPEAL

M/s. DMA projects, E/6, L. K. Society, Opp. Sterling Hospital, Gurukul Road, Memnagar, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number SD-01/Refund/58/AC/DMA/2016-17 dated 07.02.2017 (*hereinafter referred to as 'impugned order'*) passed by the then Assistant Commissioner, Division-I, 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 construction services to the Garrison Engineer (I), Air Force, Gandhinagar (Military Engineering Services Dpt., Ministry of Defense) and hold valid registration number AAHFD1528PSD001. The appellants had filed a refund claim of ₹ 3,11,231/- on 09.11.2016, before the adjudicating authority, under Section 102 of the Finance Act, 2016 read with the Finance Act, 1994 and rules made thereunder. On verification of the claim, it was noticed that the appellants had collected Service Tax from Garrison Engineer (I), Air Force, Gandhinagar and paid to the department. Further, along with the refund, the appellants requested the adjudicating authority to sanction the said refund claim and credit the refund amount directly to the Garrison Engineer (I), Air Force, Gandhinagar. Also, during scrutiny of the claim certain discrepancies were noticed viz.; the appellants had filed refund in those work orders where they had entered in work contract after 01.03.2015; the appellants had recovered the tax from their client and hence it was presumed that the doctrine of unjust enrichment would be applicable; it was further noticed that the appellants had availed CENVAT credit on their input service and did not reverse the same. It was further seen that the appellants had not submitted any RA bill in respect of work order number GE(I)AF/GNR/148 of 2013-14 dated 29.03.2014.

3. Thus, a show cause notice, dated 04.01.2017, was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, sanctioned an amount of ₹ 2,26,832/-, out of the actual claim of ₹ 3,11,231/-, and ordered the above amount to be credited to the Consumer Welfare Fund on the ground of the principles of unjust enrichment. The remaining amount of ₹ 84,399/- was rejected under various grounds which would be discussed at a latter stage.

4. Being aggrieved with the impugned order, the appellants preferred the present appeal before me. The appellants argued that the adjudicating authority has erred in passing the impugned order by not giving the appellants reasonable opportunity for submission of information. The order to



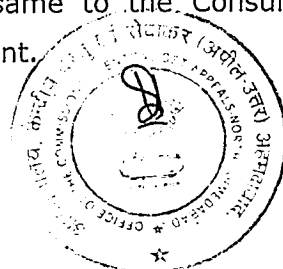
transfer the amount of ₹2,26,832/- to the Consumer Welfare Fund on the ground of the principles of unjust enrichment is totally illogical and incorrect and passed without giving the appellants proper opportunity of being heard.

5. Personal hearing in the case was granted to the appellants on 04.10.2017, 25.10.2017, 17.11.2017 and 08.12.2017 but no one, on behalf of the appellants appeared before me nor was any letter, for adjournment of personal hearing, submitted to me. However, this office received a letter, dated 27.12.2017, from the appellants on 01.01.2018 along with some documents pertaining to the refund claim.

6. I have carefully gone through the facts of the case on records and grounds of appeal in the Appeal Memorandums. I find that the appellants were granted enough chance of personal hearing for representing their case before me. However, as they failed to avail the benefit of personal hearing, I hereby, take up the matter *ex parte*, purely on the basis of merit and available documents.

7. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellant and oral submission made at the time of personal hearing. To begin with, I find that there has been a delay occurred in filing the appeal by the appellants. The impugned order was issued on 09.02.2017 and the appellants have filed the appeal on 16.05.2017. They have filed a request letter, along with the appeal memo, for condonation of delay. An assessee, if not satisfied with the demand, may prefer appeal to the higher authorities [in this case, the Commissioner (Appeals)] **within 2 months** from the date of receipt of order from such adjudicating authority. The Commissioner (Appeals) **may** allow a further period of **1 month**, if sufficient cause for late filing of appeal is shown and proved to him. In the present case, the delay is more than the further period of 1 month and hence, outside my purview. In view of the above, I reject the appeal on the ground of limitation itself; however, as per the principles of natural justice, I would like to discuss the case on merit also.

8. The request of the appellants to sanction the claim and credit the same directly to the account of the Garrison Engineer (I), Air Force, Gandhinagar is illogical. The claim of refund cannot be sanctioned to anyone else except the claimant and in the present case the appellants are the claimants and hence the refund amount cannot be sanctioned to the account of a third party. Thus, the adjudicating authority has very rightly sanctioned the amount of ₹ 2,26,832/- and transferred the same to the Consumer Welfare Fund on the ground of the of unjust enrichment.



8.1. Regarding the issue of rejection of ₹ 38,250/- on the ground that the contract agreement was framed on 17.03.2015 i.e., after 01.03.2015, I would like to quote the contents of Section 102 mentioned in Chapter V (Service Tax) of the Finance Bill 2016, as below;

102. (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of--

(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;

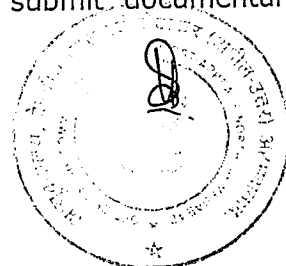
(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act, under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, 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 from above that the limiting factor for the finalization of the contract is the date 01.03.2015, therefore, the appellants are not eligible for the refund amount of ₹ 38,250/- which has been very correctly rejected by the adjudicating authority.

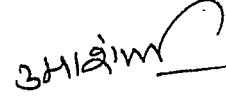
8.2. Regarding the issues of rejection of ₹ 23,955/- and ₹ 22,194/- on the grounds that the appellants have not submitted RA bills and they have availed CENVAT credit on their input service and did not reverse the same, I find that the adjudicating authority has very rightly rejected the said amounts of refund as the appellants had failed to submit documentary evidences in support of their claim.



9. Therefore, as discussed above, I do not find any reason to interfere in the impugned order and up held the impugned order passed by the adjudicating authority and reject the appeal filed by the appellants.

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

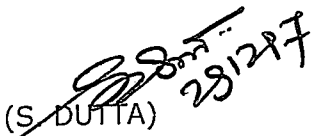
10. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED


(S. DUTTA)

SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.

To,
M/s. DMA projects,
E/6, L. K. Society, Opp. Sterling Hospital,
Gurukul Road, Memnagar,
Ahmedabad.

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad (North).
- 3) The Dy./Asst. Commissioner, Central Tax, Division-VII, S. G. Highway (East), Ahmedabad (North).
- 4) The Asst. Commissioner (System), Central Tax, Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.

