



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.

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5181 to 5185

क फाइल संख्या : File No : **V2(ST)26 /North/Appeals/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-21-18-19**

दिनांक Date : **25-Jun-18** जारी करने की तारीख Date of Issue **16/7/2018**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **GST-06/Ref/39/AC/KMM/Zaptech** Dated **05-Mar-18** Issued by **Assistant Commissioner** , Central GST , Div-I , Ahmedabad North.

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

M/s Zaptech solutions pvt ltd

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 :-

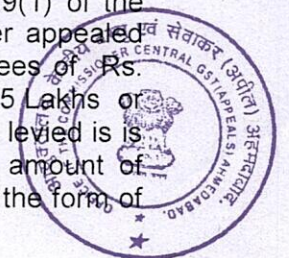
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 is 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 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 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) 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 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 (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. Zaptech Solution, 14, Sigma-I Corporate, B/h. Rajpath Club, Bodakdev, Ahmedabad (*hereinafter referred to as the 'appellants'*) have filed the present appeal against the * Order-in-Original number GST-06/Refund/39/AC/KMM/Zaptech/2017-18 dated 05.03.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad-North (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants had filed a refund claim amounting to ₹2,52,737/- for the period from October 2016 to December 2016 under Notification number 27/2012-CE(NT), dated 18.06.2012 in respect of Service Tax paid on input(s) services (specified services) used in output services/goods exported without payment of Service Tax.

3. During scrutiny of the claim, the adjudicating authority had found that the appellants had filed the claim on 03.10.2017 and therefore, an amount of ₹6,53,566/- cannot be considered as export turnover of the service in term of clause of sub-rule 5 being time barred. Further, it was seen that the CITI Bank advice, submitted by the appellants, has mentioned as "THIS IS AN ADVICE AND NOT TO BE CONSTRUED AS AN FIRC". Thus, the adjudicating authority being dissatisfied by the documents submitted by the appellants, rejected the entire refund claim of ₹2,52,737/- vide the above mentioned impugned order.

4. Being aggrieved with the impugned order the appellants have preferred the present appeals. The appellants have submitted that the adjudicating authority has rejected the claim without issuing any show cause notice and without providing any opportunity of being heard. They claimed that the adjudicating authority has rejected the bank advice submitted by the appellants. The said bank advice clearly states that the appellants had received the foreign currency in lieu of export of software consultancy. The appellants further alleged that the adjudicating authority has ignored the fact that the refund for quarter 1 (from 01.04.2016 to 30.06.2016) of the appellants was already sanctioned by accepting the payment advice as valid proof of inward certificate. They further argued that even if the adjudicating authority has not accepted Corporation Bank payment being time barred and non submission of FIRC, the appellants are eligible for the refund amounting to ₹59,581/- as HDFC Bank is already providing FIRC as required by the former. Thus, they claimed that the refund submitted by them was wrongly rejected and same should be sanctioned to them and requested to set aside the impugned order.



5. Personal hearing in the matter was granted and held on 26.06.2018. Shri Shri Sandip Gupta, Chartered Accountant, appeared before me on behalf of the appellants and reiterated the contents of appeal memo and requested to allow the refund claim. Shri Gupta informed me that CITI bank had issued advice and HDFC bank had issued FIRC but the entire refund was rejected without verifying the available FIRCs.

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

7. Regarding the issue that the appellants were not given any opportunity to present their case properly as per the principle of natural justice as no show cause notices were issued to them nor they were heard in person; I consider that the Adjudication proceedings shall be conducted by observing principles of natural justice. The principles of natural justice must be followed by the authorities at all levels in all proceedings under the Act or Rules and the order passed in violation of the principles of natural justice is liable to be set aside by Appellate Authority. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. Natural justice has certain cardinal principles, which must be followed in every proceeding. Judicial and quasi-judicial authorities should exercise their powers fairly, reasonably and impartially in a just manner and they should not decide a matter on the basis of an enquiry unknown to the party, but should decide on the basis of material and evidence on record. Their decisions should not be biased, arbitrary or based on mere conjectures and surmises. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. The orders passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. The Supreme Court in the case of S.N. Mukherjee vs Union of India [(1990) 4 SCC 594], while referring to the practice adopted and insistence placed by the Courts in United States, emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise". The Hon'ble Supreme Court has further elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under;

".....If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with



the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. ...".

The adjudicating authority should, therefore, bear in mind that no material should be relied in the adjudication order to support a finding against the interests of the party unless the party has been given an opportunity to rebut that material. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

8. Now, coming to the main issue, I find that the claim has been rejected by the adjudicating authority for non-submission of FIRC's and time bar as certain part of the claim is delayed by one day. The appellants argued that they had submitted FIRC's issued by HDFC Bank before the adjudicating authority pertaining to the refund amount of ₹59,581/-. However, I find no mention of submission of FIRC's in the impugned order. Further, regarding the submission of Bank Advice, the Notification number 27/2012-CE (NT), dated 18.06.2012 has mentioned that BRC should be produced as a proof of realization of export proceeds. However, in the judgment of *Apotex Research Pvt Ltd & Ors. (2014-TIOL-1836-CESTAT-BANG)*, it has been pronounced that the exporter has to establish that consideration in foreign currency has been received in respect of invoices raised by him. The CBEC has further clarified the issue vide Circular number 112/06/2009-ST dated 12.03.2009 in terms of refund of Service Tax paid on specified services used for export of goods. The Board has clarified that in cases where banks do not issue FIRC for the reason that payments are received by cheque, refund may be allowed on the basis of duly certified bank statement. Thus, I consider that no such requirement is mandatory. Any document evidencing the convertible the payment has been received in convertible foreign exchange suffices the purpose. Further, I find that the adjudicating authority has not denied the fact that the appellants have exported the services and received foreign



currency. The only issue he had was non submission of FIRC. Further, I come to know, by the appellants, that the refund for 1st quarter i.e. April 2016 to June 2016 was already granted to them by accepting the payment advice (instead of FIRC) as valid proof of inward certificate. So, it is not understood by me as to what situation prevailed now which restricted the adjudicating authority to accept the payment advice for the 3rd quarter. The adjudicating authority should have mentioned the said situation elaborately in the impugned order.

9. In view of the above, I remand back the case to the adjudicating authority and proclaim that the claim needs to be judiciously verified in view of the clarification issued by the Board vide Circular number 112/06/2009-ST dated 12.03.2009. The adjudicating authority should accept the payment advice issued by the CITI Bank and verify the same along with the FIRCs issued by the HDFC Bank. While deciding the case, the adjudicating authority should follow the principles of natural justice as discussed by me in paragraph 7 above. The adjudicating authority should also check the applicability of the payment advice and FIRC in the refund claim. He must record the reasons very clearly as to why the payment advice and FIRC should/ not be considered in the process of sanction of the said claim. The appellants are also directed to provide all possible assistance to the adjudicating authority in relation to the above mentioned claim. The appeal is disposed off in terms of the discussion held above.

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

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

Umasankar

(उमा शंकर)

आयुक्त (अपील्स)

CENTRAL TAX, AHMEDABAD.

ATTESTED

S. Dutta
(S. DUTTA) 16/07/18

SUPERINTENDENT (APPEALS),
CENTRAL TAX, AHMEDABAD.



To,
M/s. Zaptech Solution,
14, Sigma-I Corporate,
B/h. Rajpath Club, Bodakdev,
Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Ahmedabad-North.
- 3) The Dy./Asstt. Commissioner, Central Tax, Division-VI, Ahmedabad-North.
- 4) The Asstt. Commissioner (Systems), Central Tax Hq, Ahmedabad-North.
- 5) Guard File.
- 6) P. A. File.



