



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर शुल्क भवन, 7th Floor, Central Excise Building,
सप्तवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015

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क फाइल संख्या : File No : **V2(STC)84/North/Appeals/17-18**

5422 to 5426

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP- 34-17-18**

दिनांक Date : **12-Jul-18** जारी करने की तारीख Date of Issue

8/8/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **18/AC/D/BJM/2017** Dated **30-Nov-17** Issued by **Assistant Commissioner** , Central GST , Div-III , Ahmedabad North.

ध अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

M/s ADI Finechem 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:-

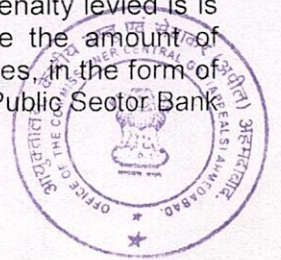
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, 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 (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 अर्जी 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



ORDER IN APPEAL

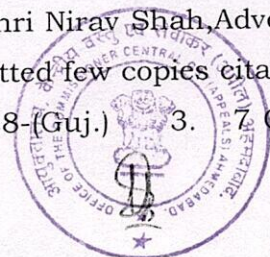
The subject appeal is filed by M/s.Adi Finechem Limited (now known as Fairchem Speciality Limited), 253/F & 312, Sanand-Kadi Highway, Chekhala, Godhavi, Ahmedabad- 382115 (hereinafter referred to as 'the appellant') against the Order in Original No.18/AC/D/BJM/2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, CGST Central Excise, Division-III, Ahmedabad-North (hereinafter referred to as 'the adjudicating authority'). Engaged in the manufacture of Deodorizer Distillate etc. Falling under Chapter 38 of the Central Excise Tariff Act, 1985. The appellant is availing the benefit of CENVAT Credit under CENVAT Credit Rules, 2004,

2. The facts in brief of the case are, during the course of audit of the records, it was noticed that, the appellant has received consultancy services from Mr. Steve Frandsen who is based in USA, under consulting agreement and paid consultancy fees. That Service Tax was not paid by the appellant on the amount of consideration paid for receiving the said service. In terms of Rule 2 (2)(l)(dXiv) of Service Tax Rules, read with Notification 30/2012-ST dated 20th June 2012, the extended period of demand was invoked. The appellant contested that the services were provided outside India and they were not liable to pay Service tax. The appellant was liable to pay service tax on the amount of fees paid under reverse charge mechanism. SCN was issued for recovery of total service tax Rs. 10,15,052/- not paid by the appellant along with interest and penalty. same was decided and confirmed.

3. Being aggrieved by the impugned order, the appellant has filed present appeal on the following main grounds:

- i. That they did not dispute the payment of service tax on recipient basis on services provided by Mr. Steve Frandsen and were willing to pay service tax as recipient of service; that they have paid the service tax and submitted the proof of the same.
- ii. That the aforesaid payment was admissible as Cenvat credit, hence, the aforesaid position was revenue neutral in nature; that they regularly paid central excise duty in cash, That no extra payment to the Government was payable and the amount which was payable on account of service tax, already paid;
- iii. That no interest or penalty is required to be imposed; that they do not dispute the service tax being payable to the Government as recipient of service; that, they request not to impose any penalty or interest on aforesaid late payment on the ground that whatever amount payable is Cenvatable and hence, there is no malafide intention in non-payment of service tax and, the amount was payable at the time of recipient of service, is now paid to the Government;
- v. That as they bonafiedly believed that, payment made to foreign person is not taxable, so they did not pay service tax and the same is paid knowing the law correctly. Also they mentioned that their unit was a large scale unit and regularly pay excise duty in cash. As it would be revenue neutral, that no interest or penalty required to be imposed.

4. Personal hearing in the matter was fixed on 26.06.2018. Shri Nirav Shah, Advocate appeared on behalf of the appellant. He reiterated GOA. Submitted few copies citations on revenue neutral. 1. (183) ELT 276- (SC.) 2. -(254)-ELT-628-(Guj.) 3. 7 GSTL 292 (Mad)



5. I have carefully gone through the facts of the case records, OIO, Grounds of Appeal Memorandum and citations. during the course of audit of the records, the appellant has received consultancy services from Mr. Steve Frandsen who is based in USA and paid consultancy fees for the same. that Service Tax was not paid by the appellant for the said service. In terms of Rule 2 (2(l)(dXiv) of Service Tax Rules, read with Notification 30/2012-ST dated 20th June 2012 ,the extended period of demand was invoked. The appellant contested that the services were provided outside India and they were not liable to pay Service tax. It was noticed that the appellant has received consultancy services from Mr, Steve Frandsen,, USA, under consulting agreement. the appellant was liable to pay service tax on the amount of consideration paid under reverse charge mechanism.SCN was issued for recovery of service tax not paid by the appellant along with interest and penalty. Same was decided and confirmed.

6. I find that, as per section 4 of the agreement, consideration for the services was a fixed amount of \$8,000 per month. Further as per Section 6 of the agreement, it was observed that service provided by Mr. Steve Frandsen was purely in the nature of Consultancy services which was provided directly to the appellant for which fixed amount was received as consideration and there was no third person involved. Further, it was cleared from the terms and conditions of the agreement that the service in question provided by Mr. Steve Frandsen on his own account which excluded from the definition of 'intermediary services'. Therefore, in terms of Rule 3 of POP Rules, 2012, the place of provision of service falls under the location of service receiver.

7. Further I find that, Under Section 2(l)(d)(iv) of Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated. 20.06.2012, in respect of certain taxable services, the liability to pay service tax is placed on the receiver of the services. Therefore, under clause 2(l)(dXiv) of Service Tax Rules,1994 and under Sr. No. 10 of Notification No.30/2012-ST, in respect of taxable services provided from a non taxable territory i.e. outside India and received by a person located in taxable territory i.e. in India, the liability to pay service tax was placed on the receiver located in India. In this case, the consultancy service provided by Mr, Steve Frandsen was a taxable service which was not covered under negative list and liable to service tax. Therefore, the appellant was liable to pay service tax on fees paid for consultancy service under reverse charge mechanism.

8. I also find that the appellant has neither assessed service tax on consultancy services received by them nor paid service tax on the same within such time, and not furnished the details in their ST-3 returns, thereby contravened provisions of Finance Act, 1994 and Service Tax Rules,1994. The fact of non-payment of service tax and failure to follow the statutory provisions were noticed during the course of audit. The appellant has not informed the facts to the Department. The appellant was a manufacturing unit and also paying service tax on other taxable services under reverse charge mechanism, they were well aware of service tax law and provisions. In spite of the same, the appellant had not paid service tax on consultancy services received by them.



9. In view of above, I find that, non-payment of service tax on consultancy services received by them was nothing but a deliberate act on the part of the *appellant* to run away from their service tax liability. That the appellant has not paid service tax by reason of suppression of facts and by reason of contravention of provisions of Finance Act, 1994 and rules made there under with an intent to evade payment of service tax. I find that the appellant had contravened the provision of Section 68 of Finance Act, 1994 read with Rule 6 (I) of Service Tax Rules, 1994, Section 70, as they failed to pay service tax on consultancy services received from non-taxable territory with an intent to evade payment of Service Tax and therefore, rendered themselves liable for Penalty under Provisions of Section 78 of the Finance Act, 1994. The submission made by the appellant is not acceptable as the fact of non-payment of Service tax has come into light only after the findings of Audit. Had it not been found by Audit team, this would have gone unnoticed and it would have resulted in a loss to government's exchequer. The appellant is liable to penalty under Section 78 of the Finance Act, 1994.

10. I find that, the appellant in the submission mentioned that they did not dispute the payment of Service Tax on recipient basis on the consultancy service and accepted the tax liabilities and agreed to pay the service tax as demanded under show cause notice voluntary. It is therefore clear that there is no dispute on the issue as the appellant themselves has accepted the violation as mentioned in show cause notice, As the appellant has agreed that the service received by them is a consultancy service. The services were availed by the appellant from the period March 2015 to January 2016. Though the appellant accepted liability, Service tax has not been paid timely for the above period, there is a loss to government & the appellant also enjoyed considerable financial benefit. Therefore, I hold that the appellant is liable to pay applicable interest on delayed payment of service tax.

11. In view of the foregoing discussion and findings, I upheld the impugned order and disallow the appeal of the appellant.

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

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Attested

K.K.Parmar

(K.K.Parmar)
Superintendent (Appeals)
Central tax, Ahmedabad.

date- /7/18



By Regd. Post A. D

M/s. Adi Finechem Limited,
(now known as Fairchem Speciality Limited),
253/F & 312, Sanand-Kadi Highway,
Chekhala, Godhavi,
Ahmedabad- 382115

Copy to :

1. The Chief Commissioner, CGST Central Excise, Ahmedabad zone.
2. The Commissioner, CGST Central Excise, Ahmedabad-North.
3. The Asstt. Commissioner, CGST, Div-III, Ahmedabad-North.
4. The Asstt. Commissioner (Systems), CGST, Ahmedabad-North.
- ✓ 5. Guard File.
6. PA file.

