

<b>केन्द्रीयकर आयुक्त (अपील)</b>	
<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX</b>	
केन्द्रीयकर शुल्क भवन	Floor: Central Excise Building
सातवां मजिल पोलिटकालिक के पास	Near Polytechnic
आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
फोन: 079-26305065	टेलिफोन: 079-26305136

क फाइल संख्या : File No : **V2(ST)038/A-II/2017-18**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-157-17-18**

दिनांक Date : 17-11-2017 जारी करने की तारीख Date of Issue \_\_\_\_\_

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No **SD-01/17/03/AC/Pacifica/16-17** Dated **31.01.2017** Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

**M/s. Pacifica Developers 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 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

Received by hand by  
Jeet on 8/1/2018

*Jeet*



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 29) 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 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.



**ORDER-IN-APPEAL**

This appeal has been filed by M/s. Pacifica Developers Pvt Ltd., Reflections, Near Vaishnodevi Temple, Near Nirma University, Ahmedabad-382735 (hereinafter referred to as "the appellant") against the Order-in-Original No. SD-01/17/03/AC/Pacifica/16-17 dated 07.02.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Service Tax, Division-I, Service Tax Commissionerate, Ahmedabad (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case are that during the course of audit for the period 2012-13 to 2014-15, it was found that the appellant had availed CENVAT Credit on input services of Rs. 25,196/- on the invoices relating to Food/Outdoor Catering and Hotel Stay issued by four hotels namely *Silver Apple, The Pride Hotel, Palm Grove Beach Hotels P. Ltd.* and *Pacifica Hotels Ahmedabad P. Ltd.* during the said period under sales promotion services. Consequent to this audit, a show cause notice dated 17.11.2016 was issued inter alia alleging that the Outdoor Catering Service has been kept out of the purview of the "input service" in terms of the provisions of Rule 2(I)(C) of CCR, 2004, when such services are used primarily for personal use or consumption of any employee; that their ST-3 returns did not shown the figure of CENVAT credit availed by them under the category of Outdoor catering; that they wrongly availed the credit with an intention to evade payment of Service Tax and the department would never come to know the act of the appellant, but for the audit objection. The said notice therefore proposed recovery of the wrongly availed CENVAT credit along with interest and further proposed penalty on the appellant. This Show Cause Notice was adjudicated by the adjudicating authority vide above said impugned order wherein the adjudicating authority, upheld the demand and recovery of Cenvat Credit of Rs. 25,196/- alongwith interest and imposed penalty under the provisions of Rule 15 (3) read with section 78 of the Finance Act, 1994.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that they are rightly eligible for the CENVAT Credit of Rs. 25,196/- which was disallowed by the adjudicating authority. Appellant relies mainly on the definition of 'input services'

The appellant submits that the definition of input service includes the services which are used in activities relating to business. The definition specifies some of the activities "accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security and the said



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specified activities do merely denote some activities related to business which is only illustrative and not exhaustive and the scope and the definition of the terms "in relation to" and "such as" is very wide and connotes all the activities related to business and stated that an amount of Rs. 25,196/- should be allowed as CENVAT credit on sales promotion services based on the exhaustive definition of input services.

4. A personal hearing in the matter was held on 01.11.2017 and Shri R. Subramanya, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case on records, appeal memorandum and submissions made by the appellants at the time of personal hearing. I find that the appellant failed to provide the evidence that the said services were availed to cater the customers/clients gathering at the site events organized by them and the invoices provided by the appellant clearly mentions the outdoor catering service and thus it nowhere falls under the category of sales promotion service. I find that clause (c) of input service definition of rule 2(I) of CCR, 2004, introduced w.e.f. 01.04.2011 specifically excludes the outdoor catering service used for personal use or staff welfare from eligible input service, which reads as follows :-

*Rule 2(I) : "Input Service" means any service, -*

- (i) *used by a provider of output service for providing an output service; or*
- (ii) *used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal; but excludes, -*
  - (A) *service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) insofar as they are used for -*
    - (a) *construction or execution of works contract of a building or a civil structure or a part thereof; or*
    - (b) *laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or*



- (B) Services provided by way of renting of a motor vehicle, insofar as they relate to a motor vehicle which is not a capital goods; or
- (BA) Service of general insurance business, servicing, repair and maintenance, insofar as they relate to a motor vehicle which is not a capital goods, except when used by
  - (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or
  - (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or
- (C) such as those provided in relation to **outdoor catering**, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, **when such services are used primarily for personal use or consumption of any employee;**

[emphasis supplied]

6. As is seen in terms of the said amended rule, the definition of input service, does not cover outdoor catering as there is a specific exclusion to the same. Such exclusion from 1.4.2011 was a conscious decision on part of the legislature having knowledge of earlier judicial decisions on the such subject, yet the legislature chose to exclude these items from the definition of input service and wisdom of the legislature cannot be questioned, in the guise of interpretation. Moreover the interpretation cannot add words to the definition, where definition is unambiguous and crystal clear. The Hon'ble High Court of Bombay in the case of Nicholas Piramal (India) Limited [2009(244) ELT 321 (Bom)], has on the question of interpretation of rules, made the following observation:

*"We may only mention that hardship cannot result in giving a go-by to the language of the rule and making the rule superfluous. In such a case it is for the assessee to represent to the rule making authority pointing out the defects if any. Courts cannot in the guise of interpretation take upon themselves the task of taking over legislative function of the rule making authorities. In our constitutional scheme that is reserved to the legislature or the delegate.*

*Hardship or breaking down of the rule even if it happens in some cases by itself does not make the rule bad unless the rule itself cannot be made operative. At the highest it would be a matter requiring reconsideration by the delegate.*

*It is never possible for the Legislature to conceive every possible difficulty. As noted a provision or a rule can occasion hardship to a few that cannot result in the rule being considered as absurd or manifestly unjust.*



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*In our opinion, the rule must ordinarily be read in its literal sense unless it gives rise to an ambiguity or absurd results."*

7. In this regard Hon'ble Supreme Court has very categorically stated that "Courts cannot add words to a statute or read words into it which are not there" (Parmeshwaran Subramani [2009(242)ELT 162(SC)]. Moreover, in the guise of interpretation, no intention can be added, when intention of legislature is very clear.

8. I also rely on the judgement of the (i) M/s AET LABORATORIES PVT. LTD. [2016(42) S.T.R. 720(Tri.-Bang.)] and (ii) M/s. APPLIED MICRO CIRCUITS INDIA PVT. LTD. [2016(42) S.T.R. 441(Tri.-Mumbai] wherein CENVAT credit on the outdoor catering service was rejected.

9. In view of above, I reject the appeal of the appellant

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

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

*उममा शंकर*

(उममा शंकर)

Commissioner, (Appeals),  
Central Tax, Ahmedabad.

ATTESTED

*(Signature)*  
(VINOD LUKOSE)  
SUPERINTENDENT,  
CENTRAL TAX (APPEALS),  
AHMEDABAD

BY R.P.A.D

To,

M/s. Pacifica Developers Pvt Ltd.,  
Near Vaishnodevi Temple,  
Near Nirma University,  
Ahmedabad-382735

Copy to:-

1.  The Chief Commissioner, Central Tax Zone, Ahmedabad.
2.  The Commissioner, Central Tax,
3.  The Dy. / Asstt. Commissioner, Central Tax, Division-
4.  The Addl./Joint Commissioner, (Systems), Central Tax,
5.  Guard file.
6.  P.A . to Commissioner (Appeals),.

