



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय कर शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015
Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)18/A-II/2017-18 / 426-30
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-247-17-18
दिनांक Date : 29-12-2017 जारी करने की तारीख Date of Issue 22/01/18

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/60AC/Abhishek/16-17 Dated
08.02.2017 Issued by Assistant Commr STC, Service Tax, Div-I , Ahmedabad

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

M/s. Abhishek Associates 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 :-

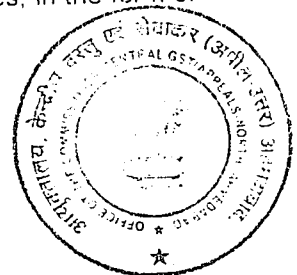
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

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 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

File



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 प्रतियों (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 स्वगन 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34 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 (जं. 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,

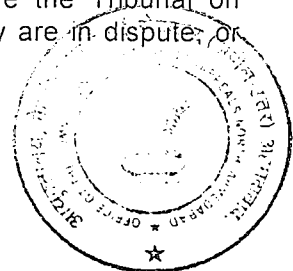
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

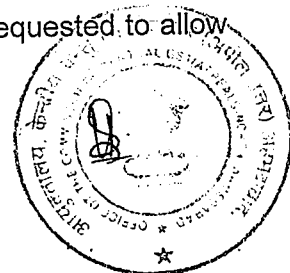
This order arises out of an appeal filed by M/s. Abhishek Associates, 24, Ambrish Society, Ranip, Ahmedabad-380005 (in short 'appellant') against Order-in-Original No.SD-01/Refund/60/AC/Abhishek/2016-17 dated 10.02.2017 (in short 'impugned order') passed by the then Assistant Commissioner, Service Tax Division-I, Ahmedabad (in short 'adjudicating authority').

2. Briefly stated that the appellant filed refund claim of Rs.20,69,034/- of service tax paid on the taxable services provided to various Airport Authority of India(in short AAI) to carry out 'Annual Operation and Maintenance' works contract. Since the said contract involved the execution of original work, the appellant availed exemption from payment of service tax in terms of Notifn. No.25/2012-ST dated 20.06.2012 Sr. No. 12(a). However, consequent to withdrawal of said exemption vide Notifn. No.6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015, the appellant started levying service tax in the bill raised to the AAI who in turn paid to it and the same was deposited to the govt. ex-chequer. Consequent to re-introduction of the said exemption retrospectively w.e.f. 01.04.2015, vide Section 102 of the Finance Act, 1994 vide Notification No. 09/2016-ST dated 1st March, 2016, the appellant filed the subject refund claim which culminated into issue of Show Cause Notice dated 14.12.2016 for rejection. This SCN was adjudicated by the adjudicating authority vide impugned order wherein refund claim of Rs.20,69,034/- was rejected.

3. Aggrieved with the impugned order, the appellant has filed the present appeal wherein, *inter alia*, submitted that:

- (a) whether they had collected initially. But recredited party account on declaration of the exemption notification, which has been suffice for the compliance of unjust enrichment principle or not.
- (b) when there was no tax, it amount to the deposit of money, required to be refunded to them.
- (c) whether on the face of some invoice category of service mention "manpower supply service", it amcunt to overlook substance of work done by them for repair and maintenance of electrification work or not.
- (d) if their service falls under "manpower supply service", then w.e.f. 01.04.2015 & onwards service tax has been payable by the recipient, in that case when there is no tax, it amount to deposit of money, requires to be refunded to them.

The appellant also relied upon series of case laws and requested to allow refund claim of Rs.20,69,034/-

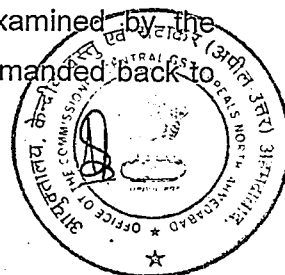


4. Personal hearing in the matter was held on 01.12.2017. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant and reiterated their earlier case to link with this case and requested to remand the case.

5. I have carefully gone through the appeal memorandum, submission made at the time of personal hearing and evidences available on records. I find that the main issue to be decided is whether the impugned order is just, legal and proper or otherwise. Accordingly, I proceed to decide the case on merits.

6. Prima facie, I find that the subject appeal is hit by limitation of six days in terms of provisions contained in Section 85(3A) of the Finance Act, 1994. No application or request is made for condonation of said delay either way i.e oral or written at any point of time by the appellant. However, I condone the said six days delay in terms of powers vested in me vide proviso to Section 85(3A)ibid in the interest of justice.

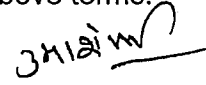
7. Prima facie, I find that the appellant is a service provider and has been awarded works contract for repair and maintenance of various airports under AAI. The said activity was exempted from levy of service tax in terms of Notification No.25/2012-ST dated 20.06.2012 vide Sr. No.12(a). This exemption was withdrawn vide Notifn. No.6/2015-ST dated 01.03.2015. Hence, the appellant charged and collected service tax at appropriate rate from the AAI and deposited this amount to govt. exchequer. Now this exemption was re-introduced with retrospective effect vide Notifn. No.9/2016-ST dated 01.03.2016. Accordingly, the appellant filed the refund claim for service tax paid during the period 01.04.2015 to 29.02.2016. In this regard, I find that the main contention raised in the subject SCN is "Supply of Manpower Services" which is not covered under said exemption granted retrospectively. I also find that though the adjudicating authority has discussed this issue in its findings in Para 7 of the impugned order, the appellant has further contended, inter alia, that if their service falls under "manpower supply service", then w.e.f. 01.04.2015 & onwards service tax has been payable by the service recipient and in that case when there is no tax, it amount to deposit of money, requires to be refunded to them. I find that this needs to be examined by the adjudicating authority. Accordingly, matter needs to be remanded back to



the adjudicating authority to study the contract awarded by the AAI and decide the matter accordingly after going through the contract minutely vis-à-vis bills raised by the appellant and pass a speaking order after following the principle of natural justice.

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


The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested:


(B.A. Patel)
Supdt.(Appeals)
Central GST, Ahmedabad.

BY SPEED POST TO:

M/s. Abhishek Associates,
24, Ambrish Society, Ranip,
Ahmedabad-380005.

Copy to:-

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad-North (RRA Section).
- (3) The Asstt. Commr, CGST, Division VII(SG Highway East), Ahmedabad North.
- (4) The Asstt. Commissioner(System), Central Tax , Ahmedabad-South
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.



