



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)32 /North/Appeals/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-53-18-19**

दिनांक Date : **27-Aug-18** जारी करने की तारीख Date of Issue **11/9/2018**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No **CGST/Abad-North/Div-VII/S.tax-DC-017-17-18** Dated **16-Mar-18** Issued by **Deputy Commissioner** , Central GST , Div-VII , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

M/s Praveg Communications 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 :-

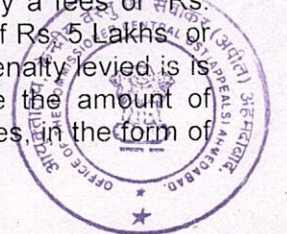
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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.



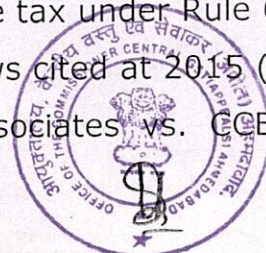
ORDER IN APPEAL

These appeals have been filed by M/s Praveg Communications Ltd., Shanti Arcade, 132 Ft. Ring Road, Naranpura, Ahmedabad-380013 (herein after referred to as the appellants) against the OIO No. CGST/Abad-North/D-VII/S.Tax-DC-017-17-18 dtd. 16.03.2018 (herein after referred to as the impugned order) passed by the Assistant Commissioner, Division-VII, Ahmedabad (North) (herein after referred to as the adjudicating authority).

2. The brief facts of the case are that on the basis of checking of the documents by the CERA audit, it was noticed that the appellants had short paid their service tax by Rs. 15,74,767/- in view of the fact that the appellants had claimed adjustment of excess payment of service tax under Rule 6 (1A), 6 (3) & 6 (4A) Service Tax Rules (STR for brevity) without making any advance/ excess payment of service tax and they could not furnish any letter intimation to the jurisdictional Range Superintendent regarding advance payment of service tax and they could not furnish any document in support of their claim. Accordingly a show cause notice dtd. 08.11.2016 was served upon the appellants demanding short paid service tax along with interest and proposed imposition of penalty. The adjudicating authority, vide the impugned order, confirmed the demand along with interest and also imposed penalty.

3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That the impugned order is a non-speaking order and in violation to the principle of natural justice and no independent findings have been given by the adjudicating authority and they rely on the case of Cyril Lasardo (Dead) vs. Juliana Maria Lasarado – 2004 (7) SCC – 431 and the case of Asst. Commissioner, Commercial Tax Department vs. Shukla & Brothers – 2010 (254) ELT-6 (SC);
- b) That the onus of non-payment of duty lies on the department and this onus has not been discharged;
- c) That the department has not analysed the copies of the invoices, letters, ledgers etc. and they have discharged their service tax liability of Rs. 15,74,767/- by means of challans and adjustment in terms of Rule 6 of the STR;
- d) Even otherwise, merely procedural lapses would not debar them from benefit of adjustment of service tax under Rule 6 of the STR;
- e) The appellants relied on the case laws cited at 2015 (40) S.T.R. 247 (Mum.) in the case of Garima Associates vs. CCE, Chandrapur,



2015 (38) S.T.R. 1230 (T.) in the case of Jubilant Organosys Ltd. vs. CCE, Meerut-II, 2016 (45) S.T.R. 101 (T.) in the case of Schwing Stetter (India) P. Ltd. vs. CCE and 2016 (41) S.T.R. 850 in the case of Plantech Consultants Pvt. Ltd. vs. CCE.

- f) That the consideration which the appellants have received is inclusive of the service tax payable and therefore the amount received should be taken as cum-duty price;
- g) That there is no suppression of facts as the department was fully aware of the facts in view of their regular filing of periodical returns and no penalty can be imposed.

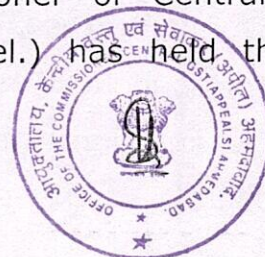
4. The personal hearing in the case was held on 24.07.2018 in which Ms. Madhu Jain, Advocate appeared on behalf of the appellants. She reiterated the grounds of appeal and stated that their submissions have not been considered and requested for remand. She also submitted a written submission stressing upon the grounds of appeal.

5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issue to be decided in the instant case is whether the suo moto adjustment of excess payment of service tax is permissible.

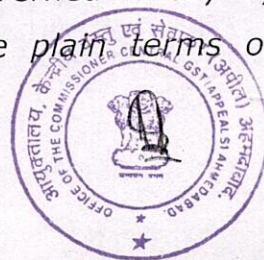
7. I find that the appellants have given the detailed month wise table showing excess payment of service tax and the adjustment and have contended that that they had paid service tax on Rs. 15,74,767/- in terms of Rule 6 of the STR. I find that the appellants have produced many documents in support of this contention. While perusing the impugned order, I find that the adjudicating authority had noted that no details of excess payment were provided by the appellants.

8. I have perused various decisions given by tribunals which have consistently held the issue of suo moto adjustment of excess payment of service tax as admissible. The Tribunal in the case of Dell india Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore cited at 2016 (42) STR-273 (Tri.Bang.) has held that adjustment of excess service tax paid should be allowed during later period as if it is not allowed, it would be against the provisions of Article 265 of the Constitution of India which says that "no tax shall be levied or collected except by authority of law". The Tribunal in the case of Jubilant Organosys Ltd. Vs. Commissioner of Central Excise, Bangalore cited at 2015 (38) STR-1230 (Tri.Del.) has held that such adjustments not to be denied on technical grounds.



9. I also find while perusing para 30 of the impugned order that the adjudicating authority has relied upon the case law of Hon'ble Supreme Court in the case of CCE, New Delhi vs. Hari Chand Shri Gopal - 2010 (260) ELT-3 (SC) in which it was held that if provisions granting exemption or concession specified certain conditions then such requirements are required to be obeyed or fulfilled exactly in the same manner as specified in the provisions and accordingly, has concluded that the appellants are not entitled for the benefit of adjustment of excess payment of service tax. In this regard, for ease of understanding, I reproduce the relevant part of the decision of Hon'ble Supreme Court in the case of Hari Chand Shri Gopal (supra):

*"22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are **directory in nature**, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In *Novopan Indian Ltd. (supra)*, this Court held that a person, invoking an exemption or concession provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in *Hansraj Gordhandas v. H.H. Dave - (1996) 2 SCR 253*, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption.(emphasis supplied)"*



I find that the adjudicating authority has wrongly interpreted the decision of the Apex Court and denied the benefit which is otherwise allowable. He should state, how non-intimation about adjustment would affect the "essence or substance of the notification"? I hold that the provisions contained in rules governing adjustment of excess payment provide the procedure of adjustment only and this is possible when there is excess payment. This is the primary requirement and the rest provisions are setting out the procedure. I accordingly hold that the adjustment of excess payment of service tax is admissible. I am of the view that the appellants have submitted copies of the documents on which their contention is based and the matter will have to be remanded to the adjudicating authority to verify the excess payment of service tax adjustment thereof and pass suitable order accordingly and the demand shall be adjusted according to the verified amount.

9. Considering the facts of the case and the fact that the appellants have submitted the documents, after verification, if any short payment remains, the demand of short paid service tax along with interest and penalty shall stand confirmed accordingly.

10. The appeal is disposed off accordingly with consequent relief.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

उमा शंकर

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित

R.P.A.D.
(धर्मेंद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To:

M/s Praveg Communications Ltd.,
Shanti Arcade,
132 Ft. Ring Road,
Naranpura,
Ahmedabad-380013

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (North),
- (3) The Dy./Astt. Commissioner, CGST, Div.-VII, Ahmedabad (North),
- (4) The Dy./Astt. Commissioner(Systems),CGST, Ahmedabad (North),
- (5) Guard File,
- (6) P.A.File.

