

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

- क फाइल संख्या : File No : V2(ST)0213/A-II/2016-17 12058 to 3063
- ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-0103-17-18
- दिनांक Date : 26-09-2017 जारी करने की तारीख Date of Issue 27-10-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

- ग Arising out of Order-in-Original No SD-02/Ref-180/VIP/2016-17 Dated 25.10.2016  
Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

**M/s. QX KPO Services 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 मैन्टल 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 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 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 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, 1984 की धारा 39फ 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,

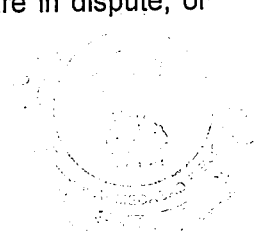
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

This order arises on account of an appeal filed by M/s QX KPO Services Pvt. Ltd., 201 & 401, GNFC Info Tower, S. G. Highway, Bodakdev, Ahmedabad (hereinafter referred to as the 'the appellants' for sake of brevity) against Order-in-Original No. SD-02/Ref-180/VIP/2016-17 dated 25.10.2016 (hereinafter referred to as the 'impugned order' for the sake of brevity) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (hereinafter referred to as the 'adjudicating authority' for the sake of brevity).

2. Briefly facts of the case are that the appellants are registered with the Service Tax Department under the category of "Rent-a-Cab Service, Security/ Detective Agency Service, Manpower Recruitment/ Supply Agency Service, Business Auxiliary Service, Legal Consultancy Service' and holding Registration No. AAACQ1087GST001. They filed a refund claim of ₹ 26,18,923/- on 26.07.2016 for the quarter January 2016 to March 2016, under Notification number 27/2012-C.E.(NT) dated 18.06.2012 (hereinafter referred to as 'the said Notification' for sake of brevity) before the proper authority in prescribed format. The adjudicating authority, vide the impugned order, sanctioned the refund of ₹ 25,21,441/-, out of ₹ 26,18,923/- in terms of provisions of Rule 5 of CENVAT Credit Rules, 2004 read with Section 11B of the Central Excise Act,1944 made applicable to the Service Tax matter vide Section 83 of the Finance Act,1994 and Notification No. 27/2012 C.E.(NT) dated 18.06.2012 and rejected the refund claim of ₹ 97,482/- ( ₹ 18,822/- + ₹ 9,800/- + ₹ 64,915/- + ₹ 729/- + ₹ 3,216/-) on the following grounds;

(a) As stated at Paragraph 6(b) table 1 and 2 and para 8 of the impugned order, an Invoice number 10000020 dated 14.01.2016 and 10000083 dated 24.02.2016 issued by M/s.Adlabs Entertainment Limited involving Service Tax of ₹ 16,140/- & ₹ 2,682/- respectively, the appellants claimed that the service was related to employee welfare for encouragement and better performance. Hence, an amount of ₹ 18,822/- was rejected.

(b) As stated at Paragraph 6 (b) table 4 and para 10 of the impugned order, in respect of an Invoice number 357 dated 28.01.2016 issued by M/s. Sun Photo involving Service tax of ₹ 9,800/-, the appellants claimed that the service was related to photography services during an event organized for employee recognition. Hence, an amount of ₹ 9,800/- was rejected.

(c) As stated at Paragraph 6(b) table 5 and para 11 of the impugned order, an invoice number 176 dated 15.02.2016 of M/s. Food link Services(India) Pvt. Ltd. involving Service Tax of ₹ 64,915/-, the appellants claimed that they had used the catering services during their Annual Function Event on 13.02.2015 Hence, the amount of ₹ 64,915/-, was rejected.

(d) As stated at Paragraph 12 of the impugned order, an amount of ₹ 729/- was rejected as the service Tax was paid under RCM on RTO Toll Tax.

(e) As stated at Paragraph 15 of the impugned order, an amount of ₹ 1,746/- was rejected on account of invoices issued by Airtel, Ahmedabad were not in the name of claimant, and invoice No,489 dated 21.02.2016 of Lucky Travels involving Service Tax of Rs.1470/- was rejected.

Being aggrieved with the impugned order, the appellants filed the present appeal on the grounds that;

1. The learned Assistant Commissioner erred legally and factually in rejecting claim of Rs. 97,482/- treating Outdoor Catering, Entertainment and Photography services as not related with core area of export and other grounds.
2. The learned Assistant Commissioner erred legally in rejecting claim of Rs. 97,482/- in violation of principle of natural justice i.e. without issue of show cause notice and hence the said order be modified and grant consequential relief.

3. Personal hearing in the case was granted on 07.09.2017 wherein Shri Tushar Shah, CA, appeared on behalf of the appellants and reiterated the contents of the appeal memorandum. He

placed reliance on earlier O-I-A SVTAX-000-APP-075-16-17 in their favour. He also submitted additional submission.

4. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and oral submissions made by the appellant at the time of personal hearing. I find that the reasons for rejection of the part claim of the refund viz., (i) Entertainment trip organized to motivate the employees, (ii) Outdoor catering and photography during Annual award ceremony, (iii) invoices were not in the name of claimant, (iv) service Tax was paid under RCM.

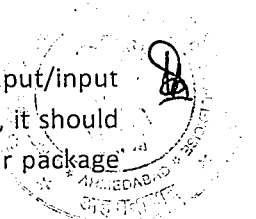
5. I first of all pick the issue involved with Entertainment tour packages. With regards to the rejection of refund of Cenvat Credit of ₹ 18,822/- (₹ 16,140/- + ₹ 2,682/-) pertaining to M/s. Adlabs Entertainment Limited, the appellants contention was that Employees who have completed 10 years or more of service were given incentive by way of their visit to imagica in order to improve their performance. Such kind of recognition increases the productivity of the employees and therefore should be treated as input service related to core area of export of services.

6. I agree with the view of the adjudicating authority, as stated in the impugned order, that above tour packages have been provided to employees for personal use or consumption of employees. Hence the said service does not fall under definition of input service. Thus claimant is not admissible of refund claim amount of ₹ 18,822/- as per Rule 2(I) of CCR, 2004.

6.1. As per the definition of 'Input Service' as envisaged under Section 2(I) of the Cenvat Credit Rules, 2004, input service means any service used by a provider of output service for providing an output services. In view of this whether the service i.e., tour package organized by the appellants can be considered as Input service for providing an output service or not, is the issue to be decided. In this regard a clarification issued by the CBEC vide Circular No.120/1/2010-ST dated 19.01.2010 is relevant and the relevant para thereto is reproduced hereunder for ease of reference.

*3.1.2 Therefore, the phrase, "used in" mentioned in Notification No. 5/2006-CX (NT) to show the nexus also needs to be interpreted in a harmonious manner. The following test can be used to see whether sufficient nexus exists. In case the absence of such input/input service adversely impacts the quality and efficiency of the provision of service exported, it should be considered as eligible input or input service. In the case of BPOs/call centres, the services directly relatable to their export business are renting of premises; right to use software; maintenance and repair of equipment; telecommunication facilities; etc. Further, in the instant example, services like outdoor catering or rent-a-cab for pick-up and dropping of its employees to office would also be eligible for credit on account of the fact that these offices run on 24 x 7 basis and transportation and provision of food to the employees are necessary pre-requisites which the employer has to provide to its employees to ensure that output service is provided efficiently. Similarly, since BPOs/call centres require a large manpower, service tax paid on manpower recruitment agency would also be eligible both for taking the credit and the refund thereof. On the other hand, activities like event management, such as company-sponsored dinners/picnics/tours, flower arrangements, mandap keepers, hydrant sprinkler systems (that is, services which can be called as recreational or used for beautification of premises), rest houses etc. prima facie would not appear to impact the efficiency in providing the output services, unless adequate justification is shown regarding their need ".*

On plain reading of the above circular, it is quite clear that in case the absence of such input/input service adversely impacts the quality and efficiency of the provision of service exported, it should be considered as eligible input or input service. Now, the service i.e. Entertainment Tour package



organized by the appellants for their employees would have adversely impact the quality and efficiency of the provisions of services exported in case of non-organization thereto, is the question that arises. I find that non-organization of such events would have not impacted the quality and efficiency of the provision of service exported. Further, the Entertainment Tour package organized are more recreational in nature than can be considered as an essential service so to improve the quality and efficiency of the provisions of services exported by the appellant. In view of this, the service i.e., Entertainment Tour package organized by the appellants cannot be considered as Input service for providing an output service within the meaning of 'Input Service' as defined under Section 2(l) of the Cenvat Credit Rules, 2004.

7. With regard to the rejection of refund of (the second issue) ₹ 64,915/-, and ₹ 9,800/- the appellants contended that the services received from M/s. Foodlink Services (India) Pvt. Ltd., and M/s. Sun Photo are admissible as they have organized event for their employee recognition so as to encourage them to give their best performance; that such type of events are essential to boost up working quality of employees as they are their major assets and subject service is directly impacting on the quality and efficiency of output services. In support of their claim they relied on my own decision vide OIA No. SVTAX-000-APP-075-16-17 dated 26.08.2016 on similar issue.

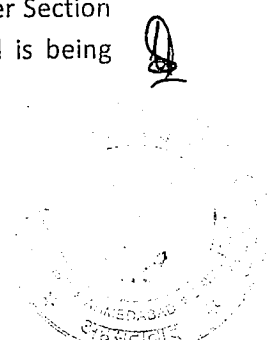
I agree with the view of the adjudicating authority, as stated in the impugned order the refund of credit on the invoices of Food Link (India) Pvt. Ltd, was disallowed, on the grounds that these activities were more of recreational nature and thus, cannot be considered as an input service as the said service is outside the preview of the definition of 'Input Service' for providing an output service within the meaning of 'Input Service' as defined under Section 2(l) of the Cenvat Credit Rules, 2004. However in the said OIA. SVTAX-000-APP-075-16-17 the services of Event Management, managed by M/s. Green Leaves Management Pvt. Ltd. were allowed, but services of Food Link (India) Pvt. Ltd, was disallowed. I find that the services provided by Foodlink and Sun photo was of recreational nature not of event organized to appreciate the works done by the employees and in recognition to their works. Hence, the refund of ₹ 64,216/- and ₹ 9,800/- is rightly rejected by the adjudicating authority. Thus claimant is not admissible of refund claim amount of ₹ 64,216/- and ₹ 9,800/- as per Rule 2(l) of CCR, 2004.

8. As regards the third issue that whether the appellants are eligible for the service Tax under RCM on RTO Toll Tax: I find that the appellant was not required to pay the Service Tax in view of Circular No. 192/02/2016-S.T. dated 16.04.2016. Thus refund amount of ₹ 729/- claimed by them is not admissible.

9. As regards an amount of ₹ 1,470/- was rejected on account of invoice issued by M/s. Lucky Travels. invoice No,489 dated 21.02.2016 of Lucky Travels involving Service Tax of Rs.1470/- was rejected on the ground that the invoice does not bear the appellant name. I agree with the view of the adjudicating authority as amount of Rs 1470/- is not eligible for Cenvat Credit as per Rule 9 of CCR,2004.

10. As regards an amount of ₹ 1,746/- was rejected on account of invoices issued by Airtel, Ahmadabad, were not in the name of claimant, The appellant has submitted the name change certificate issued by the competent authority, since the invoices were issued in the name of the company viz. Quality BPO Services Pvt.Ltd. which later change to QX KPO Services Pvt.Ltd., and hence the refund of ₹ 1,746/- is allowed to them.

11. Regarding the issue that whether the appellants are eligible for the interest under Section 11 BB of the Central Excise Act, 1944 for ₹ 97,482/-. Since maximum part of refund is being rejected as discussed above the question of granting interest does not arise.



12. As regards their plea regarding rejection of refund of ₹ 97,482/- in violation of principle of natural justice, there is no force in their argument as the authority below has issued a query memo dated 21.09.2016 stating in detail regarding grounds of in-admissibility of the refund claim, which was complied by on 28.09.2016 through email, thus there is no evidence of violation of natural justice.

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

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

*उमा शंकर*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

**ATTESTED**

*K.H.Singhal*  
( K.H.Singhal)

SUPERINTENDENT (APPEAL),  
CENTRAL TAX, AHMEDABAD.

**BY R.P.A.D.**

To,

M/s QX KPO Services Pvt. Ltd.,  
201 & 401, GNFC Info Tower,  
S. G. Highway, Bodakdev,  
Ahmedabad-380 054.

**Copy To:-**

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner Central Tax, GST South,, Ahmedabad-.
- 3) The Additional Commissioner, Central Tax , GST South, Ahmedabad
- 4) The Asst. Commissioner, Central Tax GST South, Div-VI, Ahmedabad (New jurisdiction).
- 5) The Asst. Commissioner (System), GST South, Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.

