



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)190 /North/Appeals/2018-19** / 10830 to 10834

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-11-19-20**

दिनांक Date : **20/05/2019** जारी करने की तारीख Date of Issue **31/05/2019**

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/53/AC/RJM/PSP/2018-19**
Dated **04/12/2018** Issued by **Assistant Commissioner** , Central GST , Div-VI ,
Ahmedabad North.

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

M/s PSP Projects 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:-

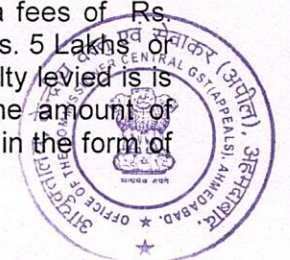
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 13 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.

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065



ORDER-IN-APPEAL

M/s. PSP Projects Ltd, Ahmedabad (henceforth, "appellant") has filed the present appeal against the Order-in-original No.GST-06/ Refund /53/AC/RJM/PSP/2018-19 dated 04.12.2018(henceforth,"impuged order") issued by the Assistant Commissioner, GST & Central excise, Division-VI, Ahmedabad-North,(henceforth,-,"adjudicating authority").

2. The facts of the case, in brief, are that the appellant filed a refund claim dated 20.09.2016 for Rs.6,33,714/- of service tax paid by them on work contract services provided to government authority which is exempted under Sr.No.12(c) of Notification No.25/2012-ST which was rejected by the refund sanctioning authority under order dated 20.12.2016. Appeal filed against said order was rejected by the Commissioner(Appeal) vide OIA No.AHM-EXCUS-002-APP-172-17-18 dated 21.11.2017 holding that the appellant had not paid back the amount collected as service tax to their customers and thereby unable to cross the bar of unjust enrichment. Appeal against said Order-In-Appeal dated 21.11.2017 filed by the appellant with CESTAT was decided vide Order No.A/10551/2018 dated 19.03.2018 remanding the matter back to the adjudicating authority to examine the issue of unjust enrichment and to pass a fresh order. Acting on the directions under order dated 19.03.2018 of CESTAT, the impugned order has been passed wherein refund claim has been rejected stating that no evidence such as balance sheet showing refund amount under head as receivable were found and also the appellant didn't appeared for personal hearing.

3. Being aggrieved with the impugned order the appellant preferred this appeal contesting inter alia that exemption under Noti. No.25/2012-ST (Sr.No.12(c)) was made available retrospectively. They further stated at para 3.2 of the Grounds of Appeal that **"On undertaking of recrediting of the tax collected by the appellant, it amount to the refund of service tax by the appellant & amount to non collection by the appellant, so appellant has complied the unjust enrichment principal"**. They cited various case law in support of ground of appeal.

4. In the Personal hearing held on 08.05.2019 Shri Vipul Khandhar, CA, reiterated the grounds of appeal and requested that the case be remanded back.



5. I have carefully gone through the facts of the case and submissions made in the appeal memorandum as well as during personal hearing. I find that under the impugned order, refund claim has been rejected by the adjudicating authority mainly stating that the appellant has not provided any evidence such as balance sheet showing refund amount under the head 'receivable'. The impugned order further records that the appellant was asked to produce under letter dated 09.07.2018 copy of balance sheet supported by necessary certificate issued by auditor/chartered accountant showing the refund amount as receivable and reminder letters dated 30.07.2018 and 09.10.2018. I find that the claim has been rejected for non compliance of observations and also for not providing evidence to prove that incidence of tax has not been passed on to the client. I also observe that the appellant didn't appear in any of the three personal hearing. I find that sufficient time period from letter dated 09.07.2018 to last personal hearing date on 29.11.2018 were provided to the appellant to prove their claim that principle of unjust enrichment is not applicable to the case. However, the appellant failed in providing such evidence to the lower authority who is entrusted with the time bound work of refund matter. Since, all instrumental i.e. personal hearing thrice, reminders letters (to comply with the observations communicated earlier) etc. which are prerequisite tools for ensuring principle of natural justice has been appropriately utilized by the lower authority, I do not find any reason in remanding the case back with the same directions again. The appellant not only failed in providing evidence i.e. balance sheet/certificate if any issued by auditor/chartered accountant but has illogically opted to remain absent during personal hearing, which shows his disregard towards the lower forum and established norms in respect of quasi-judicial proceedings. I also observe that the appellant has not disputed the communication of any of the above mentioned opportunities given by the lower authority. Even during appeal proceedings, the appellant has not come forward with documentary evidence in support of their claim that incidence of tax has been born by them and has not been passed on to their client. It is observed that the appellant took the entire issue in a careless way with the original adjudicating authority who offered sufficient opportunity to defend their case and on approaching to the first appellate authority, they makes request for remanding the matter back to the original adjudicating authority for the same purpose for which earlier also matter was remanded back. Such distorted approach shown by the appellant is



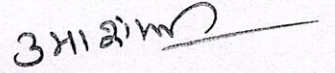
nothing but ~~the~~ disregard to judicial discipline. The decision of the adjudicating authority is also supported by the verdict of Hon'ble Apex court in case of UOI v/s Hamdard (WAQF) Laboratories wherein it is held that adjudicating process by no stretch of imagination can be carried on beyond three months. In such circumstance, I do not find merit in the argument of the appellant to which I disagree.

6. Various case laws cited by the appellant are of different background and not relevant with the situation/facts as discussed above and hence are not applicable to the case on hand.

7. In view of aforesaid discussion, I uphold the impugned order and reject the appeal.

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

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

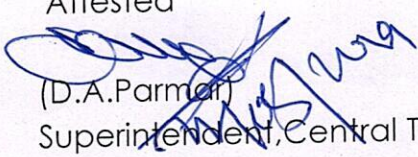


(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date:

Attested


(D.A. Parmar)

Superintendent, Central Tax (Appeals)
Ahmedabad.



By R.P.A.D.

To,

M/s. PSP Projects Ltd,

PSP House, Opp-Celesta Courtyard, Opp-lane of Vikramnagar colony,

Iscon- Ambli Road, Ahmedabad-380058.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.

2. The Commissioner of Central Tax, Ahmedabad-North.

3. The Additional Commissioner, Central Tax (System), Ahmedabad-North

4. The Asstt./Deputy Commissioner, Central Tax, Division-VI, Ahd-North.

✓ 5. Guard File

6. P.A.



~~Handwritten signature or text, possibly including 'RMS' and 'RMS'.~~

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