
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
केंद्रीय कर शुल्कभवन, 7 th Floor, Central Excise Building, Near Pclytechnic, Ambavadi, Ahmedabad-380015		
आम्बावाडी, अहमदाबाद-380015		
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क फाइल संख्या : File No : V2(ST)237/A-II/2016-17 40640/41

ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP-262-17-18**

दिनांक Date : **08/01/2018** जारी करने की तारीख Date of Issue 23-1-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No **SD-04/Ref-61/AK/2016-17** Dated **02.12.2016**
Issued by **Assistant Commr STC, Service Tax, Div-IV, Ahmedabad**

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

M/s. SKAPS Industries India Pvt Ltd
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 लो 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 :-

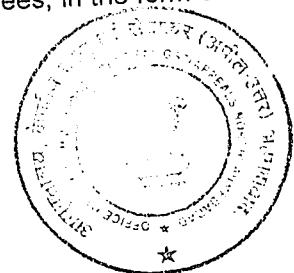
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

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 उससे कम है वहाँ 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

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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 फार्म 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 (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 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 निचमावली 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,

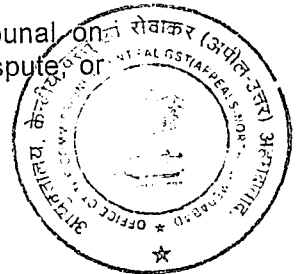
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



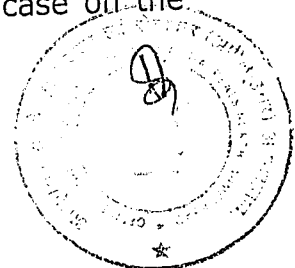
ORDER IN APPEAL

M/s. Skaps Industries India Pvt. Ltd., (100% EOU), A-20, Survey No. 423, Mahagujarat Industrial Estate, Ahmedabad- Bavla Highway, Village- Moraiya, Taluka- Sanand, Dist. Ahmedabad- 382 210 (STR AADC P2779D ST001) (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number SD-04 /REF-61/AK/2016-17 dated 02.12.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax, Div-IV, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief are that appellant had filed refund claim of accumulated credit of Rs. 3,01,952/- on 17.01.2016, for quarter October-2015 to December-2015 under notification No. 27/2012-CE (NT) dated 18.06.2012. Adjudicating authority held that appellant was not eligible to take ^{is} cenvat credit of Rs. 1,82,385/- on service tax paid on rented unregistered premises and credit of Rs. 1,986/- on courier service received at said unregistered rented premises having address at Unit No.101 and 102, 1st floor, Parshwanath E Square, Satellite, Ahmedabad. Therefore proportional refund (Rs. 1,83,724/-) in proportion to export clearance value to domestic clearance value of renting service and courier service was rejected.

3. Being aggrieved with the impugned order, the appellants preferred an appeal on 01.02.2017 before the Commissioner (Appeals-II), Ahmadabad wherein it is contended that said unregistered premises are used for business operation and export documentation/procedure; that only manufacturing activity is undertaken at Moraiya Village plant: that renting services availed from by M/s Zaveri & Co. Exports are covered under eligible input service defined under rule 2(I) of CCR,2004; that the office relating to such factory wherein the goods are manufactured is also covered in input service definition; that M/s Zaveri & Co. Exports has raised debit notes in the name of appellant and at the address which is registered with the Service Tax Department in ST-2; that courier service is availed at said unregistered premises but said service is utilized in respect of export only

4. Personal hearing in the case was granted on 04.10.2017, 08.11.2017 and 01.12.2017 but neither appellant nor their representative availed the opportunity. I, therefore proceed to decide the case on the basis of facts available on record.



DISUSSION AND FINDINGS

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants, evidences produced at the time of personal hearing.

6. I observe that refund of accumulated credit is denied because input service credit itself on renting service and courier was held to be inadmissible. Adjudicating authority concluded that credit of Rs. 1,82,385/-of service tax paid on rent of rented premises is not admissible due to following reasons-

- a. Service of "renting of immovable property" does not fall under input service definition.
- b. Cenvat credit is taken on the basis of debit notes raised by M/s Zaveri & Co. Exports. Said debit notes are raised in respect of renting of unregistered premises having address at Unit No.101 and 102, 1st floor, Parshwanath E Square, Satellite, Ahmedabad

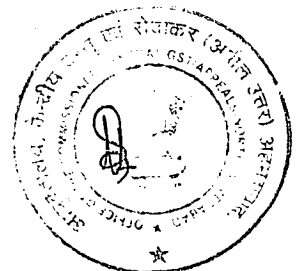
Adjudicated further concluded that credit of Rs. 1,986/- availed on courier service is not admissible as there is no nexus between service availed and export of goods and said courier service of M/s Shivam International is availed at unregistered premises.

7. Contention of appellant is that "renting service" and "courier" service is utilized at the registered office, situated at said un-registered premises and manufacturing activity takes place at plant at Moraiya Village. First I shall decide whether or not input services utilized by office of the manufacturer of goods is admissible?. I find that input service definition given in rule 2(l) of CCR, 2004 covers, the services utilized at such office of the manufacturer. Definition of input service is reproduced below-

"RULE 2(l) : Input Services

"Input Service" means any service,-

(i) used by a provider of output service for providing an output service; or



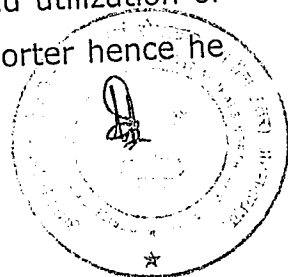
(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, **premises of provider of output service or an office relating to such factory or premises, advertisement**up to the place of removal; but excludes,"

8. Now I next question is whether or not such office premises of manufacturer is required to be registered with service tax department?. I find that Manufacturing factory is 100% EOU and is obviously registered with the Central Excise Department. CENVAT credit of input goods, input service and capital goods is admissible as a "manufacturer". CENVAT credit of all input services availed at office premises is accounted at factory as manufacturer. Refund u/r 5 of CCR, 2004 r/w Notification 27/2012- CE(NT) is filed for accumulated CENVAT credit at factory, therefore, I am of considered view that, there is no requirement to get registered with service tax department for claiming refund.

9. Registration is issued for identification of service provider and to comply various processes like return submission etc. in service tax department. In sixth edition of FAQ published on 16.09.2011 by Directorate of Service Tax has replied for "Why registration is necessary?" at para 2.2 which is reproduced as below-

"Registration is identification of an assessee. Identification is necessary to deposit service tax, file returns and undertake various processes ordained by law relating to service tax. Failure to obtain registration would attract penalty in terms of section 77 of the Finance Act, 1994, read with rule 4 of Service Tax Rules 1994. (Please also refer para 2.15 of this Booklet)"

10. The combined reading of section 66, 69, 70 of Finance Act, 1994 , Rule 4, 7 of Service Tax Rules, 1994 and sub-rule 5, 6 & 9 of Rule 9 of CCR, 2004 substantial meaning emerged are that every person liable for payment of service tax shall require to registered themselves, required to file returns and required to maintain records of receipt and utilization of credit of inputs. In instance case respondent is 100% exporter hence he



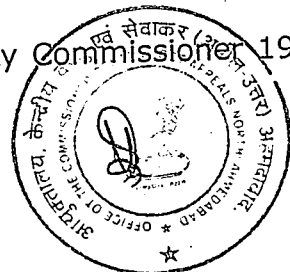
is not required to pay service tax and consequently he was NOT required to even register.

11. In case of E-care India Pvt. Ltd 2011(22) STR 529 TRI Chennai it is held that registration not necessary for refund rule 5. For claiming refund of credit under rule 5 of CCR, 2004, a person should be engaged in providing export of service. In present case respondent is engaged in export of "information Technology Service".

12. Regarding courier service availed at office situated at the un-registered premises I find that appellant is 100% EOU therefore by default all services, including courier service availed/ utilized at office of appellant are deemed to be used for export purpose unless until it is proved otherwise. Adjudicating authority has not brought on record that said courier service is not utilized in export related activity. Courier service invoice issued in name of registered office is eligible for CENVAT credit. The Hon'ble CESTAT, Delhi in the case of M/s. Allspheres Entertainment Pvt. Ltd. Vs. CCE, Meerut [2015 (8) TMI 953 - (CESTAT DELHI)] has held that in the absence of any such dispute regarding availment of Impugned Services and their utilization for payment of Service tax or proper accounting of the same, the denial of Cenvat Credit of Service tax paid on Impugned Services by Nainital office of the Appellant on the sole ground that the invoices issued are in the name of the Appellant's unregistered Delhi office is unjustified since the head office which is registered with the Department has discharged the Service tax liability of Delhi office. The defect in the invoices is only procedural lapse or rather a curable defect.

13. Adjudicating authority has never disputed the receipt and usages of services in export of goods, therefore substantial benefit can not be denied. My view is supported by following judgments-

- I. Wipro Limited Vs. Union of India [2013] 32 Taxmann.com 113 (Delhi High Court)
- II. Kothari Infotech Ltd V/S Commissioner of Central Excise, Surat - [2013] 38 taxmann.com 298 (Ahmadabad - CESTAT)
- III. Mannubhai & Co. Vs. Commissioner of Service Tax (2011)(21)STR(65)- CESTAT (Ahmadabad)
- IV. M/S Mangalore Fertilizers & Chemicals Vs Deputy Commissioner 1991 (55) ELT 437



- V. CST Delhi vs. Convergys India Private Limited 2009 -TIOL -888-CESTAT -DEL-2009 (16) STR 198 (TRI. - DEL)
- VI. CST Delhi vs. Keane Worldzen India Pvt. Ltd. 2008 - TIOL -496 -CESTAT -DEL: 2008 (10) STR 471 (Tri. - Del)

14. In view of above I allow the CENVAT credit on renting service and courier service and consequently I allow the refund of Rs. 1,83,724/- on said services. Appeal filed by the appellant is allowed and impugned OIO is set aside.

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

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

उमा शंकर

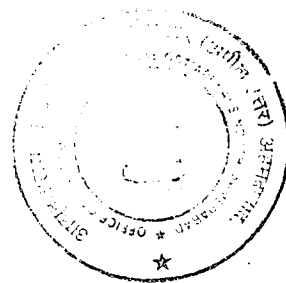
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

R.R. Patel
(R.R. PATEL)

SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD



To,

M/s. Skaps Industries India Pvt. Ltd., (100% EOU),
A-20, Survey No. 423, Mahagujarat Industrial Estate,
Ahmedabad- Bavla Highway,
Village- Moraiya, Taluka- Sanand,
Dist. Ahmedabad- 382 210

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad NORTH.
- 2) The Commissioner Central Tax, CGST, Ahmedabad NORTH.
- 3) The Additional Commissioner, Central Tax, Ahmedabad- NORTH
- 4) The Asst. Commissioner, Central Tax, Div-IV, Ahmedabad NORTH
- 5) The Asst. Commissioner(System), Hq, Ahmedabad NORTH.
- 6) Guard File.
- 7) P.A. File.

