

क फाइल संख्या : File No : V2(ST)0229/A-II/2016-17/10723 to 10727
 ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-148-17-18
 दिनांक Date : 3-11-2017 जारी करने की तारीख Date of Issue 12-12-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No STC/Ref/113/Apttus/KMM/AC/Div-III/16-17
 Dated 15.11.2016 Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

M/s. Apttus Software 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 :-

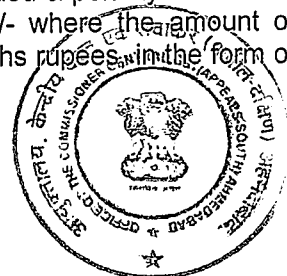
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) 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 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

M/s Apttus Software Pvt. Ltd., 307,309,310, Pinnacle, Opp. Royal Arcade, Auda Garden, Satellite, Ahmedabad-380051 (hereinafter referred to as "the Appellant"), has filed the present appeal against the Order-in-Original No STC/Ref/113/Apttus/KMM/AC/D-III/16-17 dated 15.11.2016 (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, Service Tax Division-III, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. Briefly stated that the appellant was providing services to the overseas head office under the category of 'Information Technology Software service'. The adjudicating authority rejected the refund claim filed by the appellant under Notifn. No.27/2012-CE(NT) dated 18.06.2012 read with Rule 5 of the Cenvat Credit Rules, 2004 on the ground that the services rendered by him to the overseas client does not qualify as 'export of service' under Clause(f) of Rule 6A of the Service Tax Rules, 1994.

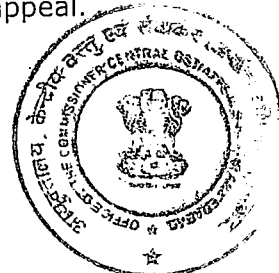
3. Aggrieved with the impugned order, the said appellant has filed the present appeal on the following grounds viz:

(i) The adjudicating authority has not understood ^h of legal background and not gone in the fact of the case stated the legal provision while rejected refund claim.

(ii) the appellants is a branch office of its holding company and hence services provided by the appellants to its holding company cannot be construed as export of service in terms of clause(f) of Rule 6A of the Service Tax Rules, 1994 and therefore refund of unutilized cenvat credit of service tax filed under Rule 5 of the Cenvat credit Rules, 2004 read with Notifn. No.27/2012-CE(NT) dated 18.06.2012 is not admissible.

4. Personal hearing in the matter was held on 07.09.2017. Ms. Bhagyashree Bhatt and Ms. Nidhi Shah, both Chartered Accountants, appeared on behalf of the appellants and reiterated the ground of appeal.

5. I have carefully gone through the case records, appeal memorandum and submission made at the time of personal hearing. I find that the main issue to be decided is whether the impugned order rejecting refund claim filed by the appellant are just, legal and proper or otherwise in terms of clause (f) of Rule 6A of the Service Tax Rules, 1994 and eligible for refund of unutilized cenvat credit of service tax filed under Rule 5 of the Cenvat credit Rules, 2004 (in short 'CCR, 2004) read with Notifn. No.27/2012-CE (NT) dated 18.06.2012 or otherwise. I proceed to decide the appeal.



6. Prima facie, I find that the appellant are registered under the category of 'Information Technology Software Service' and engaged in providing data processing, data management, measurement and analysis services to overseas clients and have filed quarterly refund claim of unutilized cenvat credit of service tax paid on input services availed, under Rule 5 of the CCR, 2004 read with Notification no.27/2012-CE(NT) dated 18.06.2012 which is conditional one. I find that the appellants have provided services of 100% of its turnover to the overseas clients which are not disputed by either side.

6.1 As regards para 3(ii) supra, I find that Rule 6A of the Service Tax Rules, 1994 defines 'export of service' which is reproduced below for the sake of ease:

Rule 6A-Export of Services-(1) The provision of any service provided or agreed to be provided shall be treated as export of service when-

- (a) *The provider of service located in the taxable territory,*
- (b) *The recipient of service is located outside India,*
- (c) *The service is not a service specified in the section 66D of the Act,*
- (d) *The place of provision of the service is outside India,*
- (e) *The payment for such service has been received by the provider of service in convertible foreign exchange, and*
- (f) *The provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of explanation 3 of clause (44) of section 65B of the Act.***

(2) where any service.....by notification.

I find that the adjudicating authority has rejected the refund claims for violation of condition no. (f) above. I find that section 64B of the Act provides interpretations. Clause (44) defines "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include:

- (a)
- (b)

Explanation 3- for the purpose of this Chapter-

- (a) *An unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct person;*



(b) An establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishment of distinct person.

I find that as per the definition of 'export of services' as defined in the Act stated supra, all the conditions needs to be fulfilled/satisfied. I find that there is no dispute for (a) to (e). But for (f), I find that the appellants have their establishment in the taxable territory i.e. India under the Companies Act, 1956 and have their head office in non-taxable territory i.e. USA. This fact is not in dispute by either side. Even all the appellants have stated that they have provided services to their parent company established in non-taxable territory and have filed ST-3 returns accordingly. So, I find that the 'export of service' as defined in Rule 6A supra is crystal clear when read with interpretation given in section 65B (44), Explanation 3(b) ibid and accordingly, I hold that the services provided by the appellants to their parent establishment shall not be treated as 'export of services' under Rule 6Aibid are not eligible for refund of service tax paid on input services.

6.2 As regards para 3(iii) supra, I find that appellants are registered under the provisions of the Companies Act, 1956 in the taxable territory of India by their parent companies established/registered under the provisions of the law prevailing in the respective states i.e USA which is outside India and non-taxable territory. This fact is not in dispute by the either side. I find that though the limited company established under the Companies Act, 1956 is artificial person and have legal entity in the eyes of law and have provided services to their parent/holding company which is also a legal entity in the eyes of law is treated as establishment of distinct persons by virtue of provisions contained in the Finance Act, 1994, and discussed in para supra, services provided by the appellants to their parent/holding company shall not be treated as export of services and accordingly, not eligible for refund of service tax paid on input service. Accordingly, I agree with the findings of the adjudicating authority and uphold the impugned OIO dtd.15/18.11.2016 and set-aside the appeal filed against the said OIO.

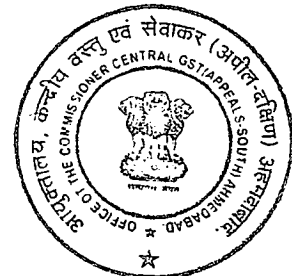
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in the above terms.



(उमा शंकर)


आयुक्त

केन्द्रीय कर (अपील्स)



Date: 3/11/2017

Attested


(S.S. Chowhan)
Superintendent,
Central Tax (Appeals),
Ahmedabad.

BY SPEED POST TO:

M/s.Apttus Software Pvt. Ltd.,
307,309,310, Pinnacle,
Opp. Royal Arcade, Auda Garden,
Satellite, Ahmedabad-380051

Copy to:-

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Principal Commissioner, Central Tax, Ahmedabad(South)
- (3) The Assistant Commissioner, Central Tax Division VII(Satellite), Ahmedabad(South)
- (4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad(South)
- (5) Guard file
- (6) P.A. file.

