


केन्द्रीय कर आयुक्त (अपील)		
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
Floor: Central Excise Building		
Near Polytechnic		
Ambavadi, Ahmedabad-380015		
आम्बावाडी, अहमदाबाद-380015		
फोन नम्बर : 079-26305065		टेलिफैक्स : 079-26305136

- क फाइल संख्या : File No : **V2(ST)0275/A-II/2016-17 / १०१५ १५०१५**
- ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-144-17-18**
- दिनांक Date : 20-10-2017 जारी करने की तारीख Date of Issue 22-11-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

- ग Arising out of Order-in-Original No **STC/14/KM/AC/Div-III/16-17** Dated **12.01.2017**
Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

M/s. Concord Biotech 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, मेघानी 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



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 35फ 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, where the payment of 10% of the duty demanded where duty or duty and penalty are in dispute, where penalty alone is in dispute.



Order-In- Appeal

M/s. Concord Biotech Ltd, 1482-1486, Trasad Road, Dholka, Dist:- Ahmedabad-387810, holding Central Excise Registration No.AAACC8514GXM001 and Service Tax Registration No. AAACC8514GST001.,(hereinafter referred to as 'appellants') have filed the present appeals against the Order-in-Original number STC/14/KM/AC/D-III/16-17 dated 12.01.2017 (hereinafter referred to as 'impugned orders') passed by the Asst. Commissioner, Service Tax Div-III, Ahmedabad (hereinafter referred to as 'adjudicating authority');

2. The facts of the case, in brief, that during the audit it was observed that the appellants has received services of civil contractors under works contract service for expansion work of their plant situated at the above address. They have also availed services of Rent a cab service, along with other services. However, they failed to pay the service tax as recipient of the said services, as contemplated in sub section 2 of Section 68 of the Finance Act, 1994, read with Rule 2(1)(d)(i)(F)(a) & (c) of Service Tax Rules, 1994 and the notification numbered 30/2012 dated 20.06.2012 (effective from 01.07.2012).

On being pointed out they paid Rs. 10,61,420/- (Rs.7,02,606/- on taxable value of Works Contract service and Rs. 3,58,814/- on taxable value of **Rent-a-Cab service** (including Ed.Cess and HSEC) (Rupees Ten Lac Sixty One Thousand Four Hundred and Twenty Only) for the period July 2012 to March-2014 under protest.

3. A show cause notice F. No. CE/15-64/C-IV/APXIX/FAR-123/RP I &2/2015-16 dated 17.05.2016 was issued to them for appropriation of `the said amount and for impositions of penalty under Section 76 , 77 and 78 of the Finance Act,1994 and recovery of interest in terms of Section 75 of Financial Act, 1944,. Which was adjudicated vide OIO No. STC/14?KM/AC/D-III/16-17 dated 12.01.2017 and confirm the demand and order to recover Service tax Rs. 4,15,242/- (Rs. 4,13,601/- on taxable value of Works Contract service and Rs. 1,641/- 'on taxable value of Rent-a-Cab service) for the period July 2012 to March-2014 under the proviso to Section 73 (1) of the Finance Act, 1994. appropriated the demand of Service Tax amounting to **Rs. 4,15,242/-** (Rs. 4,13,601/- on taxable value of Works Contract service and Rs. 1,641/- on taxable value of Rent-a-Cab service) for the period July 2012 to March-2014 paid under protest. Dropped the demand of service tax **Rs. 6,46,179/-** (Rs. 2,89,005/- on taxable value of Works Contract service and Rs. 3,57,174/- on taxable value of Rent-a-Cab service) for the period July 2012 to March-2014. Ordered to pay the interest on confirm demand for delayed payment of aforesaid amount of evaded Service Tax liability under the provisions of Section 75 of the Finance Act, 1994.Imposed the penalty of Rs. 10,000/- upon them for failure to self assess their Service Tax liability correctly and failure to file ST-3 returns with correct and full details under the provisions of the Section 77 of the Finance Act, 1994. Imposed a penalty of 100% upon them on a confirmed demand of Rs. 4,15,242/- for suppressing and not disclosing the material facts before the department with intent to evade payment of service tax under the provisions of the Section 78 of the Finance Act, 1994.



4. Being aggrieved with the impugned order, the appellants preferred an appeal on 06.03.2017. Wherein it is contended that appellant has established from the documents that the appellant have paid service tax to the service provider thus appellants have paid the service tax. The service provider has collected the service tax from the appellants and appellants have paid the service tax which in turn paid to government treasury through service provider. They have submitted the copy of ledger, copy of challan, sample invoice along with invoice wise summary for each service provider for financial year 2012-13 and 2013-14 in support of contention that appellant has received work contract service from M/s. Satyam Projects and M/s. Satellite Engineers. The service provider has charged service tax on the value of service provided after deducting the abatement available under Notification No.26/2012-ST dated 20.06.2012. The service provider has raised invoices towards the service provided and 100% service Tax payable (Net of applicable abatement)

5. Personal hearing in the case was granted on 06.10.2017. The representative of assessee Shri Abhishek Chopra, C.A., appeared for personal hearing on behalf of the assessee. During the personal hearing, Shri Abhishek Chopra, CA., reiterated the grounds of appeal submitted by him.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. The core issue to be decided is that as per notification 30/2012-ST liability to pay service tax is on the appellants and as the service tax have been stated to be paid to service provider and in turn paid to government, satisfy the condition of Section 68 of the Finance Act, for payment of service tax, or otherwise.

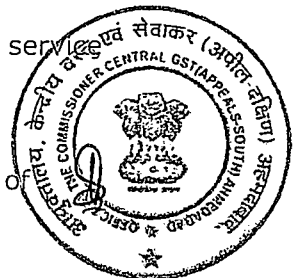
Section 68 of the Finance Act provides for payment of service tax and reads as follows; [68. Payment of service tax. — (1) every person providing taxable service to any person shall pay service tax at the rate specified in section 12[66B] in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of such taxable service as may be notified] by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.] **"Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider."**;

4.1 Rule 2(d) of the Service Tax Rules, 1994 defines "person liable for paying service tax". Relevant Extracts of the Rule are reproduced here under:

[(d) "person liable for paying service Tax",

(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, mean,-



•(A)

[(AA).....1

[(AAA).....

(B)

(C)

(D)

(E)

[(EE)

[(EEA)

(EEB)

(F) in relation to services provided or agreed to be provided by way of :-

(a) renting of a motor vehicle designed to carry passengers, to any person who is not engaged in a similar business; or

(b) ; Or

(c) service portion in execution of a works contract -by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively.

4.2 In view of the foregoing it is observed that in respect of "Works Contract Service" and "Rent-a-cab" service, if the services are provided by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory, to a business entity registered as a body corporate, located in the taxable territory, then both the service provider and the service recipient are liable to pay service tax, to the extent notified under sub-section (2) of Section 68 of the Finance Act,1994.

5. The extent of service tax payable by the recipient of service and that payable by the service provider, has been notified vide notification numbered 30/2012 dated 20/06/2012 (made effective from 01.07.2012), issued in exercise of powers conferred by sub Section (2) of Section 68 of the Finance Act,1994.

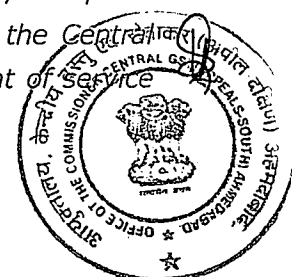
The relevant extract of the said Notification is as under;

Notification No. 30/2012-Service Tax

New Delhi, the 20th June, 2012, ,

GSR (E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II,

Section 3, Sub-section (0, vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849(E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service



tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Table

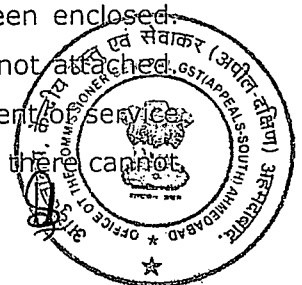
Sl.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
7	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business	Nil	100 %
	(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	60%	40%
9.	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%

06. As the appellants has made the contention that they have already paid the service tax amount to the government through service provider and therefore amount paid under protest towards the service received is amounts to double payment and therefore they are eligible for refund under section 11 B of the Central Excise Act 1944 read with section 83 of the Finance Act, 1994.

07. Further appellants has submitted that they have paid the service tax under protest on the same transaction value which has already suffered tax and also placed the reliance on the below mentioned judgment in support of their case-

- Hon'ble CESTAT, Principle bench of New- Delhi in the case of Commissioner of Service Tax, Meerut-II v/s Geeta Industries Pvt. Ltd. reported at 2011 (22) S.T.R. 293 (Tn. Del).
- Hon'ble CESTAT, Ahmedabad in case of Mandev Tubes v/s Commissioner of Central Excise, Vapi reported at 2009 (16) S.T.R. 724 (Tn. Ahmd.)
- Hon'ble CESTAT, Ahmedabad in case of Angiplast Pvt. Ltd. v/s Commissioner of Service Tax, Ahmedabad reported at 2009 (16) S.T.R. 724 (Tn. Ahmd.)

In the defense reply they submitted that the service provider wise details along with invoice details, copy of ledger and copy of challans has been enclosed. However only ledger of service provider was found and challans were not attached. Challans produced are those through which appellants have made payment of service tax under protest during the audit. In view of the above cited judgments there cannot



be double taxation on the assessee, if it is proved. In the present case the appellant has only submitted copy of challans by which they have paid the service Tax under protest during Audit, also they have submitted copy of their ledger of the concerned service providers wherein they have made payment of service tax to them along with the bill amount; however they have not produced any evidence that the service provider has made the aforesaid payment of service tax collected to the government. Hence the matter is required to be sent back to the original adjudicating authority to verify that the service provider has made the payment, and then decide the matter on merit.

08. In view of the above, I pass the following order-

-: ORDER:-

09. I remand the matter to the adjudicating authority to verify the facts regarding payment of service Tax by the service providers, as discussed in para 7 above.

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

10. 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),

केन्द्रीय कर, AHMEDABAD.

BY R.P.A.D.

To,

M/s. Concord Biotech Ltd,

1482-1486, Trasad Road, Dholka,

Dist:- Ahmedabad-387810

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, Ahmedabad North.
3. The Assistant/Deputy Commissioner, Division-V, Ahmedabad North.
4. The Assistant Commissioner, (System), Ahmedabad North
5. Guard File.
6. P.A. File.



