



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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क फाइल संख्या : File No : **V2(ST)194 /North/Appeals/2018-19** / 10163-10167

ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP-224-18-19**

दिनांक Date : **28/03/2019** जारी करने की तारीख Date of Issue **30/04/19**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-OriginalNo**GST-06/Refund/41/AC/RJM/lmark/2018-19**
Dated **18/10/2018** Issued by **Assistant Commissioner** , Central GST , Div-VI ,
Ahmedabad North.

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

M/s lmark Tech360 LLP

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:-

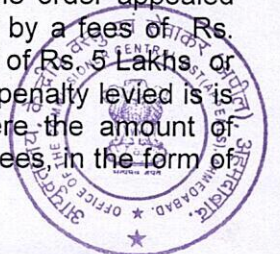
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 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 (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 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

This order arises on account of an appeal filed by M/s. Imark Tech360 LLP, 402, Gala Mart, Off South Bopal Road, Nr. Suncity Bopal, Ahmedabad (hereinafter referred to as the '*the appellants*' for sake of brevity) against Order-in-Original No. GST-06/Refund/41/AC/RJM/Imark/2018-19 dated 12.10.2018 (hereinafter referred to as the '*impugned order*' for the sake of brevity) passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as the '*adjudicating authority*' for the sake of brevity).

2. Briefly facts of the case are that the appellants were registered with the erstwhile Service Tax department bearing registration number AAEFI8878ASD001 under the category of Management or Business Consultant Service. They filed refund claims of ₹14,82,618/- on 20.03.2018 for the period October 2016 to March 2017 under Notification number 27/2012-C.E.(NT) dated 18.06.2012 (hereinafter referred to as '*the said Notification*' for sake of brevity) before the proper authority in prescribed format. During scrutiny of the claim, some discrepancies were noticed and accordingly, a show cause notice, dated 29.05.2018, was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, rejected the entire refund claim, on the grounds of limitation, in terms of provisions of Rule 5 of CENVAT Credit Rules, 2004 read with Section 11B of the Central Excise Act, 1944 made applicable to the Service Tax matter vide Section 83 of the Finance Act, 1994 and Notification No. 27/2012 C.E.(NT) dated 18.06.2012.

3. Being aggrieved with the impugned order, the appellants filed the present appeal before me. The appellants argued that the provisions of Section 11B are not applicable to the present case. They further argued that limitation of one year in view of Section 11B(1) would apply from the relevant date and on reading relevant dates prescribed vide explanation prescribed in Section 11B, none of the relevant dates are applicable to the present case.

4. Personal hearing in the case was granted on 07.03.2019 wherein Shri Pravin Dhandharia, Chartered Accountant, appeared on behalf of the appellants and reiterated the contents of the appeal memorandum.



5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellants and oral submission made at the time of personal hearing.

6. Now, to begin with, I find that the refund claims were rejected on the ground that the appellants failed to file the said claims after lapse of one year from the date of receipt of the foreign remittance. Now, I find that the relevant period for which the refund claim had been filed was October 2016 to March 2017. The turnover during the period has to be considered in terms of Rule 5(1)(D) of the Cenvat Credit Rules, 2004. Moreover, in paragraph 2 of the Notification number 27/2012-CE(NT) dated 18.06.2012, it is stipulated that a claim has to be filed after the completion of quarter and in the present case, the quarter ends on 31.12.2016 and 31.03.2017 and the appellants have filed the claim, according to the adjudicating authority, on 20.03.2018. Thus, I find that the appellants are well within the time frame mentioned in the notification.

The careful analysis of the calculating of time limit for the refund cases governed under Notification No.27/2012 CN NT as amended from time to time reveals that the period of limitation of one year will start from the date of receipt of BRC, however on the other hand refund claim has to be filed quarter wise. In such a situation it would be difficult on the part of an assessee with a question as to how to comply both the conditions simultaneously. I am of the opinion that the limitation has to be computed from the end of the quarter in which the export proceeds are realised and not individual BRC dates. The answer to this question is given in the case of CCE, Cus & ST, Bangaluru vs Span Infotech (India) Pvt. Ltd. [2018 (12) G.S.T.L. 200 (Tri. - LB)], wherein the Hon'ble Larger Bench of Tribunal held that "*Export of services completed only with receipt of consideration in foreign exchange as per Service Tax Rules, 1994 as well as successor provisions, i.e., Export of Services Rules, 2005 - Exporters of services given the option to file claims for such refunds once in a quarter and in respect of 100% EOUs, once in a month - Relevant date to be taken as the end of the quarter in which FIRC is received since refund claim is filed for the quarter.*" The ratio of this decision is squarely applicable to the case on hand. Accordingly I held that refund claim filed by the applicant is well within time limit had the last date of quarter in which BRC is received have been considered in light of the aforesaid decision.



7. In light of the above discussion, after listening to the arguments of the appellants and going through the impugned order and the grounds of appeal, I come to the conclusion that the adjudicating authority has wrongly rejected the refund claims by applying time limit under the provision of 11B of the Central Excise Act, 1944. Therefore, I set aside the impugned order with consequential relief to the appellants, if applicable.

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

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

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

S. Dutta
(S. DUTTA) 300419

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.

To,

M/s. Imark Tech360 LLP,

402, Gala Mart, Off South Bopal Road, Nr. Suncity Bopal,

Ahmedabad-380 058.

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-North.
3. The Dy. / Asstt. Commissioner, Central Tax, Div- VI, Ahmedabad-North.
4. The Addl./Joint Commissioner, (Systems), Central Tax, Ahmedabad-North.
5. Guard file.
6. P.A file.



