



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)101 /North/Appeals/2018-19

688/106885

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-76-18-19

दिनांक Date : 14-Sep-18 जारी करने की तारीख Date of Issue

29/10/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No GST-06/Refund/07/AC/KMM/Zaptech/2018-19 Dated 10-May-18 Issued by **Assistant Commissioner** , Central GST , Div-VI , Ahmedabad North.

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

### M/s Zaptech Solutions 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 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, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1988 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**

M/s. Zaptech Solution, 14, Sigma-I Corporate, B/h. Rajpath Club, Bodakdev, Ahmedabad (*hereinafter referred to as the 'appellants'*) have filed the present appeal against the Order-in-Original number GST-06/Refund/07/AC/KMM/Zaptech/2018-19 dated 10.05.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad-North (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants had filed a refund claim amounting to ₹4,45,947/- for the period from October 2015 to December 2015 under Notification number 27/2012-CE(NT) dated 18.06.2012 in respect of Service Tax paid on input(s) services (specified services) used in output services/goods exported without payment of Service Tax. During scrutiny of the claim, the adjudicating authority had found that the appellants had failed to submit BRCs in any of the export invoices as per the conditions laid down in paragraph 3(d) of the notification. Also, it was found that the amount of refund claim was more than the amount lying in balance at the end of the quarter. Accordingly rejected the entire refund claim of ₹4,45,947/- vide OIO number SD-02/REF-236/VIP/2016-17 dated 21.12.2016. Being aggrieved, the appellants filed an appeal before the undersigned and after going through the appeal, I, vide O-I-A number AHM-EXCUS-002-APP-121-17-18 dated 23.10.2017, remanded back the case to the adjudicating authority with a direction to ascertain the intention of the appellants and then condone the procedural lapse. The adjudicating authority was further directed to verify the FIRC's submitted by the appellants vis-à-vis their refund claim.

3. Thus, I find that the appellants had filed the claim once again, before the adjudicating authority in terms of my above observation. The adjudicating authority, vide the impugned order, submitted his observation as per my direction. Regarding the issue of less balance at the end of the quarter vis-à-vis more refund claim, the adjudicating authority observed that as per paragraph 2(g) of the Notification number 27/12-CE(NT) dated 18.06.2012, the amount of refund claimed shall not be more than the amount lying in balance at the end of the quarter for which refund claim is being made. The appellants had filed refund claim of ₹4,45,947/- whereas closing balance of Cenvat as on last day of the quarter was ₹1,23,557/-. Regarding the issue of FIRC, the adjudicating authority observed that the Notification number 27/2012-CE(NT) dated 18.06.2012 provided that the applicant shall file the refund claim along with BRC in respect of the services exported. Further, after a revised quantification, the adjudicating authority concluded that the appellants were eligible for refund of ₹33,935/- only.





However, the adjudicating authority, vide the impugned order, rejected the entire claim of ₹ 4,45,947/- filed by the appellants under the Notification number 27/2012-CE(NT) dated 18.06.2012 issued under Rule 5 of the Cenvat Credit Rules, 2004 read with Section 11B of the Central Excise Act, 1944 as made applicable in the case of Service Tax matter vide Section 83 of the Finance Act, 1994.

4. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that the adjudicating authority has rejected the claim without issuing any show cause notice. Thus, depriving the appellants from their right of being heard in person. They further contended that the adjudicating authority conveniently ignored the FIRC's submitted by them. The adjudicating authority, according to the appellants, accepted the fact that the appellants had exported the services and also received the foreign currency but conveniently rejected the claim of refund on the ground of non-submission of BRC. The bank advice, submitted by the appellants, was also ignored by the adjudicating authority. The appellants further asked that when the adjudicating authority has observed that the appellants were eligible for the refund amount of ₹ 33,935/-, why the said amount was also rejected along with the claim? Thus, they claimed that the refund submitted by them was wrongly rejected and same should be sanctioned to them along with consequential benefit and requested to set aside the impugned order.

5. Personal hearing in the matter was granted and held on 04.10.2017. Shri Sandip P. Gupta, Chartered Accountant, appeared before me on behalf of the appellants and reiterated the contents of the grounds of appeal. Shri Gupta showed me copies of the FIRC's/bank advice issued by Citibank and HDFC bank. Regarding the mismatch in closing balance and refund claimed, he argued that there was a merger of the appellants unit with another unit and the credit transferred on merger was shown in next quarter return. Shri Gupta further promised to file a paper book in this regard, but till date no additional document has been submitted by him.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that the adjudicating authority has rejected the appeal on two grounds, viz;

(a) The closing balance of CENVAT credit, as on last day of the quarter i.e. 31<sup>st</sup> December 2015 was less than the refund amount.

(b) The appellants could not produce BRCs in any of the export invoice.

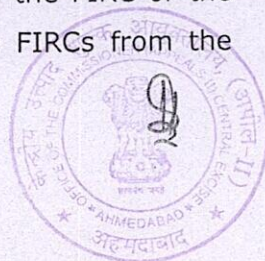
Now I will discuss both the issues point wise, in detail.





**6.1** Regarding the first issue, i.e. the closing balance of CENVAT credit, as on last day of the quarter i.e. 31<sup>st</sup> December 2015 was less than the refund amount, I find that the appellants have not submitted anything in their grounds of appeal. In serial number (x) of the grounds of appeal, they have added only a line stating that the adjudicating authority has conveniently ignored the letter submitted by them in respect of mismatch of Cenvat credit in Service Tax return and books of account. The said contention is not enough to prove their bonafide to enable the adjudicating authority to condone the lapse. On going through the observation of the adjudicating authority, it seems that the appellants could not submit any evidence in support of their claim. It may be possible that the appellants intended to clarify their legitimate intention during personal hearing which they could never avail. In view of the above, the case needs to be remanded back, once again, to the adjudicating authority so as to enable the appellants to explain their stance in regard to paragraph 2(g) of the Notification number 27/12-CE(NT) dated 18.06.2012.

**6.2.** Regarding the second issue, I find that the claim has been rejected by the adjudicating authority for non-submission of BRCs. The appellants argued that they had submitted FIRC's before the adjudicating authority pertaining to the export remittances in relation to the refund claims. However, I find that the adjudicating authority has rejected the said FIRC's. Now, I am going to repeat again what I already viewed in my previous Order. "The FIRC, in full, means 'Foreign Inward Remittance Certificate'. A Foreign Inward Remittance Certificate is a document that acts as a testimonial for all inward remittances and payments received in India from abroad. Most statutory authorities accept this document as proof that an individual or a business, has received a payment in foreign currency from outside the country. The Notification number 27/2012-CE(NT), dated 18.06.2012 has mentioned that BRC should be produced as a proof of realization of export proceeds. However, in the judgment of *Apotex Research Pvt Ltd & Others (2014-TIOL-1836-CESTAT-BANG)*, it has been pronounced that the exporter has to establish that consideration in foreign currency has been received in respect of invoices raised by him. The CBEC has further clarified the issue vide Circular number 112/06/2009-ST dated 12.03.2009 in terms of refund of Service Tax paid on specified services used for export of goods. On the issue of FIRC, the Board has clarified that in such cases where FIRC's are issued on consolidated basis, the exporter should submit self-certified statement along with the FIRC showing the details of export in respect of which the FIRC pertains. As the adjudicating authority has not denied the fact that the export has actually taken place, refunds should be allowed on such certified statements. If the adjudicating authority has any doubt on the authenticity of the FIRC or the export, he should have confirmed the genuineness of the FIRC's from the



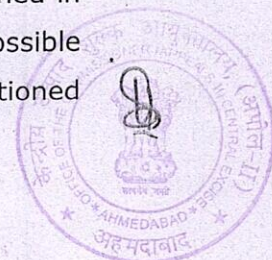


concerned bank. Also, exporters should maintain a register showing running account which should be reconciled between the export and the remittance periodically. It seems that the adjudicating authority has not properly verified the FIRCs submitted by the appellants".

Looking to the above, I find that the adjudicating authority has kept many open loop holes in the impugned order. In paragraph 8.2 of the impugned order, the adjudicating authority observed that the appellants had submitted some bank advices issued by Citibank, in place of FIRCs. In paragraph 8.3, the adjudicating authority concludes that the export turnover cannot be considered as a genuine export turnover (as the bank advices cannot be interpreted as FIRCs). This is a very bizarre argument on the part of the adjudicating authority. If all the relevant information can be gathered from the said bank advice and if the concerned bank can vouch on the genuineness of the said advice, there should not be any impediment in sanctioning the refund. It is held in a catena of judgments that where all the necessary particulars are duly disclosed on "any document", same shall envisage to be a proper document. Further, in paragraph 8.1 of the impugned order, the adjudicating authority states that the appellants had submitted certain FIRCs before him. However, in paragraph 9.2, he states that the appellants had not submitted FIRC/BRC. Also, in paragraph 9.3 of the impugned order, he quantified the claim again and concluded that the appellants are eligible for the refund of ₹ 33,935/-. He proceeds with the same position in paragraph 9.5 also but rejects the entire claim of ₹ 4,45,947/-. The approach of the adjudicating authority is very perplexing in absence of clear observation in the impugned order.

7. Now, going through the grounds of appeal, I find that the appellants have alleged that the adjudicating authority did not allot them the opportunity of being heard in person. This, I find, is a clear case of violation of principles of natural justice. The adjudicating authority simply jumped to a conclusion in absence of supporting evidence from the appellants. He should have offered the appellants the opportunity of personal hearing to avoid unnecessary allegation of injustice. This has converted the entire case into a single way traffic where one party has all the easy access of the path and the other party has been barred to even enter inside.

8. Therefore, looking to all the confusions, vagueness and allegations enveloping the case, it becomes fit to remand back to the adjudicating authority to verify it finally in light of my discussion held in paragraphs 6.1 and 6.2. The adjudicating authority is further directed to treat the appellants as per the clause mentioned in the principles of natural justice mentioned in paragraph 7 above. The appellants are also directed to provide all possible assistance to the adjudicating authority in relation to the above mentioned





claim. The appellants are hereby informed that this may be their final chance to contest their claim with the help of genuine documentary evidences.

9. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

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

*उमा शंकर*

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

*स. दुता*  
(S. DUTTA)

SUPERINTENDENT,  
CENTRAL TAX (APPEALS),  
AHMEDABAD.



To,  
M/s. Zaptech Solution,  
14, Sigma-I Corporate,  
B/h. Rajpath Club, Bodakdev,  
Ahmedabad

**Copy to:**

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Ahmedabad (North).
- 3) The Dy./Asstt. Commissioner, Central Tax, Division-VI (S.G. Highway, West), Ahmedabad (North).
- 4) The Asstt. Commissioner(System), Central Tax Hq, Ahmedabad (North).
- 5) Guard File.
- 6) P. A. File.



