
	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
सत्यमेव जयते	केंद्रीय कर शुल्क भवन,	7 th Floor, Central Excise Building,
	सातवीं मजिल पॉलिटेक्निक के पास,	Near Polytechnic,
	आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
☎ 079-26305065		टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : **V2(ST)0248/AM/2016-17** / 5098-6003
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-100&101-17-18**
 दिनांक Date : 28-09-2017 जारी करने की तारीख Date of Issue 8/11/2017

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No **AHM-SVTAX-000-ADC-26-27-28-2016-17**
 Dated **14.12.2016** Issued by **ADC STC**, Service Tax, Ahmedabad

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

M/s. Veeda Clinical Research Pvt Ltd
Ahmedabad

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 :-

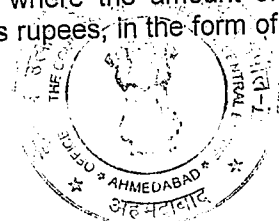
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, 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 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 फॉर्म 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 A219k 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 43 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.



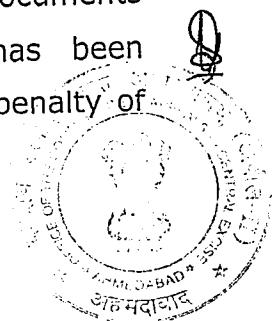
ORDER IN APPEAL

M/s Veeda Clinical Research Pvt Ltd, Shivalik Plaza-A, Near IIM, Ambavadi, Ahmedabad- 380 015 (*hereinafter referred to as 'appellant'*) has filed the present appeals against the Order-in-Original number AHM-SVTAX-000-ADC-26-27-28-2016-17 dated 14.12.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Additional Commissioner, Service Tax, HQ, Ambawadi, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. Impugned OIO dated 14.12.2016 is issued in respect of following three SCN`s dated (i) 30.09.2011, (ii) 17.10.2012 and (iii) 08.10.2015-

a. de novo adjudication of (i) SCN dated 30.09.2011 covering period 2007-08 to 2010-11 and (ii) SCN dated 17.10.2012 covering period 2011-12. Both SCN`s were earlier decided vide common Order-in-Original No. 05-06/ORS/STC-AHD/DSN/2013-14 dated 02.09.2013 passed by the Addl. Commissioner, Service Tax, Ahmedabad. Appellant filed an appeal in CESTAT against OIA No. AHM-SVTAX-000-APP-058 to 059 dated 29.05.2014 passed by Commissioner (Appeals-IV), Central Excise Ahmedabad. CESTAT vide order No. A/11045-11046/2015 dated 21.07.2015, remanded the case back to original adjudicating authority to pass the order afresh as to whether or not outdoor catering are received by appellant and as to whether or not entire cost is absorbed by appellant. Credit of tax paid Outdoor catering service utilized for personal use also has been allowed to appellant vide impugned OIO dated 14.12.2016 in respect of SCN dated 30.09.2011. However, in wake of new definition of input service introduced from 01.04.2011, Credit of Rs. 1,45,245/- availed on outdoor catering utilized for personal use of employee has been denied and penalty of Rs. 14,525/- has been imposed u/s 76 of FA, 1994 r/w rule 15 of CCR, 2004 vide impugned OIO dated 14.12.2016 in respect of SCN dated. 17.10.2012.

b. (iii) SCN dated 08.10.2015 issued for subsequent period 2013-14 and 2014-15 is also adjudicated vide impugned OIO dated 14.12.2016. Said SCN is a periodical SCN issued u/s 73(1A) of FA, 1994. Credit of Rs. 8,95,625/- on outdoor catering charges and insurance charges of vehicle and credit of Rs. 48,724/- availed on basis of documents pertaining to expenses incurred at Mahesana office has been disallowed. (Total disallowed credit of Rs. 9,44,349/-) and penalty of



Rs. 94,435/- has been imposed u/s 76 of FA, 1994 r/w rule 15 of CCR, 2004 vide impugned OIO dated 14.12.2016 in respect of SCN dated. 08.10.2015.

3. Present appeal, filed on 10.02.2017, is filed in respect Credit of Rs. 9,44,349/- (in fact correct figure is 8,95,625/-) availed on outdoor catering and rejected by adjudicating authority. [(para 2 (b) above SCN dt. 08.10.2015 matter)]. It is contended by appellant that appellant has been maintaining the canteen for employee at workplace, which is necessary for similar service provider to maintain health of employee, incentive to employee, encouragement of employee to work for more hours.

(Note- appellant in his PRAYER in appeal memo has mentioned amount of tax of Rs. 9,44,349/- paid on catering charges should be allowed as CENVAT credit. But in fact actual amount of catering charges is Rs. 8,95,625/- as per OIO.)

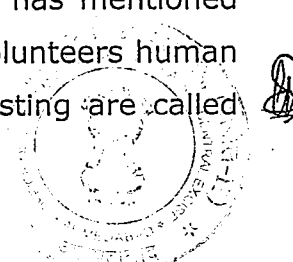
4. Personal hearing in the case was granted on 07.09.2017. Shri Vipul Khandhar, CA, on behalf of appellant, appeared before me and reiterated the grounds of appeal. He stated that during trials patients are given recommended diet therefore CENVAT credit of tax paid of input service, the Outdoor catering charges should be given to appellant.

DISCUSSION AND FINDINGS

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants at the time of personal hearing.

6. Question to be decided is whether or not appellant is eligible for input service credit of "Out door catering Service" for period after 01.04.2011. Appellant are providing taxable service under technical testing & Analysis AND Scientific and Technical Consultancy Service.

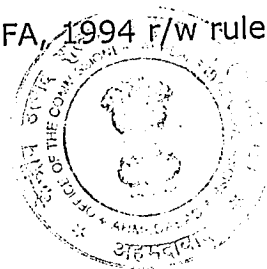
7. At para 11.4 of impugned OIO adjudicating authority has mentioned that appellant are carrying out clinical testing of drugs on volunteers human beings. Such volunteers who allow their body for drugs testing are called



Subjects. Studies are required to be conducted to evaluate the food effect on the absorption test and reference formulation drugs, hence volunteers are dosed with drugs after having breakfast or lunch or dinner as per the case study for which the food is prepared according to predefined calorific requirement by regulatory authority. Thus providing foods by procuring it from outdoor caterers are input service for providing of output service. However I find that this aspect has not been substantiated with supporting document, rather, it is in record from previous proceedings that these services have been utilized by the staff of appellant. OIO has quoted this fact in para 7 of the order. Adjudicating authority has allowed input service credit of tax paid on such out door catering service which is used prior to 10.04.2011 by volunteers undergoing clinical drug test but has disallowed credit of tax paid on out door catering service of Rs. 8,95,625/- which is used for personal use or consumption of employee.

8. I find that clause (c) of input service definition give in rule 2(l) of CCR, 2004, introduced w.e.f. 01.04.2011 specifically excludes the outdoor catering service used for personal use or staff welfare from eligible input service. Outdoor catering service used for personal use or staff welfare for period prior to 01.04.2011 has been allowed to appellant. I hold that credit of Rs. 8,95,625/- corresponding to outdoor catering service which is used after 01.04.2011 for personal use or consumption of employee is not admissible to appellant and it is correctly ordered to be recovered with interest u/s 75 of FA, 1994 r/w rule 14 of CCR,2004, in impugned OIO.

9. Appellant has not produced any evidence to substantiate that they have disclosed to department that they are availing input service credit of outdoor catering service used for personal use or used for staff welfare. SCN dated 08.10.2015 for period 2013-14 and 2014-15 is issued within prescribed time period of 18 months from filing of ST-3, hence it is not time barred as alleged by the appellant. I fully agree with the adjudicating authority as far as time barred matter is discussed in para 14 of OIO. Case involved is not of interpretation of statutory provisions as argued by appellant to avoid penalty. Definition of input service is very clear that outdoor catering services used for personal use or for staff welfare is not eligible input service in terms of clause (c) of rule 2(l) of CCR, 2004. Offence is of deliberate nature. I hold that penalty Rs. 9,44,349/- u/s 76 of FA, 1994 r/w rule 15 of CCR, 2004 is correctly imposed.

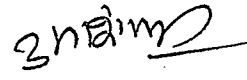


§

10. In view of above, appeal filed by the appellants is rejected.

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

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



(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED



(R.R. PATEL)

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,

M/s Veeda Clinical Research Pvt Ltd,
Shivalik Plaza-A, Near IIM
Ambavadi, Ahmedabad- 380 015

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Central Tax , South, Ahmedabad-.
- 3) The Additional Commissioner, Central Tax , South, Ahmedabad
- 4) The Asst. Commissioner, Service Tax Div-V, APM Mall, Satellite, Ahmedabad.
- 5) The Asst. Commissioner (System), Central Tax , South, Ahmedabad.
- ✓ 6) Guard File.
- 7) P.A. File.

