



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)110 /North/Appeals/2018-19

7801 to 7805

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-125-18-19

दिनांक Date : 09-Nov-18 जारी करने की तारीख Date of Issue 1/1/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shariker Commissioner (Appeals)

ग Arising out of Order-in-Original No Div-VII/North/106/Refund/Nirma/17-18
Dated 12-Jul-18 Issued by Assistant Commissioner , Central GST , Div-VII ,
Ahmedabad North.

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

M/s Nirma University

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 :-

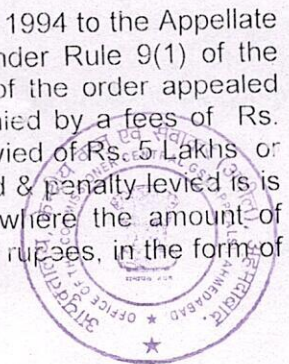
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हॉस्पिटल कंपाउण्ड, 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 रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 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 accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is 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 **अधीक्षक** केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश एवं 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 (सीस्टैट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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 होगी।

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.



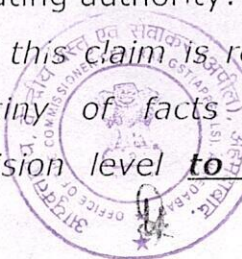
ORDER-IN-APPEAL

M/s Nirma University, Sarkhej-Gandhinagar Highway, Ahmedabad (hereinafter referred to as 'the appellant') has filed the present appeal against Order-in-original No. Div-VII/North/106/Refund/NIRMA/17-18 dated 12/07/2018 (hereinafter referred to as 'the impugned order') passed by Dy. Commissioner, CGST, Division-VII, Ahmedabad-North (hereinafter referred to as 'the adjudicating authority').

2. The appellant had filed a Refund claim on 13/04/2016 for an amount of **Rs.9,66,775/-** [Rs.5,06,533/- for F.Y. 2014-15 and Rs.4,60,242/- for F.Y. 2015-16] under Section 11B of the Central Excise Act, 1944 (hereinafter CEA, 1944) made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994, on the ground that they had wrongly paid/ deposited Service Tax amount of Rs.9,66,775/- on Online Information & Database Access service & Retrieval service under reverse charge mechanism as receiver of service. A Show Cause Notice F.No.01/04-11/Refund/Nirma/16-17 dated 20/07/2016 (hereinafter referred to as 'the SCN') was issued to the appellant proposing to reject the refund claim on the grounds of limitation applicable to the amount of Rs.5,06,533/- for R.Y. 2014-15 as the refund claim was filed on 13/04/2016 and on the grounds of unjust enrichment on the entire amount in terms of Section 12B of CEA, 1944 made applicable to Service Tax matter vide Section 83 of the Finance Act, 1994 on the presumption that the incidence of duty was passed on to the buyer.

3. While deciding the SCN, the adjudicating authority i.e. the Asstt. Commissioner of Service Tax, Division-I, Ahmedabad, vide the original order No. SD-01/Refund/ 20/AC /Nirma/16-17 dtd. 23.09.2016, relied on the observation of pre-audit by holding that the said observation cannot be misplaced and the refund claim is liable to be rejected on the ground of unjust enrichment. Based on these findings, the adjudicating authority rejected the entire refund claim of Rs.9,66,775/- on the ground of unjust enrichment. Being aggrieved by the order dtd. 23.09.2016, the appellant filed an appeal before the Commissioner (Appeals). After considering the appeal and case records/documents available, the Commissioner (Appeals) allowed the appeal by way of remand for re-adjudication with following observations in para 8 of the OIA No. AHM-EXCUS-002-APP-102-17-18 dtd. 25.09.2017 and I quote the relevant part for ease of understanding the directions to be followed by the adjudicating authority:

*"I find that the veracity of this claim is required to be verified and established by scrutiny of facts and figures at the jurisdictional Range / Division level **to ascertain that the***

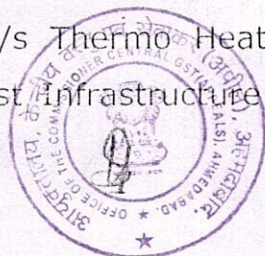


amount covered under the refund amount has been actually credited in to the said accounts of the students concerned to be refunded and that such amounts were actually refunded to any students who had completed their courses with the university. Therefore, the appeal is allowed by way of remand to the original authority to get the facts verified and give a reasoned order clearly commenting on the evidences produced by the appellant and then arrive at a decision as to whether the incidence of the amount claimed under the impugned refund has been passed on to the student or whether such incidence has been refunded / credited to the accounts of the students for refunding on completion of the courses.”
(emphasis supplied)

On remand proceedings, the adjudicating authority, vide the impugned order, has rejected the refund claim and hence this appeal.

4. Aggrieved by the impugned order, the appellant has filed the instant appeal, inter alia, on the following grounds:

- a) The findings of the adjudicating authority that the submission made by the appellant in their reply to the show cause notice and their letter dated 03.07.2018 are contradictory are not correct;
- b) That the accounting standards and the principals of accounting entries have not been properly appreciated by the adjudicating authority and that the entire amount of the refund claim does not pertain to the students' fee;
- c) That they immediately credited such amount to the books and reading materials account maintained which is an advance account for Rs. 8,65,566/- and also prepared the list of students whom the amount belongs to and for the same amount the appellant have shown receivable account;
- d) That the adjustments made through credit notes/ journal entries is well recognized under the Finance Act in as much as under Rule 6 (3) of the Service Tax Rules, 1994 as the refund through credit note/journal entries has been specifically recognized and permitted;
- e) That the amount of service tax paid amounting to Rs. 1,01,209/- towards library and periodicals is an expense account and is to be borne by the appellant and is not to be refunded to the students;
- f) That they rely on the case laws of M/s Shiva Electricals -2007 (7) S.T.R. 35 (Tri.), M/s Thermo Heat Tracers-2001 (132) E.L.T. 455 (Cestat), M/s Modest Infrastructure -2013 (031) STR- 0650 (Guj.),



M/s Edelweiss Securities Ltd. -2016-TIOL-CESTAT-MUM., 2013 (032) STR 0630 (Tri.-Ahmd.) in the case of Eastern Shipping Agency.

5. Personal hearing was held on 11.10.2018 in which Shri Vikram Singh Jhala, authorized representative appeared and reiterated the grounds of appeal.

6. I have carefully gone through the impugned order and the grounds presented in the appeal filed by the appellant. The appellant has explained that at the time of admission they received the fees towards Books & Periodicals Material expenses from the students as advance and during the tenure of study the appellant makes payments for such expenses out of this advance and at the end of the course, balance, if any, in the books of the appellant is refunded to the students. The appellant has explained that Books and Periodicals Material account is to be considered as running account of the students with the appellant for specific purpose of making expenses related to Books and Periodicals. The appellant has further claimed that as soon as they realized that the payment of Service Tax had been made mistakenly, they have immediately credited such amount to the Books and Reading Material and Periodical accounts even before filing the refund claim and at the time of creation of liability to pay students, the appellant had also at the same time prepared the list of students to whom the amount belonged and was liable to be refunded. The appellant has produced copies of the journal vouchers in support of their claim that the incidence of the mistaken Service Tax was not passed on to the students. I find that the appellant is an educational institution and is not a commercial institute. I also observe that the veracity of this claim has also been verified and established as is evident from the para 13 and 14 of the impugned order. I find that the adjudicating authority has recorded that as per verification report submitted by the jurisdictional Range / Division vide their letter dtd. 06.07.2018, the submissions made by the appellants have been got verified. I therefore hold that the ends of the justice would be met if this case is remanded to the adjudicating authority for the only purpose that in the event of the appellant submitting the evidence that the money involved in the refund claim has actually been refunded to the concerned students and not merely credited in the accounts as claimed by the appellant, the refund claim shall be sanctioned without any further delay. In view of these findings, the appeal is allowed by way of remand and the impugned order is set aside.

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



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

उमा शंकर

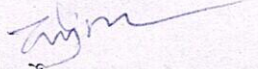
(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित



(धर्मेन्द्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

By R.P.A.D.



By R.P.A.D.

To

M/s Nirma University,

Sarkhej-Gandhinagar Highway,

Ahmedabad-382 481.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: VII, Ahmedabad (North).
5. Guard File.
6. P.A.