

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

क फाइल संख्या : File No : **V2(ST)060/A-II/2017-18** / 10460 to 10464
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-149-17-18**
 दिनांक Date : 13-11-2017 जारी करने की तारीख Date of Issue 06-12-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **SD-02/43/AC/16-17** Dated **13.02.2017** Issued
 by **Assistant Commr STC, Service Tax, Ahmedabad**

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

M/s. BMT Consultants (India) 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 :-

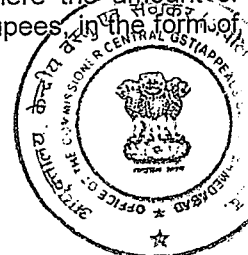
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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 A2I9k 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 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 होंगे।

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,

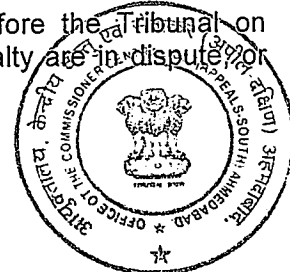
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 is an appeal filed by M/s BMT Consultants (India) Pvt. Ltd. (herein after referred to as the appellants) against the OIO No. SD-02/43/AC/16-17 dtd. 13.02.2017 (herein after referred to as the impugned order) passed by the Assistant Commissioner, Division-II, Service Tax, Ahmedabad (herein after referred to as the adjudicating authority).

2. The brief facts of the case are that the appellants provided the service under the category of consulting Engineers which is taxable service. During the course of audit of the said appellants, it was noticed that they had less paid their service tax liability by Rs. 93,089/-. Further the appellants had provided services to the SEZ entity during the financial years 2011-12 and 2012-13 availing the benefit of the Notification No. 17/2011-ST dtd. 01.03.2011 and had not paid service tax on the services provided to the SEZ entity. As per the said notification, an SEZ entity can avail ab-initio exemption subject to the condition that the SEZ entity has to provide A-1 Certificate issued by the SEZ authority to the service provider and the A-1 certificate contains the name of the service provider. The appellants failed to produce such certificate and therefore they were liable to pay service tax amounting to Rs. 27,11,042/-. In view of this, the appellants were issued a show cause notice demanding service tax amounting to Rs. 28,04,131/- and proposed imposition of penalties under various sections of the Finance Act, 1995 (the Act for brevity).

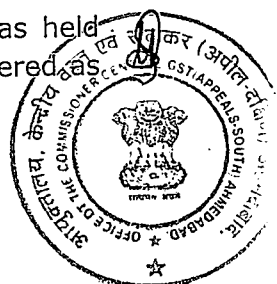
The Assistant Commissioner, vide the impugned order, dropped the demand for Rs. 93,089/- and confirmed the demand of Rs. 27,11,042/- on the ground that they did not have A-1 certificate for availing ab initio exemption for supplies to SEZ and had therefore failed to fulfill that condition of the notification dtd. 01.03.2011.

3. Being aggrieved by the confirmation of demand of Rs. 27,11,042/-, the appellants have filed this appeal on the following grounds:

- (a) That they have provided service to the developer of Special Economic Zone and they had rendered "Project Consultancy Services" towards the site supervision of a site located in the SEZ area;
- (b) That no payment of service tax was made by the SEZ entity on the ground that the service recipient is located within the SEZ and the developer is enjoying tax benefits;
- (c) That they have provided service to a unit located in Special Economic Zone non-production of the required form would merely lead to a procedural lapse and the authentication of the transaction cannot be questioned;
- (d) That the appellants were provided the copies of sanctions received by the SEZ entity clarifying the same are sufficient to permit them to take ab initio exemptions for the entire period;
- (e) That the adjudicating authority has erred in invoking the extended period;
- (f) The appellants sought support from the following case laws:

Mangalore Refinery and Petrochemicals Lts. vs. CCE (Appeals) Mangalore - 2013 (1) TMI-462 (Tri-Bang) in which it was said that cenvat credit benefit cannot be denied to the assessee on a minor pure procedural ground.

Alarsin vs. CCE, Mumbai-I - 2015 (5) TMI 67 (Tri-Mum) and M/s Doshion Ltd. Vs. CCE, Ahmedabad - 2012 (10) TMI 952 (Tri-Ahem) in which it was held omission to take registration as an input service distributor is to be considered as procedural irregularity.



M/s Zydus Hospira Oncology Pvt. Ltd. Vs. CCE, Ahmedabad – 2013 (2) TMI 562 (Tri-Ahem) in which it was held that refund of service tax paid on services made to SEZ can be sanctioned if the services are not on the approval list as granted by the Approval Committee.

4. The personal hearing in the case was held on 10.10.2017 in which Ms Richa Ankit Gandhi, Chartered Accountant appeared on behalf of the appellants. She reiterated the grounds of appeal. She pointed out that subsequent notifications have done away with the procedural requirements.

5. I have carefully perused the documents pertaining to the case and submitted by the appellant alongwith the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issue to be decided in the instant case is whether the services provided to a SEZ developer are liable to service tax in absence of not fulfilling conditions of an exemption notification.

7. I find that the appellants have submitted the copy of work order given by SEZ unit and a copy of authorisation in FORM-A-2 dtd. 13.06.2014 required under Notification No. 17/2011-ST dtd. 1.03.2011 as amended. As per the authorisation, the SEZ unit M/s L & T Shipbuilding Ltd. has given details of specified service to be received from the appellants. The receipt of authorisation in FORM-A-2 is a condition to be fulfilled by any unit which wants to avail the ab-initio exemption on the specified services received by the SEZ unit and used exclusively for the authorised operations.

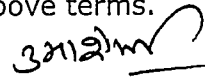
8. I find that as per the documents submitted by the appellants, the service provided in the instant case have been approved as per the letter F.No. 9/103/2009/Pvt-SEZ II/Vol II dtd. 05.01.2010. The appellants have fulfilled the conditions for availing ab-initio exemption for the clearances made to SEZ unit and therefore are entitled for exemption from payment of service tax on the specified services. I also find support from a decision cited at 2015 (40) S.T.R. 158 (Tri. - Mumbai) in the case of BOMBAY INTELLIGENCE SECURITY (INDIA) LTD. Vs. COMM. OF S.T., MUMBAI-II in which it has been held that:

"Demand - Service provided to SEZ unit - Taxability - Service provided to SEZ unit exempt under Notification No. 17/2011-S.T. - Appellant producing approvals from approval committee along with certificate from chartered accountant as prescribed - Demand not sustainable"

9. In view of the above position I allow the appeal.

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

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



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

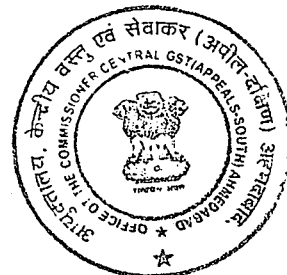
अहमदाबाद.

सत्यापित

(धर्मेन्द्र उपाध्याय)

अधीक्षक (अपील्स),

केन्द्रीय कर, अहमदाबाद.



BY R.P.A.D.

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Ahmedabad-380 054

Copy To:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad (South).
- (3) The Assistant Commissioner, CGST, Div-VI (Vastrapur), Ahmedabad (South)
- (4) The Assistant Commissioner, Systems, CGST, Ahmedabad (South)
- ~~(5) Guard File.~~
- (6) P.A. File.

