



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)



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

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- क फाइल संख्या : File No : **V2(ST)16 /A-II/2017-18**
- ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-280-17-18**
दिनांक Date : **22-01-2017** जारी करने की तारीख Date of Issue 16-2-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

- ग Arising out of Order-in-Original No **SD-02/Ref-74/AK/2016-17** Dated **09.02.2017**
Issued by **Assistant Commr STC**, Service Tax, Div-IV , Ahmedabad

- घ 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 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 :-

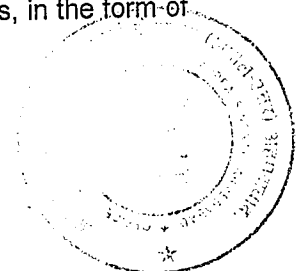
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

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 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

G. Patel



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, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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 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,

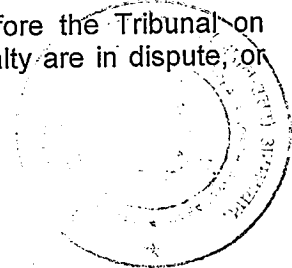
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

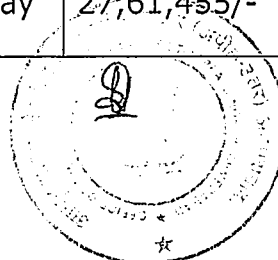


ORDER IN APPEAL

M/s. Skaps Industries India Pvt. Ltd. (100% EOU), A-20, Survey No.423, Mahagujarat Industrial Estate, Ahmedabad-Bavla Highway, Village-Moraiya, Taluka-Sanand, Ahmedabad - 382210 (*hereinafter referred to as the 'appellant'*) holding Central Excise Registration No. AADCP2779DST001 are providing/receiving various taxable services. The appellant being a 100% EOU, was not able to utilize the accumulated Cenvat credit of service tax and therefore had filed a refund claim of Rs.4,64,970/-, under Notification No. 27/2012-CE(NT) dt.18.06.2012, as amended. The Refund Sanctioning Authority vide OIO No. SD-04/REF-74/AK/2016-17 DT.9.02.2016 (herein after referred as the impugned order), sanctioned the refund claim of Rs. 2,45,072/-, and rejected the refund claim of Rs. 2,19,898/-, on various counts. The Appellant aggrieved by the said OIO, filed an appeal against the same, before me.

2. The facts of the case, in brief, are that the appellant had filed the refund claim of Rs. 4,64,970/-, for the quarter January, 2016 to March, 2016, under Notification No. 27/2012-CE(NT) dt.18.06.2012. The appellant had furnished the following details as required under Para 3(a) of the said notification :

Sl. No.	Description	Amount (in Rs.)
1	Total Value of the goods cleared for export and exported during the quarter	12,13,06,728/-
2	Export turnover of the services determined in terms of clause (D) of sub-rule(1) and rule(5)	Nil
3	Total Cenvat Credit taken on inputs and input services during the quarter	4,65,741/-
4	Amount reversed in term of sub-rule (5C) of Rule 3	Nil
5	Net CENVAT Credit = (3) - (4)	4,65,741/-
6	Total value of all goods cleared during the quarter including exempted goods, dutiable goods and goods for export	12,15,07,841/-
7	Export turnover of services and value of all other services, provided during the said quarter	Nil
8	All inputs removed as such under sub-rule (5) of rule 3, against an invoice during the quarter	Nil
9	Total Turnover = (6) + (7) + (8)	12,15,07,841/-
10	Refund amount as per the formula = $(1) \times (5) / (9)$, in r/o goods exported	4,64,970/-
11	Refund amount as per the formula = $(2) \times (5) / (9)$, in r/o service exported	Nil
12	Balance of Cenvat credit available on the last day of quarter	4,65,741/-
13	Balance of Cenvat credit available on the day of filing the refund claim	27,61,455/-



14	Amount claimed as refund, [Amount shall be less than the minimum of (10), (12) and (13) in case of goods or the minimum of (11), (12) and (13) in case of services].	4,64,970/-
15	Amount debited from the CENVAT Account [shall be equal to the amount claimed as refund (14)].	4,64,970/-

As per the condition stipulated under Notification No. 27/2012-CE (NT) dt.18.06.2012, read with details mentioned in Form A and Rule 5(1)(D) of the Cenvat Credit Rules, 2004, the refund amount will be determined by adopting the following formula :

$$\text{Refund Amount} = \frac{[\text{Export turnover of goods} + \text{Export turnover of services}] \times \text{Cenvat Credit taken}}{\text{Total Turnover}}$$

During the verification of the refund claim certain discrepancies were noticed and accordingly letter was issued to the appellant seeking clarifications on various matters. The Adjudicating authority based on the queries raised during the scrutiny of the claim and the reply of the appellant in this regard, sanctioned the refund claim of Rs. 2,45,072/-, and rejected the refund claim of Rs.2,19,898/-.

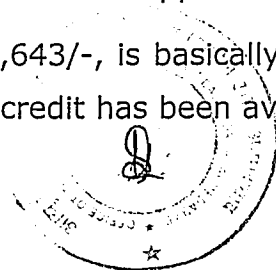
4. Being aggrieved by the impugned order dt. 09.02.2017, the appellant has filed this appeal before me on the grounds that (i) the Refund Sanctioning authority's contention to reject the refund claim by saying that it is not an ineligible input service is invalid; (ii) the premises at Parshwanath Square, Ahmedabad, is used solely for the purposes of the operations of the manufacturing plant of the appellant, and so the Cenvat credit on rent of immovable property should be allowed; and (iii) the import clearing service charges paid by the appellant on the invoice issued by M/s. United Arab Shipping Agency should be allowed.

5. During the personal hearing, Shri Arjun Akruwala, C.A. of the appellant appeared before me and reiterated the grounds of appeal and also submitted that Rs.18375/- + Rs.39/- + Rs.3209/-, is not being contested.

6. I have carefully gone through the facts of the case on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of personal hearing.

7. The question to be decided is as to whether the Cenvat credit availed by the appellant on services for which invoices mentioning their office address can be considered as admissible Cenvat credit and whether the invoices issued by M/s. United Arab Shipping Agency Co. (I) Pvt. Ltd. of Rs. 16,255/-, is admissible as the invoice is not in the name of the appellant.

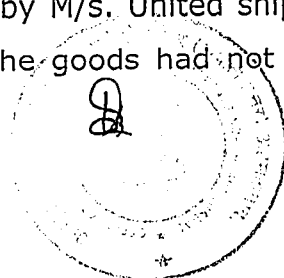
8. The rejection of Refund to the tune of Rs. 2,03,643/-, is basically due to the reason that the input services on which cenvat credit has been availed



by the appellant has been taken on the invoices addressed to some other premises which is not their registered premises and Rs.16,225/-, is due to the reason that the invoice is not in the name of the appellant. I find that the credit availed on Renting of immovable property service, printing service, Internet charges and Courier charges are all admissible services on which cenvat credit can be availed by any registered person. However, the invoices on the strength of which credit is availed should be in the registered name and address of the applicant. The case laws mentioned by the appellant are irrelevant in this regard. Regarding renting of premises service issue mentioned above, it is contended that the rented premises which is not reflected in their Service Tax Registration is used by the administrative Head Office of the appellant. Service Tax Registration Application is in the name of factory and there is no column specified in such application for any address of the Head office or Administrative office or Registered office. I find that inclusive part of the definition of "input service" covers the office relating to such factory. It is sufficient evidence to conclude that renting service of the office premises is utilized and consumed in export activity. I hold that renting of immovable property service is admissible credit and appellant is eligible for refund of that amount. I allow the refund of Rs. 1,82,385/-, on invoices of M/s. Zaveri & Co. Exports which is raised for the rent of premises having address at Unit No. 101 and 102 on the 1st floor, Parshwanath E Square, Satellite, Ahmedabad.

9. The issue regarding unutilized Cenvat Credit of Rs. 39/-, on printing charges, Rs.18375/-, on Internet charges, and Rs.3,209/-, on Courier charges, which is having address at Unit No. 101 and 102 on the 1st floor, Parshwanath E Square, Satellite, Ahmedabad, is not being contested by the appellant, as confirmed by their representative during the personal hearing with me on 20.12.2017. Hence, I don't go in to this issues. Impugned OIO in respect of the claim is final for these services.

10. As regarding the unutilized Cenvat credit of Rs.16,255/-, availed by the appellant on the basis of Invoice No. 38245 dated 29.02.2016, issued by M/s. United Arab Shipping Agency Co. (I) Pvt. Ltd., which is not in the name of the appellant, has been conclusively found to be inadmissible by the adjudicating authority. The appellant in their appeal has informed that M/s. Anand Tradelink had sold the goods (Polypropylene Granules Moplen HP 456J) to M/s. Karan Impex who was the first buyer of the goods. M/s. Anand Tradelink appointed M/s. United Arab Shipping Agency to provide the goods to M/s. Karan Impex. Therefore, the invoice issued by M/s. United shipping Agency is in the name of M/s. Karan Impex, but the goods had not been



received by M/s. Karan Impex, as the high sea sales agreement has been entered in between M/s. Anand Tradelink Pvt. Ltd. and M/s. Skaps Industries Pvt. Ltd. In support of this contention they have submitted copies of the Invoice issued by M/s. United Arab Shipping Agency Co. (I) P. Ltd., which shows the buyers name as M/s. Karan Impex, and they have also submitted a copy of Bill of Lading of that product in which the Consignee's name is again M/s. Karan Impex. In the light of the above two documents indicating the consignee's name as M/s. Karan Impex, the appellant's High Sea Sale Agreement with M/s. Anand Tradelink Pvt. Ltd. cannot be considered as a legal document for availing Cenvat credit under Rule 9 of the Cenvat Credit Rules, 2004. I therefore, hold that Cenvat credit and consequently refund is inadmissible to the appellant, for the unutilized Cenvat credit of Rs.16,255/-.

11. In view of above, appeal filed by the appellants is partially allowed to the extent of Rs. 1,82,385/-.

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

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

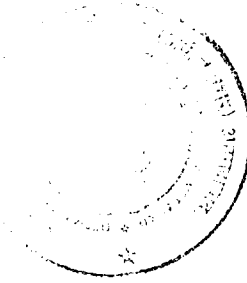
उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

ATTESTED

(R.R. NATHAN)
SUPERINTENDENT,
CENTRAL TAX APPEALS, AHMEDABAD.



To,

M/s. Skalp Industries India Pvt. Ltd.,
Plot No-A/20, Survey No.423,
Mahagujarat Industrial Estate,
Moraiya, Taluka- Sanand,
Ahmedabad - 382 210

Copy to:

- 1) The Chief Commissioner, Central Tax, GST, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad-North.
- 3) The Dy./Asst. Commissioner, Division-III, Central Tax, GST, Ahmedabad (North), Ahmedabad.
- 4) The Asst. Commissioner(System), Central Tax, Hqrs., Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.