



आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या (File No.): V2(ST)18/North/Appeals/ 2019-20/13718 To 13722

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-110-19-20

दिनांक (Date): 24-12-2019 जारी करने की तारीख (Date of issue): 28/01/2020

, आयुक्त (अपील) द्वारा पारित

Passed by Shri Akhilesh Kumar , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-VII), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No Div-VII/North/119/Refund/Amba/18-19 Dated:

05/03/2019

issued by: Assistant Commissioner-Central Excise (Div-VII), Ahmedabad North,

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Amba Township Pvt. Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person an aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



Cont....2

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.



- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

6(I) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

1. This order arises out of an appeal filed by M/s. Amba Township Private Limited, having registered office at Basement, Tower-A, Vardan Tower, Opp. Shanti Apartment, Pragatinagar, Shastrinagar, Naranpura, Ahmedabad (herein referred to as 'appellant') against Order in Original No. Div-VII/North/119/Refund/Amba/18-19 dated 05.03.2019 [hereinafter referred to as 'the impugned order'] passed by the Assistant Commissioner of Central Tax, Division VII, Ahmedabad North, (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant is engaged in providing taxable service under the category Construction Service falling under erstwhile Section 65(105)(zzq) and (zzzh) of the Finance Act, 1994 and holding Service Tax Registration Number AAFCA1933JSD001. The appellant has filed Service Tax refund claim for an amount of Rs. 12,47,306/- under Section 11B of the erstwhile Central Excise Act, 1944 as made applicable in the case of Service Tax matter vide Section 83 of the Finance Act, 1994 on the ground that some of their customers who had made their booking before July 1,2017 and had paid partial amount for their booking before implementation of GST law, have cancelled their booking post July 1,2017. Since the Service Tax had been paid but the output service was cancelled, the service tax was no longer payable and accordingly they had applied for refund of service tax paid by them. The refund claim was rejected by the adjudicating authority vide the aforesaid mentioned order.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds that adjudicating authority has erred:

- a. Rejecting the refund claim based on the assumption that the refund is hit by the limitation as provided in sub-section 11B of the Central Excise Act, 1944 despite the fact that refund is pertaining to the tax amount paid on the advance against which no service is provided and hence tax paid at time of advance is "deposit" and not "duty" and hence limitation of one year is not applicable to that.
- b. Rejecting the claim in violation of well settled principle that limitation of one year is not applicable where tax paid is not required to be paid.
- c. Rejecting the claim despite the clear provisions of the Section 142(3) of the CGST Act, 2017 which clearly states that such refunds shall be granted in cash notwithstanding anything contained in other provisions [including limitation in Section



11B(1)]of the law, except provisions Section 11B(2) of the CEA, 1944.

4. This appellant placed reliance on the following Judgements:

- (i) CCE (Appeals) Bangalore V. KVR Construction [2012 (26) S.T.R. 195 (Kar.)].
- (ii) MADHVI PROCON PVT. LIMITED (Madhvi) Passed by Tribunal - Ahmedabad, [2015 (38) S.T.R. 74 (Tri. - Ahmd.)].

5. Personal Hearing in the case was held on 18-12-2019. Shri Punit Prajapati, Chartered Accountant, attended hearing on behalf of the appellant and reiterated submissions made in appeal memorandum.

6. I have carefully gone through the facts of the case on record, grounds of appeal and oral submissions made by the appellant at the time of hearing.

7. I find that the appellant is providing service under the category of Construction Service and booking the units after receiving payments from the prospective buyers of the units. They have claimed to have discharged the service tax liability properly and timely and this is undisputed. However, some of the units were cancelled by the prospective buyers and consequently the booking amount was fully refunded to them. It has been contended that the service tax was already paid against the advances received therein and no adjustment of the tax amount paid was allowed after 01.07.2017. Hence, the appellant filed a refund claim. The appellant's claim was rejected by the adjudicating authority vide the impugned order on the grounds of being time barred.

8. I find that in case of construction service, service tax is required to be paid on the amount received from prospective buyers towards the booking of complex before the issue of completion certificate by the competent authority and this process goes on for years, as has happened in the instant case, and the bookings/dealings can be cancelled at any point of time by the buyers before taking of possession of complex by him and therefore, I find that no service at all has been provided and the relevant date of one year and date of payment as per Section 11B of the Central Excise Act, 1944 cannot be made applicable in the instant case. I further find that since there is no contingency prescribed in this type of cases, the appellant cannot be put to loss for want of such contingency.



8.1 I also find that there is no adverse finding on the documents submitted for refund claim and hence they are not in dispute.

9. Further, I find that in case of M/s Panchratna Corporation Ahmedabad Commissioner (Appeals-II), Central Excise, Ahmedabad had in Order-in-Appeal No. AHM-SUTAX-000-APP-023-17-18 dated 29.06.2017 analyzed various case laws on the subject and held that once the booking is cancelled and the entire amount is returned, the appellant has not provided any service and whatever the amount paid by them is in the nature of deposits only and they are eligible for the refund following the case laws discussed in the order. The facts of the case are similar in nature to this case in hand. Hence, it is well settled principle that if tax is paid on advances and contracts are cancelled subsequently, and no services are provided, tax paid on advances are not in the nature of duty but in the nature of deposit and hence limitation as provided under sub-section (1) of the Section 11B of Central Excise Act, 1944 shall not apply.

10. I find that the service tax is payable on the service provided or to be provided and in this case, once the booking is cancelled the entire amount is returned to the proposed buyers, thus no service has been provided and received, therefore, the amount of service tax paid by the appellant is in the nature of merely deposit and not service tax.

11. I further find that Hon'ble High Court of Karnataka has, in the case of COMMR OF C.EX. (APPEALS), Bangalore versus KVR Construction in writ appeal Nos. 2992-2993 OF 2009 (T-TAR) , as reported in 2012 (26) STR 195 (Karnataka High Court) and the Hon'ble High Court of Madras has in the case of NATRAJ AND VENKAT ASSOCIATED Versus Asst. Commr. Of ST CHENNAI-II in Writ Petition No. 15357 of 2009, as reported in 2010(17) S.T.R.3(Mad.)/2010-TIOL-67-HC-MAD-ST had held the principle that if tax is paid on advances and contracts are cancelled subsequently, and no services are provided, tax paid on advances are not in the nature of duty but in the nature of deposit.

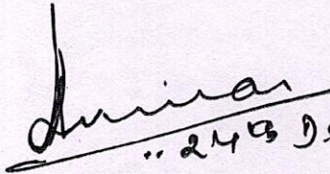
12. I also find that the above citation has been relied upon in various subsequent case laws viz. 2012(26) STR 195 Karnataka High Court, 2012(27) STR 281(Tribunal Bangalore), 2012(28) STR 273 (Tribunal Madras/Chennai), 2012 (28) STR 513 (Commissioner (Appeals)), 2014(34) STR 562 (Bombay High Court), 2015 (39) STR 706 (Kerala High Court) and+ 2017 (48) STR 286(Tribunal Delhi) etc.

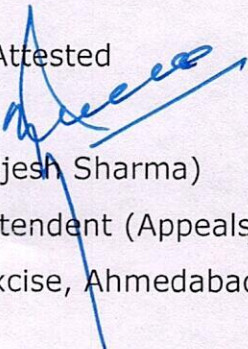


13. Therefore, I find that once the booking is cancelled and the entire amount is returned the appellant has not provided any service and whatever the amount paid by them is in the nature of deposits only and they are eligible for the refund following the various case laws cited above.

14. In view of the above, impugned OIO is set aside and appeal filed by the appellants is allowed.

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


.. 24th December, 2019..
(Akhilesh Kumar)
Commissioner (Appeals)

Attested

(Brijesh Sharma)
Superintendent (Appeals)
Central Excise, Ahmedabad



By Regd. Post A. D
M/s. Amba Township Private Limited,
Basement, Tower A, Vardan Tower,
Opp. Shanti Apartment, Pragatinagar,
Shastrinagar, Naranpura, Ahmedabad.

Copy to :

- 1 The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
- 2 The Commissioner CGST and Central Excise, Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, Central Excise, Division-VII, Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-North.
5. Guard file
6. PA File

