



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

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क फाइल संख्या : File No : **V2(ST)16 /North/Appeals/2018-19**

*5206 to 5210*

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-30-18-19**

दिनांक Date : **29-Jun-18** जारी करने की तारीख

Date of Issue *17/7/2018*

**श्री उमा शंकर**, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **06/JC/2018/GCJ** Dated **09-Feb-18** Issued by **Joint Commissioner** , Central GST , Div-VI , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता

**Name & Address of The Appellants**

### M/s Satyam Developers 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:-

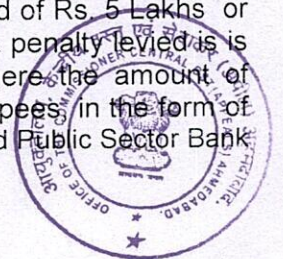
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल 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 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 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.

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065



## ORDER - IN - APPEAL

M/s. Satyam Developers Limited, Satyam House, B/h Rajpath Club, S G Highway, Ahmedabad 380059 (henceforth, "appellant") has filed the present appeal against the Order-in-original No. 06/JC/2018/GCJ dated 29.01.2018 (henceforth, "impugned order") issued by the Joint Commissioner, CGST, Ahmedabad - North (henceforth, "adjudicating authority").

2. To state briefly, the facts of the case are that on the basis of department's audit a show cause notice was issued to the appellant, a service tax registrant, for recovery of Cenvat credit wrongly taken to the tune of Rs.66,53,204/- in the years 2012-13 and 2013-14. In adjudication, credit amount of **Rs.50,58,161/-** taken in **2012-13** was found inadmissible for the reason that payment of service tax involved in the invoices issued by the service providers was not proved. Therefore, out of Rs.66,53,204/-, demand of Rs.50,58,161/- was confirmed and rest (Rs.15,95,043) was dropped. Further, out of Rs.50,58,161/-, the Cenvat credit of Rs.10,17,791/- was found inadmissible on the additional ground that input services had been rendered when appellant was availing the benefit of Notification No.1/2006-ST carrying a condition that Cenvat credit of service tax paid on input services and Cenvat credit of duty paid on inputs and capital goods was not taken.

3. The appellant, being aggrieved with the impugned order, has filed this appeal on different grounds. Following are the main grounds of appeal in very brief-

3.1 With regard to denial of Cenvat credit of Rs.50,58,161/-, appellant's submissions are on the issue of invoices not carrying the prescribed details like registration number of the service provider. Since this part of the matter has been considered in the impugned order in favour of the appellant, the submissions made are not relevant.

3.2 With regard to Cenvat credit taken on three invoices of Shree Krishna Construction, appellant states that as per Point of Taxation Rules, 2011 (POT Rules) date of invoices (1.7.2012) has to be treated as the date of completion of service; that therefore, denial of Cenvat credit assuming that service was provided prior to 1.7.2012, when there was restriction on availment of Cenvat credit alongwith abatement under Notification No.1/2006-ST, was not correct.

3.2.1 That w.e.f. 1.7.2012, when Notification No.1/2006-ST was replaced with Notification No.26/2012-ST, the condition of availment of Cenvat credit was



modified and Cenvat credit on input services became allowable. As per appellant, therefore, credit was rightly taken.

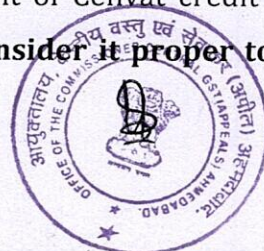
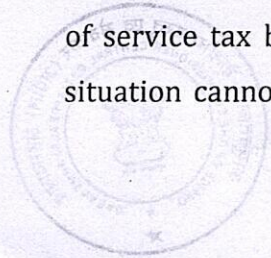
3.3 Appellant has also contested invocation of extended period and imposition of penalties under section 77 and 78 of the Finance Act, 1994.

4. In the personal hearing held on 16.05.2018, Shri Vipul Khandhar, Chartered Accountant reiterated the grounds of appeal and submitted some documents like copies of R.A. Bills.

5. I have carefully gone through the appeal. The adjudicating authority has denied the Cenvat credit of Rs.50,58,161/- taken by the appellant in the year 2012-13 on some (18) invoices issued by two service providers namely Shree Krishna Corporation and Aahir Construction on the ground that payment of service tax involved in these invoices by the service providers to the Govt. Account is in doubt. Further, the Cenvat credit of Rs.10,17,791/- taken on three invoices issued by Shree Krishna Construction, out of said 18 invoices, was found inadmissible on the additional ground that provision of services covered under these three invoices was completed before 1.7.2012 when the appellant was taking the benefit of Notification No. 1/2006-ST under which there was a bar on availment of Cenvat credit.

5.1 Thus, there are two different grounds for denial of Cenvat credit in the impugned order. With regard to the first ground that payment of service tax by the service providers is in doubt, appellant is silent in the appeal filed. On the second ground that there is no proof that service providers had paid the service tax amounts shown in the invoices, appellant's contention is that date of invoices (01.07.2012) signified the date of provision of service in terms of POT Rules and hence, the credit taken was in order as the condition of not taking credit on input services was no longer there in the new Notification 26/2012-ST effective from 1.7.2012.

5.2 With regard to first issue, I find that credit taken in 2012-13 on the basis of invoices issued by two service providers has been denied because payment of service tax involved in the invoices to the government account is not proved. For 2013-14, the adjudicating authority allowed the credit on the basis of chartered accountant's certification that service tax was remitted to the government account. Such a certification, however, is not there for the year 2012-13. A similar certification for 2012-13 would have served the purpose, however, the appellant's unwillingness or inability to produce such a certificate raises doubts about payment of service tax by the service providers. The availment of Cenvat credit in such a situation cannot be held to be valid. **I, therefore, consider it proper to remand**



**the issue back to the adjudicating authority for causing necessary verification to establish that service tax involved has not been deposited by the service providers in the government account. It would also be prudent that service tax payment for the year 2013-14, which has been accepted on the basis of CA certificate, is also verified from the concerned Division.**

5.3 With regard to second issue where credit is being denied on three invoices on the ground that provisions of services was completed before 01.07.2012 when there was a condition for taking the benefit of abatement under Notification No.1/2006-ST prohibiting availment of credit on input services, Appellant has argued that since invoices were issued on 01.07.2012 and the date of invoice is the date of provision of service in terms of POT Rules, credit taken is in order considering that from 01.07.2012 the condition prohibiting availment of credit on input services was done away with.

5.3.1 The adjudicating authority in the impugned order has noted that RA bills issued on 01.07.2012 should have been issued much before 01.07.2012 as in case of continuous supply of service, bills are raised on completion of each event as specified in the contract of service. Adjudicating authority also notes that without completion of service, RA bills cannot be issued as they are issued against stage wise completion of work and details of work done are required to be mentioned. Adjudicating authority concludes that for these reasons services involved in three invoices were actually rendered prior to 01.07.2012.

5.3.2 The point in time when the services were provided has to be determined in terms of POT Rules. As per rule 3 of POT Rules, the time when the invoice for the service provided or to be provided is issued would be the point of taxation (point in time when service shall be deemed to have been provided), however, where invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation would be the date of completion of provision of service. As per adjudicating authority, provision of services was completed much before 01.07.2012, however, I observe that adjudicating authority's findings in this regard are not clear to prove that impugned three invoices were not issued in time. **Therefore, this part of the matter also needs to be remanded back for determination of point of taxation in terms of POT Rules. If the point of taxation falls in the period prior to 01.07.2012, the denial of Cenvat credit on three invoices is justified.**

6. Accordingly, the case is remanded back to the adjudicating authority with a direction to decide it afresh in light of above observations.



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

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

*उमा शंकर*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested

*S. Hudda*

(Sanwarmal Hudda)

Superintendent

Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To,

M/s. Satyam Developers Limited,  
Satyam House, B/h Rajpath Club, S G Highway,  
Ahmedabad 380059



Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad North.
4. The Joint Commissioner, CGST, Ahmedabad- North
5. Guard File.
6. P.A.