



सत्यमेव जयते

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

☎ : 079 - 26305136



क फाइल संख्या : File No : V2(ST)166 to169 /North/Appeals/2018-19 9730709734

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-002-APP-167 to 170-18-19

दिनांक Date : 29/01/2019 जारी करने की तारीख Date of Issue 25/3/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-OriginalNo GST-06/Refund/26 to 29/AC/RJM/ibaset/2018-19 Dated 30&31/08/2018 Issued by Assistant Commissioner , Central GST , Div-VI , Ahmedabad North.

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

**M/s iBaset India software Private  
Limited**

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:-

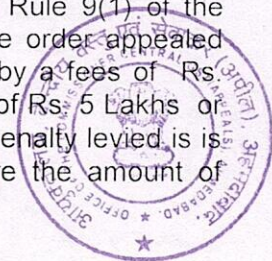
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, 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 नागिक सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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 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 **अधीक्षक** 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 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 13 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 रुपए 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,

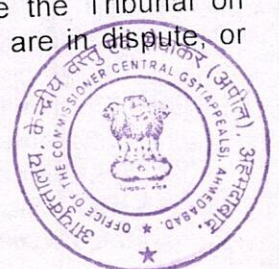
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

The below mentioned appeals have been filed against rejection of refund, the details of which are as follows:

Sr. No.	Name of the appellant	Impugned OIO & date	Impugned OIO issued by	Amount of refund rejected	Appeal No.
1	iBASEt India Software Private Limited, Corporate House No. 10/3, 11/3 & 11/4, Nr. Sola Bridge, SG Road, Thaltej, Ahmedabad 380 054.	GST-06/Refund/26/AC/RJM/ibaset/ 18-19 dated 30.8.18	Assistant Commissioner, Division VI, CGST, Ahmedabad North Commissionerate.	956989	V2(ST)166 /North /Appeals/2018-19
2		GST-06/Refund/26/AC/RJM/ibaset/ 18-19 dated 31.8.18		1088016	V2(ST)167 /North /Appeals/2018-19
3		GST-06/Refund/28/AC/RJM/ibaset/ 18-19 dated 31.8.18		697607	V2(ST)168 /North /Appeals/2018-19
4		GST-06/Refund/29/AC/RJM/ibaset/ 18-19 dated 31.8.18		536015	V2(ST)169/ North /Appeals/2018-19

Since the issue involved in the aforementioned four appeals is similar, I am taking it up for decision vide this common OIA.

2. Briefly, the issue involved is that the appellant filed four refund claims for the periods July, 2016 to September 2016, October 2016 to December 2016, April 2017 to June 2017 and January 2017 to March 2017, under notification No. 27/2012-CE(NT) dated 18.6.2012, in respect of service tax paid on input services used in output services, exported without payment of service tax.

3. On scrutiny of the refund claim, as discrepancies were noticed, the same was communicated and further show cause notices, were issued. Later on, the adjudicating authority, vide the aforementioned impugned OIO, rejected the refund on the grounds that the appellant in the present case is merely an establishment of a distinct person in accordance with item (b) of explanation (3) of clause (44) of section 65B of the Finance Act, 1944; that the service fails to qualify as 'export of service' in as much as the claimant fails to comply with the provisions of Rule 6A(1) of the Service Tax Rules, 1994; that the appellant is not providing any service and is merely working as a back office of iBASEt Inc, USA; that the appellant is entirely dependent on finances provided by the iBASEt Inc USA; that its morality is entirely contingent upon the will and pleasure of iBASEt Inc., USA.

4. Feeling aggrieved, the appellant has filed this appeal raising the following averments in all the appeals:

- that the adjudicating authority has not raised any concerns regarding points A, B, C,D,E,G and H of the notice & therefore these issues are not in dispute;
- that both the appellant and iBASEt Inc. USA, are separate legal entities incorporated in different countries under different legislations;
- that the financial statements of both the appellant and iBASEt Inc. USA, are maintained separately at the respective registered offices; that the place of provisions is the location of the service receiver;
- that nothing in the agreement will create a partnership, joint venture or agency relationship between the parties;
- that consideration for the services is computed as per the agreement in accordance with the Income Tax transfer pricing regulations;
- that they are not a branch office of iBASEt India;
- that holding a meeting of the appellant at the address of iBASEt Inc., USA does not mean that both the companies are same;



- that section 173 of the Companies Act, 2013 read with Rule 3 of the Companies (Meeting of Board and its Powers) Rules, 2014, clearly depicts the companies are not debarred from holding board meetings outside India;
- that the Board meeting was held at the address of iBASEt Inc., should not lead one to an assumption that both the companies are the same; that they are separate legal entity under the respective applicable laws of the country and they maintain separate books of account and file separate returns under the respective country;
- that the bills were raised on iBASEt Inc., USA after following the rules and requirements of Transfer Pricing regulations of the Income Tax Act, 1961;
- that merely indicating the costing on the invoice does not mean that it is not a service but a reimbursement; that reimbursements do not have a margin; that if such receipt were merely reimbursements the appellant would not receive any mark up on such amounts; that the mark up represents the professional fees of the appellant and that it is providing services on his own account;
- that they would like to rely on the case of Tandus Flooring India P Ltd [WP No. 57422/2013] GoDaddy India Web Services P [Ruling no. AAR/ST/08/2016 dated 4.3.2016, Nihilent Technologies [2017(47) STR 53];
- that the impugned OIO has been passed on the basis of letter issued by the pre-audit department.

5. Personal hearing in all these appeals was held on 29.1.2019, wherein Ms. Khushboo Kundalia and Shri Hitesh Mundra, both CAs, appeared on behalf of the appellant and reiterated the grounds of appeal. The Learned CA further relied on the case of Tandus Flooring India Private Limited [2014(33) STR 33(AAR)], which was in their favour. It was further stated that as per the Income Tax Regulation, transfer pricing is to be cost + 18%. She also submitted copy of IT provision and further submitted a sample of invoice issued, to drive home the point that the invoices have been issued from India.

6. I have gone through the facts of the case, the grounds, the oral averments raised during the course of personal hearing. The primary question to be decided is whether the appellant, is eligible for refund or otherwise.

7. I have already mentioned in para 3 supra, the reasons on which the adjudicating authority rejected the refund. So first it needs to be examined whether the appellant fails to comply with the provisions of Rule 6A(1) of the Service Tax Rules, 1994, as held by the adjudicating authority or otherwise. Now, Rule 6A(1) of the Service Tax Rules, 1994, states as follows:

**6A. Export of services.-**

(1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-

(a) the provider of service is located in the taxable territory,

(b) the recipient of service is located outside India,

(c) the service is not a service specified in the section 66D of the Act,

(d) the place of provision of the service is outside India,

(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act

(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.

Further, service is defined under the Finance Act, 1994, as follows:

**Section [65B. Interpretations].—** In this Chapter, unless the context otherwise requires,—

(44) “service” means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—



(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or  
(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

*Explanation 1 . — For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—*

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

*'Explanation 2. - For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include —*

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out —

(a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in 7 organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998;.

(Finance Act 2016)

(b) by a foreman of chit fund for conducting or organising a chit in any manner.;

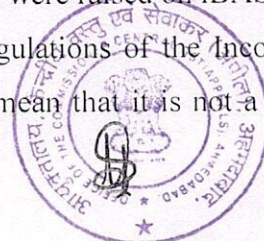
*Explanation 3. — For the purposes of this Chapter,—*

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

*Explanation 4. — A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;*

The adjudicating authority, as is evident, rejected the refunds on the grounds that the appellant in the present case is merely an establishment of a distinct person and hence in accordance with item (b) of explanation (3) of clause (44) of section 65B of the Finance Act, 1944 the service failed to qualify as 'export of service' in terms of Rule 6A(1) of the Service Tax Rules, 1994. The adjudicating authority, further held that the appellant is not providing any service and is merely working as a back office of iBASEt Inc, USA, and that the appellant is entirely dependent on finances provided by the iBASEt Inc USA and that its morality is entirely contingent upon the will and pleasure of iBASEt Inc., USA. The appellant on the other hand contends that both they and iBASEt Inc., USA are separate legal entities incorporated in different countries under different legislations; that their financial statements are maintained separately; that consideration for the services is computed as per the agreement in accordance with the Income tax transfer pricing regulations; that they are not a branch office of iBASEt India; that holding a meeting of the appellant at the address of iBASEt Inc., USA does not mean that both the companies are same; that the bills were raised on iBASEt Inc., USA after following the rules and requirements of Transfer Pricing regulations of the Income Tax Act, 1961; that merely indicating the costing on the invoice does not mean that it is not a service but a



reimbursement; that reimbursements do not have a margin; that if such receipt were merely reimbursements the appellant would not receive any mark up on such amounts; that the mark up represents the professional fees of the appellant and that it is providing services on his own account.

8. The bone of contention in this case is Rule 6A(1)(f) of the Service Tax Rules, 1994 read with explanation 3(b) of Section 65B(44) of the Finance Act, 1994. Rule 6A(f) of the rules, *ibid*, state that any service provided or agreed to be provided shall be treated as export of service when the provider of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 3(b) of Section 65B(44) of the Finance Act, 1994. The said explanation goes on to state that an establishment of a person in the taxable territory and any of his other establishment in a non taxable territory shall be treated as establishments of distinct persons.

9. The appellant has relied upon the case law of Tandus Flooring India P Ltd [2014(33) STR 33(AAR)] and [2015(39) STR 424], Godaddy India Web services P Ltd [2016(46) STR 808] and Nilhent Technologies P Ltd [2017(47) STR 53]. In the case before the Authority for Advance Rulings, New Delhi, [*Tandus Flooring India P Ltd [2014(33) STR 33(AAR)]*], the authority, in a similar matter, held as follows:

*" 4. ....In terms of Place of Provision of Service Rules, 2012, the place of provision of Service Rules, 2012, the place of provision of service is outside India. The applicant would be receiving payment in convertible foreign exchange. The applicants as well as the recipients of service are independent legal entities and not merely establishments of a distinct person as evidenced by the certificates of incorporation under the respective laws, copies of which have been furnished by them. Consequently, the bar under clause (f) above, would not apply to their case. Therefore, according to them the case meets the requirements of Rule 6A of the rules and the answer to Question No. 2 is in the affirmative.*

*7. We also hold that the provisions of Rule 6A of the Service Tax Rules, 1994, are satisfied in this case and therefore this would be a case of export of service."*

10. The appellant in para 15 of the grounds of appeal, has stated that they are located in Ahmedabad Gujarat State, and are registered as a Private Limited Company, incorporated under the Companies Act, 1956 of India, while iBASEt Inc., is located at Foothill Ranch, CA and is a company incorporated under the laws of the United States of America. Hence, the conditions stipulated under Rule 6A of the Service Tax Rules, 1994 are satisfied and therefore this would be a case of export of service. The appellants have also produced before me the certificate of incorporation of iBASEt Inc., USA and their incorporation certificate issued by RoC, Ahmedabad. I know that the judgement quoted above is one which is delivered by the Authority for Advance Rulings. However, I am only adopting the principle enunciated *vide* the aforementioned judgement, which in any case would apply to the present dispute, owing to the facts being similar.

11. In view of the foregoing, the rejection of refund by the adjudicating authority on the grounds that the appellant had failed to comply with the provisions of Rule 6A(1)(f) of the Service Tax Rules, 1994 read with explanation 3(b) of Section 65B(44) of the Finance Act, 1994, and that the service fails to qualify as 'export of service', is not tenable. The appeal is therefore allowed with consequential relief if any.



12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
12. The appeals filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : 29.1.2019

Attested

(Vinod Lukose)  
Superintendent (Appeal),  
Central Tax,  
Ahmedabad.

By RPAD.

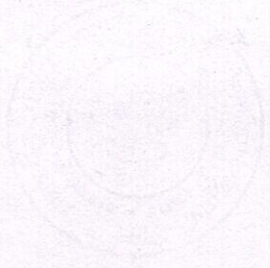
To,

iBASEt India Software  
Private Limited ,  
Corporate House No. 10/3, 11/3 & 11/4,  
Nr. Sola Bridge,  
SG Road, Thaltej,  
Ahmedabad 380 054.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad North Commissionerate.
3. The Assistant Commissioner, Central Tax Division- VI, Ahmedabad North Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
5. Guard File.
6. P.A.





*Faint handwritten text or signature.*

