

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

क फाइल संख्या : File No : **V2(ST)0282/A-II/2016-17/3064 & 3068**
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-0106-17-18**
 दिनांक Date : 27-09-2017 जारी करने की तारीख Date of Issue **25-11-17**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **02/Supdt/AR-I/Div-III/ST/2016** Dated **21.12.2016** Issued by **Supdt-AR-V, Div-III, Service Tax, Ahmedabad**

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

M/s. Zeus Fitness Point 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 :-

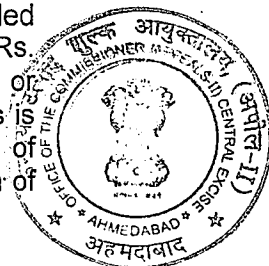
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल 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 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 (सीस्टेट) 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 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

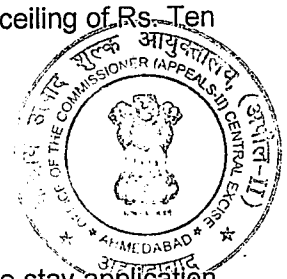
⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

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 appeal is filed by M/s. Zeus Fitness Point Private Limited, 101, Venus Atlantis, Nr. Reliance Petrol Pump, Prahladnagar, Ahmedabad 380 015 [for short – ‘appellant’] against OIO No. 2/Supdt./AR-V/Div.III/ST/2016 dated 21.12.2016 [for short – ‘the impugned order’] issued by the Superintendent, AR V, Division III, Service Tax Commissionerate, Ahmedabad[for short – ‘adjudicating authority’].

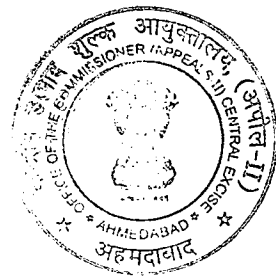
2. Briefly the facts are that during the course of scrutiny of the CENVAT credit availed by the appellant during the FY 2014-15, it was observed that the appellant had availed CENVAT credit of service tax paid on *renting of premises*. While the appellant’s registered premises was 101 Venus Atlantis, Nr. Reliance Petrol Pump, Prahladnagar, Ahmedabad 380 015, the appellant had in addition to availing CENVAT credit in respect of the said premise, had also wrongly availed CENVAT credit in respect of shop nos. 102, 103 and 104 of Venus Atlantis, Nr. Reliance Petrol Pump, Prahladnagar, Ahmedabad 380 015, which did not find a mention in his registration Certificate. Therefore, the show cause notice dated 6.4.2016, proposed recovery of the CENVAT credit wrongly availed of Rs. 4.44.960/- along with interest and further proposed penalty on the appellant under section 78 of the Finance Act, 1994.

3. This notice was adjudicated vide the impugned OIO wherein the adjudicating authority disallowed the CENVAT credit, ordered recovery of interest and further imposed penalty on the appellant.

4. Feeling aggrieved the appellant has filed this appeal on the following grounds:

- that the appellant is registered under the Companies Act, 1956; that they are engaged in providing service of “Health Club and Fitness Centre” for which they are registered with department; that their registration no. is AAACZ5385JSD001;
- their corporate and registered office address is 101, Venus Atlantis, Nr. Petrol Pump, Prahaladnagar, Satellite, Ahmedabad;
- that the invoice in the present case has been raised on the registered and corporate office address as mentioned above;
- that they have not contravened any of the provisions of the Act or the rules made thereunder;
- that no proper opportunity was granted to the appellant; that the rent is used in providing of output services and he is paying service tax on output services;

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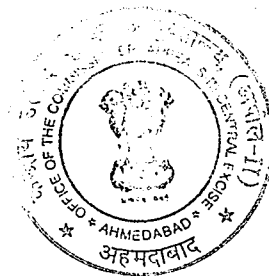
- that on all invoices issued by the appellant, pertain to 101-104, Venus Atlantis, Ahmedabad, which are accounted in the books and on which service tax also stands paid; that a copy of a invoice is also enclosed;
- that copy of ground plan is enclosed which clearly shows that equipments/instruments used for the propose of providing output services from 101-104 Venus Atlantis;
- that there is a technical lapse in obtaining centralized registration under service tax for all the premises from 101 to 104;
- that they wish to rely on the case of Dashion Limited [2016(66 Taxman.com)(Gujarat High Court) and Origzo Technologies Private Limited (OIA no. 187/16-17) and Imagination Technologies India Private Limited.

5. Personal hearing in the matter was held on 13.9.2017 wherein Shri Keyur Bavishi, Authorized Representative appeared on behalf of the appellant. He reiterated the grounds of appeal and further stated that he would be submitting the lease agreement in respect of the premises within seven days. Thereafter, vide his letter dated 15.9.2017, he submitted copies of lease deed for the premises 101 to 104.

6. I have carefully gone through the facts of the case on records and submissions made by the appellant. The issue to be decided in the present appeal is whether the appellant is eligible for CENVAT credit in respect of service tax paid on renting of premises which did not figure in the registration certificate.

7. As is evident the appellant had rented four shops 101, 102, 103 and 104 on the first floor of Venus Atlantis, Nr. Reliance Petrol Pump, Prahladnagar, Ahmedabad 380 015, by entering into a 'Bhadano Karar'/Lease deed/rent agreement. The copies of the same have been provided consequent to the personal hearing. A copy of the ground plan attached with the appeal, shows that the premises are adjoining shops and accommodate various sections of the Health Club and Fitness Centre. The appellant availed CENVAT credit on service tax paid on renting of premises. The department has disallowed the CENVAT credit in respect of shops no. 102, 103, and 104 on the grounds that [a] only shop no. 101 was the registered premises as per the Registration Certificate and [b] the invoices in respect of shops no. 102, 103 and 104, were not addressed to the registered premises of the appellant. In-fact the invoices were addressed to shops no. 102, 103 and 104 and not 101.

[Handwritten signature]



8. I find that the appellant in his invoices issued to customers [a copy of which has been submitted with the appeal papers] used to mention his address as follows:

*Zeus Fitness Point Pvt Ltd
101-104 Venus Atlantis, Near Shall Petrol Pump,
Prahladnagar Main Road, Prahladnagar, Ahmedabad- 380 015.*

9. I find that the issue is no longer *res integra*. The issue has already been decided by the Court and the Appellate Tribunal, viz.

(i) Intent Design Pvt. Ltd. [2016(46) STR 579 (Tri).

In this case the department had objected to the CENVAT credit availed on service tax paid on renting of immovable property on the ground that services were not received in the manufacturing premises and the premises where it has been received was not registered under Service Tax statute. The Hon'ble Tribunal held that there is no such requirement as far as the input services are concerned that the same should have been received in the manufacturing premises and the premises where received should be registered one.

(ii) Eltex Sgs Pvt. Ltd [2016(46) STR 465]

The dispute in this case was that the respondents had wrongly availed the CENVAT credit of service tax paid on renting of immovable property located at a place other than registered premises for manufacturing activity. The Hon'ble Tribunal, in this case, held as follows:

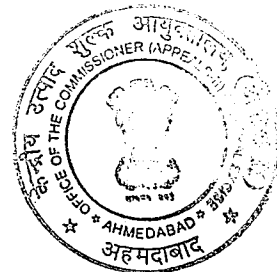
"The original authority has denied the benefit only on the ground that renting of the property was located on different address than that of the registered premises of the respondents. The respondents have produced copies of the invoice issued by their address located at 390-391, Udyog Vihar, Phase-IV, Gurgaon before the adjudicating authority and Commissioner (Appeals) in support of their contention that the manufacturing activities were taking place on that premises also. Therefore, since that activity of manufacture was taking place in the premises located on 390-391, Udyog Vihar, Gurgaon benefit of Cenvat credit cannot be denied to the respondents. Accordingly, I do not find any infirmity in the findings of the Commissioner (Appeals) and I uphold the same and reject the appeal."

(iii) mPortal India Wireless Solutions (P) Ltd. [2012 (27) STR 134]

In this case, in para 7 the Hon'ble Karnataka High Court, held as follows:

"7. Insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside."





10. From the above decisions, it is clearly evident that Court/Tribunals have held that there is no requirement under law, as far as the input services are concerned, that the premises where it is received should be a registered one, for availing CENVAT credit. Therefore, the finding that because shop Nos. 102, 103 and 104, were not mentioned in the registration certificate, credit in respect of the service tax paid on renting of the said premises would not be eligible, is not legally tenable. The second ground that the invoices in respect of shop Nos. 102, 103 and 104, were not addressed to the registered premises of the appellant is not a tenable ground since in the address in the invoices raised by the appellant all the shops i.e. Nos. 101, 102, 103 and 104 form the entire Zeus Fitness Point Pvt. Ltd. Further even in the copy of ground plan submitted with the appeal it is clearly forthcoming that the services are provided from all the shops 101 to 104. The ground plan clearly depicts that all the shops are interlinked and the service is provided by the appellant from all the shops put together.

11. In view of the foregoing, following the judicial discipline, I do not find the view of the adjudicating authority is legally tenable. I therefore find that the appellant is eligible for the CENVAT credit. Hence, the appeal is allowed and the impugned OIO is set aside.

12. अपीलकर्ता द्वारा दर्ज अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in the above terms.

उमाशंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date: 27/09/2017

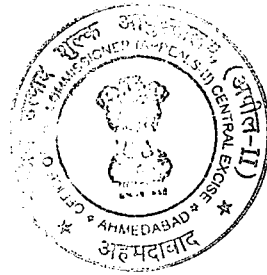
Attested

Vinod Lukose

(Vinod Lukose)
Superintendent, Central Tax (Appeals)
Ahmedabad.

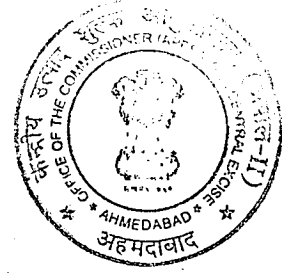
By RPAD.

To,
M/s. Zeus Fitness Point Private Limited, 101,
Venus Atlantis, Nr. Reliance Petrol Pump,
Prahlanagar, Ahmedabad 380 015.



Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad.
2. The Principal Commissioner of Central Tax, Ahmedabad-I.
3. The Additional Commissioner, Central Tax (System), Ahmedabad-I.
4. The Assistant Commissioner, Central Tax, Division-VI, Ahmedabad-I.
5. Guard File.
6. P.A.



12

