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 **टेलेफैक्स** : 079 - 26305136

6623 to 6627

क फाइल संख्या : File No : **V2(ST)94&81 /North/Appeals/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-EXCUS-002-APP-40-41-18-19**

दिनाँक Date : **13-Aug-18** जारी करने की तारीख Date of Issue 28/8/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **39&40/REFUND/2018** Dated **24-May-18**

Issued by **Deputy Commissioner ,** Central GST , Div-IV , Ahmedabad North.

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

M/s Piramal Enterprises 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 विरूद्ध 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 वहां 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 वहां 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 शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 होगे।**

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

Two appeals bearing Nos.94/North-Appeals/18-19 and 81/North Appeals/18-19 have been filed by M/s Piramal Enterprises Limited, Plot No.19, Special Economic Zone – PHARMEZ, Sarkhej–Bavla Highway - 8A, Village: Matoda, Taluka: Sanand, district: Ahmedabad – 382 213 (hereinafter referred to as the appellant) respectively against Orders-in-Original No.39/Refund/2018 dated 24.05.2018 and 40/Refund/2018 dated 24.05.2018 [for short impugned order] passed by the Deputy Commissioner of Central GST, Division-IV, Ahmedabad North (hereinafter referred to "adjudicating authority").

2. Briefly stated, the appellant had filed a refund claim of Rs.18,73,260/- and 7,61,283/-on 17.01.2018 and 30.01.2018 respectively under Notification No. 12/2013-ST dated 01/07/2013 in respect of Service Tax paid on specified services used for authorized operations in SEZ. The refund claims were decided vide impugned order under which the adjudicating authority has sanctioned 13,01,876/- and Rs.6,00,334/- and rejected refund claim amounting to Rs.5,71,384/- and Rs.1,60,949/-/- respectively against the impugned order on the ground that "renting of immovable property service, 'director sitting fee' and other taxable services 'other than 119 & other that 117' are not in the list of authorized services approved by Kandla SEZ, *vide* letter F. No. Customs/UAC Corres./2016 dated 01/04/2016 issued by Specified officer, KASEZ, Ahmedabad.

3. Aggrieved by the impugned order, the appellant have filed the instant two appeals on the following grounds that as per the condition in the Notification, list of services is required to be approved but after the introduction of the negative list of Service Tax, the SEZ authorities have not approved list of services individually, but default list of services has been declared whereby in the annexure it has been specifically defined all the services under list of approval and now the SEZ authorities are not approving individual services. So the services "renting of immovable property service, 'director sitting fee' and other taxable services 'other than 119 & other that 117' are squarely covered under default list of service, so request to relook the matter and allow the refund claim. The appellant relied on Hyderabad Automotive Design & Engineering Solutions (P) Ltd., vs C.C., C.Ex. & S.T., Hyderabad. When services were covred under the default list of services, there was no requirement to get approved individually, so the rejection of refund claim under Notification no. 12/2013-ST is required to be set aside.

4. Personal hearing was held on 26.07.2018. Shri Vipul Khandhar, C.A. appeared on behalf of the appellant. The learned C.A. reiterated the grounds of appeal. He submitted O.I.A No. AHM-EXCUS-002-APP-3-18-19 dated 27/04/2018 for Pirmal Enterprises.

5. I have carefully gone through the contents of the impugned order as well as the grounds of appeal filed by the appellant. I find that the issue relating to the rejection of refund claim on the ground that "renting of immovable property service, 'director sitting fee' and other taxable services 'other than 119 and 117' are not in the list of authorized services approved by Kandla SEZ, *vide* letter F. No. Customs/UAC Corres./2016 dated 01/04/2016 issued by Specified officer, KASEZ, Ahmedabad has already been decided by me in a similar appeal *vide* O.I.A. No. AHM-EXCUS-002-APP-3-18-19 dated 27/04/18 as pointed out by the learned C.A. during the

course of personal hearing. Even in the present case it is not disputed that the said services were used for export in the SEZ by the appellant. Therefore, there is merit in the claim of the appellant that in the regime of Negative List, the refund on the said services cannot be denied. On studying the case laws, I find that this matter is no more *res integra* and stands settled in the matter of Sundew Properties Ltd. Vs Commissioner of Customs, Central Excise & S.T., Hyderabad-IV – 2017 (3) G.S.T.L. 461 9Tri._Hyd.), where deciding on a similar matter of refund denied on the ground that certain services were not finding mention in the SEZ approval list, Hon'ble Tribunal decided in the following terms:

> "7. Firstly, it is undisputed that services i.e., Banking and Financial Services and Real Estate Agents Services were consumed by the appellant as an unit/developer in SEZ during the relevant period. When there is no dispute that services are consumed in a SEZ the question of rejecting the refund claim in itself is incorrect."

Following the above ratio, the impugned order is set aside to the extent that it rejects refund claim amounting to Rs.5,71,384/- and Rs.1,60,949/-and both the appeals are allowed.

7. The appeals filed by the appellant stand disposed of in the above terms.

(उमा शंकर)
आयुक्त
केन्द्रीय कर (अपील्स)

Date: / /2018

Attested

(Mohanan V.V)
Superintendent,
Central Tax (Appeals),
Ahmedabad.

By R.P.A.D.

To

M/s Piramal Enterprises Limited,
Plot No. 19, Special Economic Zone – PHARMEZ,
Sarkhej – Bavla Highway 8A, Village: Matoda,
Taluka: Sanand, District: Ahmedabad – 382 213.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: IV, Ahmedabad (North).
5. Guard File.
6. P.A.