

केन्द्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX	
केन्द्रीय कर शुल्क मन्त्रालय	7 th Floor, Central Excise Building
सातवीं मंजिल, पॉलिटेक्निक के पास	Near Polytechnic
आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
079-26305065	टेलीफोन नं. 079-26305136

क फाइल संख्या : File No : **V2(ST)026/A-II/2017-18 / 10280 to 10285**
 ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-001-APP-159-17-18**
 दिनांक Date : 20-11-2017 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-05/19/DKJ/DC/2016-17** Dated **28.02.2017**
 Issued by Deputy Commr STC, Service Tax, Ahmedabad

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

M/s. Angiplst 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 :-

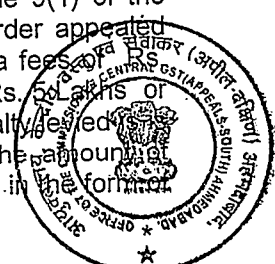
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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. / Assst. 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ 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 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,

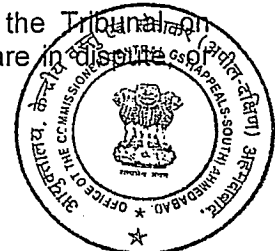
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

1 M/s. Agniplast Private Limited, 4803, Phase-IV, GIDC, Vatwa, Ahmedabad- 382 445 (hereinafter referred to as 'appellants') holding Service Tax Registration No. AABCA 8320 PST001, have filed the present appeals against the Order-in-Original number SD-05/09/DKJ/DC/2016-17 dated 28.02.2017 (hereinafter referred to as 'impugned orders') passed by the Asst. Commissioner, Service Tax Div-V, APM Mall, Satellite, Ahmedabad (hereinafter referred to as 'adjudicating authority');

2.1 The facts of the case, in brief, are that-

- a. the appellant had incurred expenditure in foreign currency for receipt "Banking and Financial Service" and had not discharged service tax liability, as a recipient of overseas services, u/s 66A of FA, 1994, of Rs. 1,32,986/- for period FY 2011-12 and 2012-13.
- b. The appellant had incurred expenditure in foreign currency for receipt "Exhibition Service" and had discharged service tax liability, as a recipient of overseas services, u/s 66A of FA, 1994, of Rs. 52,204/-/- for period FY 2011-12 and 2012-13 but the payment has been made from CENVAT A/c. As per the Explanation given under rule 3 of CCR, 2004 "CENVAT credit can not be used for payment of service tax in respect of services where the person liable to pay tax is recipient."
- c. the appellant had incurred expenditure in foreign currency for receipt "Legal fees/Professional fees covered under Consultancy Service" and had not discharged service tax liability, as a recipient of overseas services, u/s 66A of FA, 1994, of Rs. 38,611/- for period FY 2011-12 and 2014-15. (Demand was raised from 28,932 to 38,611/- by issuing corrigendum of SCN.)

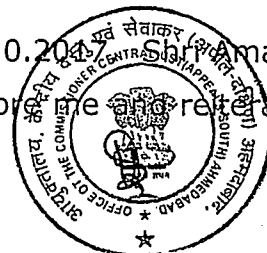
2.2 After issuing SCN and corrigendum, total short payment of duty Rs. 2,23,801/- [1,32,986.00 + 52,204.00 + 38,611.00] was confirmed vide impugned OIO u/s 73(1) by invoking extended period along with imposition of penalty of Rs. 2,23,801/- u/s 78 of FA, 1994 and penalty of Rs. 10,000/- u/s 77(2)(b) of FA, 1994..Interest was also ordered to be recovered u/s 75 of CEA, 1944.

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



- a. The Deputy Commissioner, the adjudicating authority, has not considered the submissions made by the appellant, that the services received by appellant are not taxable at all.
- b. The adjudicating authority has not given reasoned order and submission made by appellant was brushed aside without giving any findings on the same.
- c. The present case involves various services like Banking Service, Consultancy Service and Exhibition Service etc., the adjudicating authority ought to have provided reason for confirming the service tax in each category of services. However, adjudicating authority has clubbed all services together and without analyzing the special features of each service, it is ordered that appellant is required to pay the service tax.
- d. Adjudicatin authority has not observed the principal of natural justice and placed bland findings which is in violation of natural justice. Therefore impugned Order needs to be set aside in interest of justice.
- e. Regarding banking service demand it is stated that Indian Bank had paid charges to foreign Bank, therefore appellant is not required to pay service tax. Foreign bank is rendering service to Indian Bank and not to the appellant.
- f. Regarding payment from CENVAT a/c as a recipient of "Business Exhibition Service" it is stated that when person is deemed to be person liable to pay service tax, such person is eligible for all the benefits and facilities provided under CCR, 2004 and one facility under CCR, 2004 is utilization of CENVAT for paying service tax. In other words all persons liable to pay service tax can utilize service tax, if otherwise credit was otherwise legally and lawfully available to them. Matter is revenue neutral as payment by cash would result in no gain to the revenue and we would have taken credit of that..
- g. Regarding legal consultancy service demand, it is stated that expenditure incurred in foreign currency is actually the payment made to various experts located in foreign countries whose assistance was taken by us in executing various project that our company had to execute in foreign countries. Such payment does not attract service tax liability. Regarding issuing corrigendum it is stated that revenue has no authority to revise the demand by way of corrigendum.

4. Personal hearing in the case was granted on 10.10.2017. Shri Amal P. Dave, Advocate, on be half of appellant, appeared before the authority.



the grounds of appeal. They stated that audits certificate has been submitted subsequently. Earlier CA Certificate was given.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants. Regarding audit certificate and CA certificate stated in personal in hearing, I find that said certificates are not relevant in present case and no any issue involved has any relation with said certificate.

6. Appellant had vehemently contended that the adjudicating authority has passed order without considering their submission given in reply to SCN dated 15.06.2017. More so, the adjudicating authority has not given reasoned order and submission made by appellant was brushed aside without giving any findings. I have perused the submission dated 27.07.2016 given in respect of SCN dated 15.06.2016 and findings of OIO. I find that adjudicating authority has not recorded any finding as to how their arguments put forth in submissions are not accepted to him. All arguments put forth are connived at and simply concluded that services received from overseas is taxable and recipient of service is liable to pay service tax under reverse charge mechanism u/s 66A of FA, 1994 r/w rule 2(1)(d)(iv) of Service tax rule, 1994 for period up to 30.06.2012 and under rule 2(1)(d)(i) (G) of Service tax rule, 1994 for period from 01.07.2012 r/w Section 66C of FA, 1994 and rule 3 and 4 of Place of provisions of service rules, 2012 (w.e.f.01.07.2012).

7. The adjudicating authority should have passed reasoned and speaking order for expeditious justice in a meaningful manner. Orders passed by an authority without giving sufficient details of facts, applicable law, and reasoning are called cryptic orders. The reasons must be conveyed. The reasons and grounds for not allowing the submissions are not conveyed to the appellant. The order must also be reasoned and speaking which is not so in present case. Non-reasoned and non-speaking order is violation of principal of natural justice enshrined in judicial proceedings. I hold that principal of natural justice is not followed in passing order by the adjudicating authority. In the interest of natural justice, the case needs to be remanded back to adjudicating authority to pass the reasoned and speaking order. Reasons for acceptance or non-acceptance of submissions made and case relied upon by appellant should be discussed and given for each category of services separately.



8. In view of facts and discussion herein above, the Adjudicating Authority is directed to decide the case afresh, for which case is remanded back to the Adjudicating Authority, after due compliance of the principles of natural justice and after proper appreciation of the evidences that may be put forth by the appellant before him. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority. These findings of mine are supported by the decision/order dated 03.04.2014 of the Hon'ble High Court, Gujarat in the Tax appeal No.276//2014 in the case of Commissioner, Service Tax, Ahmedabad V/s Associated Hotels Ltd. and also by the decision of the Hon'ble CESTAT, WZB Mumbai in case of Commissioner of Central Excise, Pune-I Vs. Sai Advantium Ltd and reported in 2012 (27) STR 46 (Tri. - Mumbai).

09. In view of above, without going in to merit of the case, I remand the case back to original adjudicating authority.

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

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

R.R. Patel

(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD.

By R.P.A.D.:

To,

M/s. Agniplast Private Limited,
4803, Phase-IV, GIDC, Vatwa,
Ahmedabad- 382 445

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, Ser. Tax Div-V, APM Mall Ahmedabad-I(old jurisdiction).- NEW Div-VI, Ahmedabad South, Central Tax

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

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