

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 34फ 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 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 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 the 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

Amit N. Shah, C/1, Priyadarshini Apartment, Behind NRI Tower, Near Pawan Bungalows, Bodakdev, Ahmedabad (*hereinafter referred to as 'appellant'*) has filed the present appeal against Order-in-Original No. SD-02/REF-281/VIP/2016-17 dated 15.02.2017 (*hereinafter referred to as 'impugned order'*) passed by the then Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant was engaged in providing services under the categories of 'Legal Consultancy Service, Construction Services Other than Residential Complex Service and Works Contract Service' and hold valid registration number ALKPS7138LSD001. The appellants had filed a refund claim of ₹63,06,128/- on 27.10.2016, before the adjudicating authority. The said refund claim was filed under Notification number 09/2016 dated 01.03.2016. Later on, as per the request of the appellants, the claim amount was recalculated to the tune of ₹65,94,893/-. During scrutiny of the claim, certain discrepancies were noticed (which would be discussed thoroughly in the subsequent paragraphs below) and therefore, a show cause notice, dated 09.12.2016, was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, out of the total refund claim of ₹65,94,893/-, rejected ₹57,64,301/- and sanctioned ₹8,30,592/- but credited the same to the Consumer Welfare Fund in terms of the provision of Section 12 C of the Central Excise Act, 1944 read with Section 11B of the Central Excise Act, 1944.

3. Being aggrieved with the impugned order, the appellant filed the present appeal. The appellant stated that he denies all allegations imposed vide the impugned order. The appellant further argued that the doctrine of unjust enrichment would not be applicable to the case as the appellant has paid Service Tax and the liability was not passed on to the service receiver. The further claimed that he has refunded the CENVAT credit received from the sub-contractors also. Further, regarding the allegation that part of the claim is hit by limitation of time bar, the appellant confirmed that the claim was filed on 27.10.2016 i.e. before the due date. There was some rectification of the claim amount but the claim was not re-filed. The appellant has also claimed that the refund was delayed by more than three months and hence, under Section 11BB of the Central Excise Act, 1944, the appellant is eligible for interest.

4. Personal hearing in the case was granted on 10.10.2017 wherein Shri Bishan Shah, Chartered Accountant, on behalf of the appellant appeared before me and reiterated the contents of appeal memorandum. He submitted the copy of a certificate from Gujarat State Police Housing Corporation Ltd. and assured to submit the affidavit within seven days



Accordingly, the appellants submitted copy of the affidavit within 7 days of the personal hearing.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellant and oral submission made at the time of personal hearing. To begin with, I find that the adjudicating authority has rejected the appeal on three grounds, viz;

(a) ₹ 86,590/- was rejected being time bar and the appellant did not submit work order pertaining to the amount.

(b) ₹ 56,77,711/- was rejected on the ground that the appellant has availed and utilized CENVAT credit collected from the sub-contractors and did not maintain separate account of CENVAT credit used in exempted services as well as taxable services.

© The claim is hit by the doctrine of unjust enrichment as the appellant did not reimburse the amount of Service Tax collected from the client.

The adjudicating authority, out of the amount of ₹ 65,94,893/-, rejected an amount of ₹ 57,64,301/- and sanctioned ₹ 8,30,592/- and ordered the sanctioned amount to be credited in the Consumer Welfare Fund.

Now, I would like to discuss the issue point wise.

6.1. As regards the first issue, I find that the amount of ₹ 86,590/- was rejected being time bar and the appellant did not submit work order of M/s. Saanvi Construction pertaining to the amount. Now, the issue remains to me is whether the adjudicating authority has rightly rejected the claim on the ground of limitation, or otherwise. The claim was rejected by the adjudicating authority stating that the claim was submitted by the appellant on 30.01.2017 i.e. after the due date of filing of the refund claim which was 13.11.2016 as per Section 102 of the Finance Act, 2016. However, I find that in the first paragraph of the impugned order, the adjudicating authority has himself claimed that the refund claim was filed before him on 27.10.2016 i.e. 16 days prior to the due date. In this regard, I would like to quote the contents of Section 102 mentioned in Chapter V (Service Tax) of the Finance Bill 2016, as below;

102. (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, out, repair, maintenance, renovation or alteration of--



subcontractors the amount of credit availed by the former and therefore, he is eligible for the amount of ₹56,77,711/- rejected by the adjudicating authority.

6.3. Now I am going to discuss the final issue i.e. the claim is hit by the doctrine of unjust enrichment as the appellant did not reimburse the amount of Service Tax collected from the client. A work order was issued to the appellant on 20.11.2014 by the ADG, Gujarat Police. At that time, the service was exempted from payment of Service Tax vide Mega Exemption Notification number 25/2012-ST dated 20.06.2012. Thus, it is well understood that at the material time, the remuneration offered to the appellant by the Gujarat State Police Housing Corporation Ltd. was devoid of Service Tax. However, the exemption was withdrawn vide Notification number 06/2015-ST dated 01.03.2015. Now, to collect Service Tax (which was not included in the work order) the appellant was needed to receive a revised work order from their client. But that never happened. In fact, the appellant submitted a certificate from the Gujarat State Police Housing Corporation Ltd. I quote, verbatim, the required contents of the last paragraph of the said certificate as below;

*"..... and to whom the payments were made by the corporation during the year F.Y. 2015-16 are inclusive of all taxes and duties. **No tax, including service tax, has been separately paid/reimbursed to the contractor by the Corporation.** Cenvat availed by the corporation on the contractor's service tax portion has been reversed in the month of March-2016."*

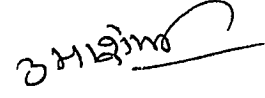
From above, it is quite clear that the payments made to the appellant during the F. Y. 2015-16 were inclusive of the taxes that were prevailing at the material time when the work started or to be precise, when the work order was prepared and handed over to the appellant. The second sentence of the said certificate very clearly says that no tax, including Service Tax, was separately paid or reimbursed to the contractor by the Corporation. This is very clear to assume that whatever payments were getting released to the appellant, were exclusive of the Service Tax as per Mega Exemption Notification number 25/2012-ST dated 20.06.2012. Thus, I find force in the argument of the appellant that he never recovered Service Tax from the client and paid the tax from his own account. Therefore, I affirm that the burden of tax was borne by the appellant and he did not pass the same to his client. In view of the above, I conclude that the doctrine of unjust enrichment is not applicable to the instant case and the amount of ₹8,30,592/-, credited to the Consumer Welfare Fund, needs to be recovered and credited to the account of the appellant.

7. In view of my above discussions and findings, I set aside the order and allow the appeal with consequential relief.



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

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


(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED


(S. DUTTA)

SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.

BY R.P.A.D.

To,
Amit N. Shah, C/1,
Priyadarshini Apartment, Behind NRI Tower,
Near Pawan Bungalows, Bodakdev,
Ahmedabad

Copy To:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Commissioner, Central Tax, Ahmedabad (South).
3. The Assistant Commissioner, System, Central Tax, Ahmedabad (South).
4. The Dy./Assistant Commissioner, Service Tax, Division-VI, Vastrapur, Ahmedabad (South).
5. Guard File.
6. P.A. File.



