



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
☎ : 079-26305065 टेलिफैक्स : 079 - 26305136



क फाइल संख्या : File No : **V2(ST)125 /North/Appeals/2018-19** **7257/07261**
ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-87-18-19**
दिनांक Date : **23-Oct-18** जारी करने की तारीख Date of Issue **29/11/2018**

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/105/Refund/Bhavesh/18-19**
Dated **10-Jul-18** Issued by **Deputy Commissioner** , Central GST , Div-VII ,
Ahmedabad North.

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

M/s Bhavesh C. Patel

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 :-

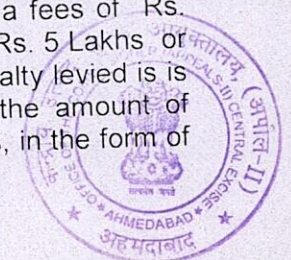
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल 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 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 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 आकषित 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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 हैं -

- (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 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. Bhavesh C. Patel, 303, Block-G, Akshat Heaven, Nr. Sahjanand City, Kudasana, Ta. & Dist. Gandhinagar (*hereinafter referred to as 'appellant'*) has filed the present appeal against the Order-in-Original number Div-VII/North/105/Refund/Bhavesh/17-18 dated 10.07.2018 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, CGST & C.Ex. Division-VII, Ahmedabad-North (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant was engaged in providing services under the category of 'Works Contract Service' having valid registration number AIFPP5157JSD001. The appellant had filed a refund claim of ₹6,89,021/- on 08.05.2018, before the adjudicating authority, under Section 102 of the Finance Act, 2016 read with the Finance Act, 1994 and rules made thereunder. The appellant provided services to CPWD. During scrutiny of the claim, it was noticed that the said refund claim was filed under Notification number 09/2016 dated 01.03.2016 in respect of Service Tax paid on the specified services used for Government, a local authority or a government authority. During scrutiny of the claim, it was noticed that the adjudicating authority, vide the impugned order, rejected the refund claim of an amount of ₹6,89,021/- being time barred.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal before me. The appellant argued that the adjudicating authority has wrongly rejected the refund claim of ₹6,89,021/- vide the impugned order which is not sustainable at all. He contended that the Service Tax paid by him was to be considered as a deposit in government account and no time limit has been fixed for refund of deposit. As the refund claim by the appellant is for the service tax paid by the appellant which was not required to be paid, it becomes a deposit in the government account and the time limitation will not be applicable in present case. Further, when by law, the Service Tax was not payable and even if the appellant has deposited such Service Tax, then the appellant is eligible for such amount of refund claim.

4. Personal hearing in the case was granted on 09.10.2018 wherein Shri N.R. Parmar, Consultant from M/s G.B. Patel & Associates, appeared before me, on behalf of the appellant, and reiterated the contents of the grounds of appeal.

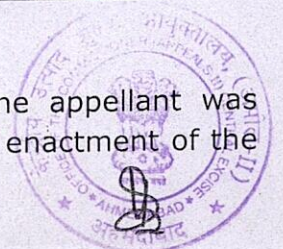
5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellant and oral submission made at the time of personal hearing. Now, the issue remains to me is whether the adjudicating authority has rightly rejected the claim on the ground of limitation, or otherwise. I find that the adjudicating authority has not denied the legitimacy of the refund claim in terms of Mega Exemption Notification number 25/2012-ST dated 30.06.2012. The claim was rejected only on the ground that it was hit by time limitation. Thus, I start with the question that whether limitation under Section 102 of the Finance Act, 2016 is applicable to a service that is exempted by notification. In this regard, I would like to quote the contents of Section 102 mentioned in Chapter V (Service Tax) of the Finance Bill 2016, as below;

102. (1)

(2)

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

Thus, it is very clear from sub section 3 of Section 102 that the appellant was supposed to apply for the refund within a period of six months from enactment of the



law. The appellant has argued that the Service Tax paid by them is to be considered as deposit and hence the refund claim should not have been rejected under the ground of limitation. The argument of the appellant is not sustainable because the conditions of Section 11B are not applicable to the present case as the appellant had filed the claim under Section 102 of the Finance Act, 2016 which is self contained provision, providing for refund, procedure and limitation. Section 102 *ibid*, begins with the non-obstante clause and therefore, any other provisions contrary to what is stated therein will not be applicable. As the appellant had filed the refund claim beyond the time limit prescribed under Section 102 of the Finance Act, 2016, I proclaim that he is not eligible for the refund amount of ₹ 6,89,021/-. In view of the above, I find that the adjudicating authority has rightly rejected the claim of ₹ 6,89,021/-, as time bar under Section 102 of the Finance Act, 2016.

6. Therefore, I do not find any reason to interfere in the impugned order and in view of above discussions, I up held the impugned order passed by the adjudicating authority and reject the appeal filed by the appellant.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

7. The appeal filed by the appellant stands disposed off in above terms.

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED

(डी. ए. पटेल)
SUPERINTENDENT,
CENTRAL TAX (APPEALS), AHMEDABAD.



To,

M/s. Bhavesh C. Patel,
303, Block-G, Akshat Heaven,
Nr. Sahjanand City, Kudasana,
Ta. & Dist. Gandhinagar
Gujarat-382421

Copy to:

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