



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)134 /North/Appeals/2018-19

689270 6896

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-002-APP-79-18-19

दिनांक Date : 22-Oct-18 जारी करने की तारीख Date of Issue 1-11-2018

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/22/AC/KMM/Contis/2018-19

Dated 27-Jul-18 Issued by Assistant Commissioner , Central GST , Div-VI , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

**M/s Contis Technologies 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:-

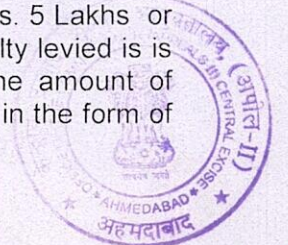
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल 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 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 अर्जी 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

M/s Contis Technologies Pvt Ltd., House "H", 1<sup>st</sup> & 2<sup>nd</sup> Floor, Mondeal Retails Park, Nr.Rajpath Club, S.G.Highway, Bodakdev, Ahmedabad [hereinafter referred to as "the appellant"] against Order-in-Original No.GST-06/Refund/22/AC/KMM/Contis/2018-19 dated 27.07.2018 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad North[hereinafter referred to as "the adjudicating authority"].

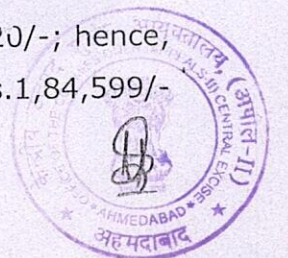
2. Brief facts of the case is that the appellant has filed a refund claim of Rs.3,21,488/-on 27.03.2018 for the period of January 2017 to March 2017 under notification No.27/2012-CE (NT) dated 18.06.2012 regarding unutilized CENVAT credit in respect of specified services used in export of services/goods. After scrutiny of the claim, a show cause notice dated 21.05.2018 was issued to the appellant for rejection of the said refund claim. Vide impugned order, out of the said refund claim, the adjudicating authority has sanctioned refund claim of Rs.1,84,599/-.

3. By disputing the rejection of refund claim amounting to Rs.70,609/-, the appellant has filed the instant appeal, inter-alia, stated that the adjudicating authority has disallowed the said amount on the grounds that the amount of refund claimed was more than the balance lying in the CENVAT credit Account; that the CENVAT credit availed ledger as on date of application show balance of Rs.2,50,819/- which is post reduction of the CENVAT application amount of Rs.2,72,7447/-. Therefore, total balance available before application was Rs.5,72,306/-. The adjudicating authority has not considered this fact while deciding the refund claim.

4. Personal hearing in the matter was held on 11.10.2018. Shri Khanjan Chhaya, Chartered Accountant appeared for the same and reiterated the grounds of appeal. He further submitted additional submissions.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the grounds of appeal and also submitted at the time of personal hearing.

6. At the outset, I find that the appellant has disputed the refund claim of Rs.70,609/- which was rejected by the adjudicating authority on the ground of non fulfillment of the condition mentioned at para 2.0 (g) of notification No.27/2012-CE (NT) supra which stipulates that the amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made at the time of filing of claim. As per contention of the adjudicating authority, the CENVAT credit available on the day of filing the refund claim is Rs.2,50,819/-, out of which they were not eligible for refund of Rs.66,220/-; hence, formula given in the said notification is required to be applied on Rs.1,84,599/-



(Rs.2,50,819 minus 66,220/-) to arrive the refund amount. Accordingly, the adjudicating authority has sanctioned the said claim.

7. The appellant contended that as on date of application, the balance of CENVAT credit shows of Rs.2,50,819/- which is post reduction of the CENVAT credit amount of Rs.2,72,747/-; that similarly, CENVAT credit deferment account which shows nil balance as refund application date was having balance of Rs.48,740/- was duly debited with the said amount; that total balance available in CENVAT account right before the application debit entry was of Rs.5,72,306/- (Rs.2,50,819/- + Rs.2,72,747/-+Rs.48,740/-) which very well above the amount of refund claimed. The appellant further contended that that adjudicating authority has not considered the above facts and considered the balance of available credit as Rs.2,50,819/- and reduced disallowance of Rs.66,220/- from therein and passed Rs.1,84,599/-.

8. On going through the facts stated above, I find merit consideration in the contention of the appellant. I observe that though they have submitted all above stated details before the adjudicating authority, the same was not considered by him while deciding the refund claim. For the clarity, the reproduced the CENVAT ledger account submitted by the appellant hereunder.

	Opening Balance	Transactions		Closing Balance
		Debit	Credit	
CENVAT Credit Availed	5,23,566.67 Dr		2,72,747.53	2,50,819.14 Dr
CENVAT Credit Deferment	48,740.68 Dr		48,740.68	
CENVAT Refund Appeal	1,93,610.14 Dr			1,93,610.14 Dr
Cenvat Refund Application	4,22,761.28 Dr	3,21,488.21		7,44,249.49 Dr
<b>Grand Total</b>	<b>11,88,678.77 Dr</b>	<b>3,21,488.21</b>	<b>3,21,488.21</b>	<b>11,88,678.77 Dr</b>

9. In the circumstances, I am of the opinion that the matter needs to be verified again in view of submissions made by the appellant with respect to admissibility of refund claim of Rs.70,609/-.

10. Therefore, in view of foregoing discussion, I remand the case to the adjudicating authority. The appeal stands disposed of in above terms.

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स)

Date : .10 .2018

Attested

*Mohan V.V.*  
(Mohan V.V)  
Superintendent (Appeal),  
Central Tax, Ahmedabad.  
By RPAD.

To,  
M/s Contis Technologies Pvt Ltd.  
House "H", 1<sup>st</sup> & 2<sup>nd</sup> Floor, Mondeal Retails Park,  
Nr.Rajpath Club, S.G.Highway,  
Bodakdev, Ahmedabad



Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad-North.
3. The Assistant Commissioner, System, Central Tax, Ahmedabad North.
4. The Assistant Commissioner, CGST, Div-VI, Ahmedabad North
5. Guard File.
6. P.A.

