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| केन्द्रीय कर आयुक्त (अपील) | |
| O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, | |
| 7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015 | |
| आम्बावाडी, अहमदाबाद-380015 | |
| 079-26305065 | टेलिफैक्स: 079-26305136 |

क फाइल संख्या : File No : **V2(ST)0157/A-II/2016-17 / 10005 to 10010**
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-145-17-18**
 दिनांक Date : 20-10-2017 जारी करने की तारीख Date of Issue **23-11-17**

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-108/VJP/16-17** Dated **10.08.2016**
 Issued by Assistant Commr **STC**, Service Tax, Ahmedabad

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

M/s. Contis Technologies 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, 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 is 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 (सीस्टैट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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,

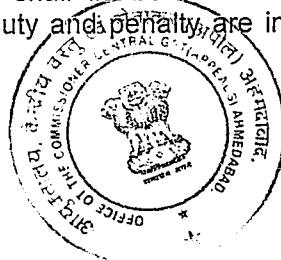
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



adjudicating authority that refund has to be filed before expiry of one year from date of-

- a. Receipt of payment in foreign convertible currency-----[**where provision of service had been completed prior to receipt of such payment- para 3(a) of amended notification**]
- b. Issue of invoice-----[**where payment of service has been received in advance- para 3(b) of amended notification**]

2.3 As per opinion of Adjudicating authority due date of filing refund for each BRC and invoices was as following-

TABLE-B

| FIRC/ Dt. | Bank credit Dt. | Invoice dt. | Due date of filing the refund |
|---------------------|-----------------|--|---|
| 2121393 29.12.14 | 30.12.2014 | 19.01.15 27.01.15 | (a) 18.01.2016 for invoice dt. 19.01.15 (b) 26.01.2016 for invoice dt. 27.01.2015 |
| 2161133 27.02.15 | 02.03.2015 | 11.02.15 16.02.15 20.02.15 24.02.15 | 01.03.2016 for all four invoices [as payment received after rendering of service i.e after invoice dt.] |

3. Being aggrieved with the impugned order, the appellant filed an appeal wherein it is stated that-

- I. Appellant exports 100% of its service and time-limit prescribed in 11B, CEA, 1994 does not apply to accumulated credit due to export and claimed as refund u/s 5.
- II. Though they have rigorously followed the Bank, BRC were issued late by bank due to their on procedural delay. It is beyond their control to get issued BRC. Appellant had been instructed in one of the prior hearing that no application should be filed in absence of BRC.
- III. Adjudicating authority has erred in law and on facts.

4. Appellant was afforded opportunity of Personal Hearing in the matter on 02.06.2017, 12.06.2017, 19.06.2017 and 19.07.2017. Neither appellant or nor his representative availed the opportunity granted



5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum. In terms of Section 35 of CEA, 1944, only three adjournments can be granted, therefore no further opportunity of Personal Hearing is granted. I find that claim is rejected on time limitation ground.

6. I take up the limitation ground. It is contended by appellant that adjudicating authority has erred in law and on facts but where and how adjudicating authority has erred on facts and law is not brought out in appeal memo.

7. Appellant has argued limitation of 11B is not applicable to them but has not produced any legal authority or any judgments or any other authority, in his ground of appeal before me to prove his point that as to how and why Section 11B of CEA, 1944 is not applicable for refund of accumulated credit under notification 27/2012-CE (NT). However from impugned OIO, it is gathered that appellant had relied upon judgment in case of Swagat synthetics Ltd. Vs. CCE Surat [2007 (220) ELT 949 (Tri. Ahd.)] wherein it is held that time limitation of 11B is not applicable to refund of accumulated credit.

8. I find that judgment in case of Swagat synthetics Ltd. Vs. CCE Surat [2007 (220) ELT 949 (Tri. Ahd.)] is delivered for the deemed credit accumulated due to export is refundable in terms of Notification No. 29/96-C.E. Said judgment is upheld by Hon'ble High Court of Gujarat 2008 (232) E.L.T. 413 (Guj.). It was a case relating to Sub-Rule (13) of Rule 57F of Central Excise Rules, 1944. Said judgment case of Swagat synthetics Ltd. though upheld by Hon'ble High Court of Gujarat has been reversed by Hon'ble High Court of Madras vide decision reported at 2012 (281) E.L.T. 185 (Mad.) in case of GTN Engineering Ltd. delivered in case of refund of accumulated credit in terms of Notification 5/2006- CE (NT). Notification No. 5/2006-CE (N.T.) is superseded by new Notification No. 27/2012 CE-(NT) from 18.06.2012.

9. In the case of GTN Engineering Ltd. (supra), the Tribunal [2010 (259) ELT 625 (Trib. - Chennai)] had decided that the time-limit prescribed under Section 11B will not apply for granting refund under Rule 5 of Cenvat Credit Rules, 2004. Revenue had appealed against the said decision before the Hon,ble High Court of Madras. The Hon'ble High Court of Madras vide



decision reported at 2012 (281) E.L.T. 185 (Mad.) set aside the order of the Tribunal and held that the time-limit as provided in Section 11B will apply.

10.1 Para 3(b) of Notification 27/2012 CE (NT) itself states that time-limit as provided in Section 11B will apply for claiming refund. Paragraph 3(b) existed in Notification 27/2012 CE (NT) prior to amendment vide Noti. 14/2016- CE (NT) dated 01.03.2016 is as below-

"The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944)."

10.2 Paragraph 3(b) after amendment in notification 27/2012- CE (NT) vide Noti. 14/2016- CE (NT) dated 01.03.2016 is as below

"The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed as under :

- (i) in case of manufacturer,
- (ii) in case of service provider, before the **expiry of one year from the date of -**

(a) *Receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or*

(b) *issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice."*

11. In view of my above findings I conclude that time limit of one year prescribe Section 11B of CEA , 1944 is applicable in amended notification for granting refund of accumulated credit under notification 27/2012- CE (NT). I find that appellant has not filed claim (a) within one year from invoice date in case of BRC 2121393 dated 29.12.14 and (b) within one year of realization of export proceeds in case of BRC 2161133 dated 27.02.15

12. In Bechtel India Pvt. Ltd. V. Commissioner of Service Tax , the Hon'ble Delhi CESTAT while applying the provision of erstwhile export of service rules

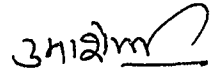


had held that export of services is completed only when all conditions for export of service in terms of the Export Rules are fulfilled. Accordingly, relevant date for the calculation of limitation period in case of export of service was held to be the date of receipt of payment in foreign convertible exchange. Similar view was held by the Hon'ble Mumbai CESTAT in case of CCE versus Eaton Industries P. Ltd. [2010 (12) TMI 71 - CESTAT, MUMBAI] and Clear point Learning Systems (I) P. Ltd. versus CCE [2015 (6) TMI 749 - CESTAT MUMBAI].

13. Time limit given in statute is requires to be followed strictly to avail the benefits. Once a period of limitation was prescribed in the refund notification for submitting the refund application that would necessarily govern. My view is supported by judgment of The Apex Court in the case of [ACC Vs. Anam Electrical Mfg. Co. [1997] 90 E.L.T. 260 (SC)] wherein it has been clarified that any appellate court, civil court, high court cannot extend the period of limitation and such a direction will be illegal. Likewise in the case of [Brite Neon Signs V. Commissioner of Central Excise, New Delhi [2002] 149 E.L.T. 330 (Tribunal Delhi)] It has been observed that Tribunal has no discretion under Section 11B to condone the delay involved in the filing of the refund claim. I am in complete agreement with adjudicating authority rejecting the claim on limitation ground. I hold that refund is not grantable on limitation ground.

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

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


(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED



(R.R. PATEL)

SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.



By R.P.A.D.:

M/s Contis Technologies Pvt. Ltd.,
Sheraton Complex 301-302,
Polytechnic Road, Ambawadi,
Ahmedabad

Copy To:

The Chief Commissioner, Central Tax, Ahmedabad.

The Commissioner Central Tax, GST South, Ahmedabad-.

The Additional Commissioner, Central Tax , GST South, Ahmedabad

The Asst. Commissioner, Service Tax Div-II, Ahmedabad(old jurisdiction).

The Asst. Commissioner(System), GST South, Hq, Ahmedabad.

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P.A. File.

