



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 टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : **V2(Ref)31 /North/Appeals/2018-19** **6746 to 6750**  
ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-67-18-19**  
दिनांक Date : **13-Sep-18** जारी करने की तारीख Date of Issue **24/10/2018**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No **Div-VII/North/81/Ref/Meditab/17-18** Dated **28-Mar-18** Issued by **Deputy Commissioner** , Central GST , Div-VII , Ahmedabad North.

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

**M/s Meditab software India Pvt 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 :-

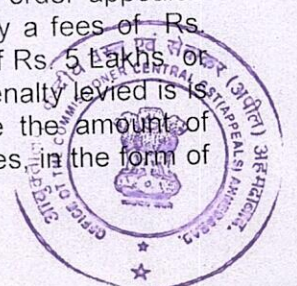
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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 43 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 होंगे।

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. Meditab Software (India) Pvt. Ltd., 219/A, 2<sup>nd</sup> Floor, Kalasagar Shopping Hub, Sattadhar Saibaba Temple, Ghatlodia, Ahmedabad (hereinafter referred to as the '*the appellants*' for sake of brevity) against the Order-in-Original No. Div-VII/North/81/Refund/Meditab/17-18 dated 28.03.2018 (hereinafter referred to as the '*impugned order*' for the sake of brevity) passed by the Deputy Commissioner, GST, Division-VII, 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 Service Tax Department under the category of Rent-a-Cab Service, Security/Detective Agency Service, Information Technology Software Service, Legal Consultancy Service, other taxable service other than the 119 list and holding Registration No. AAECM1391HSD001. They filed a refund claim for ₹12,67,254/- on 29.02.2018 for the quarter January 2017 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. The adjudicating authority, vide the impugned order, sanctioned an amount of ₹6,30,066/-, out of the total amount of ₹12,67,254/- 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 rejected the remaining claim of ₹6,37,188/- (₹12,365/- + ₹6,22,579/- + ₹2,244/-) on the following grounds;

(a) As stated at paragraph 12 of the impugned order, Cenvat credit amounting to ₹6,22,579/- does not fall under the ambit of input service as the nature of the service was works contract service (Pre-Audit observation).

(b) As stated in the same paragraph 12 of the impugned order, Cenvat credit amounting to ₹2,244/- was not used in relation to output service (Pre-Audit observation).

(c) As stated in paragraph 11 of the impugned order, in respect of Invoices amounting to ₹365/-, ₹3,750/- and ₹8,250/-, the amounts taken against input invoices are inadmissible to the appellants as these were taken on the base of proforma invoice and in one case, the Service Tax number mentioned, was a 14 digit one (rejected amount is ₹12,365/-).

3. Being aggrieved with the impugned order, the appellants filed the present appeal. The appellants argued that works contract service deals with transfer of property related to construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. But in the present scenario, transfer of property does not take place.



The service related to so called works contract service is purely related to labour service hence, does not fall under the ambit of works contract service. Regarding the issue of input credit not used in output service, the appellants pointed out that the appellants had obtained installation services at the registered premises by their input service provider and it is covered under the definition of input services (used in relation to modernization, renovation or repairs of their factory). They, in their grounds of appeal, did not contest the rejection of ₹12,365/-.

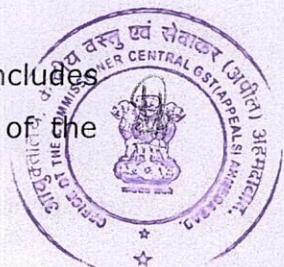
4. Personal hearing in the case was granted on 26.06.2018 wherein Smt. Sonal Jain, Chartered Accountant, appeared on behalf of the appellants and reiterated the contents of the appeal memorandum. She further, made additional submission in favour of the appellants.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and oral submissions made by the appellants at the time of personal hearing. The appellants, in their grounds of appeal, have contended that the input service received by them is merely labour work as there has been no transfer of property. In support of their claim, the appellants have submitted before me the photocopies of related invoices. Going through the said invoices, I find that the invoices are basically pertaining to installation charges which include erection, commissioning and installation of properties viz. glass partitions, air conditioners, furniture, electric gadgets etc. Thus, the activities were purely pertaining to services falling under the category of erection, commissioning and installation of the properties purchased by the appellants. Thus, in the instant case, I find that there has been transfer of service and not transfer of property. So, as there has been no transfer of property, the issue does not get involved by Works Contract Service and hence, I find that the adjudicating authority has wrongly rejected the amount of ₹6,22,579/-.

6. Regarding the second issue, I find that the adjudicating authority has rejected an amount of ₹2,244/- on the ground that the input services were not used in relation to the output service. The services mentioned in the impugned order are extension of warranty period for new TV and pest control service. The appellants, surprisingly, instead of countering the allegation with documentary evidence, parroted what they have said initially about installation service. They were silent about the services related to extension of warranty period for new TV and pest control service. In view of the above, I believe that they have nothing encouraging to say in their favour and thus, I consider that the adjudicating authority has rightly rejected the amount of ₹2,244/-.

7. Regarding the rejection of ₹12,365/-, I find that the appellants have not challenged the issue in their grounds of appeal and therefore, I understand that the appellants have accepted the observation of the adjudicating authority. Therefore, I refrain myself from making any comment in the said issue.

8. In view of discussions held above, I allow that portion of appeal which includes the amount of ₹6,22,579/- (as discussed in paragraph 5 above). For rest of the



amounts i.e. ₹2,244/- and ₹12,365/-, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants (as discussed in paragraphs 6 and 7 above).

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeal filed by the appellants stands disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स)

CENTRAL TAX, AHMEDABAD.

ATTESTED

*S. Dutta*  
24/10/18  
(S. DUTTA)

SUPERINTENDENT (APPEAL),  
CENTRAL TAX, AHMEDABAD.

To,  
M/s. Meditab Software (India) Pvt. Ltd.,  
219/A, 2<sup>nd</sup> Floor, Kalasagar Shopping Hub,  
Sattadhar Saibaba Temple, Ghatlodia,  
Ahmedabad-380 061.

**Copy to:**

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad (North).
- 3) The Dy./Asst. Commissioner, Central Tax, Div-VII, Ahmedabad (North).
- 4) The Asst. Commissioner (System), Central Tax, Ahmedabad (North).
- 5) ~~Guard File.~~
- 6) P.A. File.



