

केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX	
सत्यमेव जयते	Floor: Central Excise Building
केंद्रीय कर शुल्क भवन	Near Polytechnic
सातवांमजिले, पोलिटिकनिक के पास	Ambavadi, Ahmedabad-380015
आम्बावाडी, अहमदाबाद-380015	
☎ 079-26305065	☎ 079-26305136

क फाइल संख्या : File No : **V2(ST)055/A-II/2017-18** / 1150 to 1154
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-175-17-18**
 दिनांक Date : 21-11-2017 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 **STC/Ref/191/Nikunj/KMM/AC/D-III/16-17**
 Dated **21.03.2017** Issued by Assistant Commr **STC**, Service Tax, Ahmedabad

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

M/s. Nikunj Mangubhai Patel

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 :-

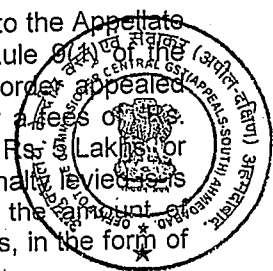
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 is 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, 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 13 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. Nikunj M. Patel, 47, Shreyas park Society, Jodhpur Tekra, Ramdevnagar, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number STC/Ref/191/Nikunj/K.M.Mohadikar/AC/Div-III/16-17 dated 21.03.2017 (*hereinafter referred to as 'impugned order'*) passed by the then Assistant Commissioner, Division-III, Service Tax, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants were engaged in providing services under the category of 'Works Contract Service' and hold valid registration number ALQPP8622GSD001. The appellants had filed a refund claim of ₹ 7,82,919/- on 11.11.2016, before the adjudicating authority, under Section 102 of the Finance Act, 2016 read with the Finance Act, 1994 and rules made thereunder. The appellants provided services to "Gujarat State Roads & Building Department/Water Department" for S. R. to Gujarat College at Ahmedabad. During scrutiny of the claim, it was noticed that the contract was awarded to the appellants by the Executive Engineer (Road & Building) Division, Ahmedabad on 11.03.2015. As per paragraph 1© of Section 102 of the Finance Act, 2016, the refund is to be allowed if the contract is awarded to the service provider prior to 01.03.2015. Thus, the adjudicating authority, on the above ground, vide the impugned order, rejected the entire claim of refund of ₹7,82,919/-.

3. Being aggrieved with the impugned order, the appellants preferred the present appeal before me. The appellants argued that the adjudicating authority has wrongly rejected the refund claim of ₹ 7,82,919/- vide the impugned order which is not sustainable at all. They contended that the adjudicating authority did not consider their submission, explanation, available evidences, proofs and facts of the case. They informed me that the last date of submission of tender was 10.02.2015 and they had submitted their tender well before the above date and therefore, they squarely fall under the provisions of Notification number 09/2016-ST dated 01.03.2016 read with Section 102 of the Finance Act, 2016. After submitting the tender, their tender qualified and their finance bid was opened and qualified on 19.02.2015. On qualifying the same, not a single terms and condition could be altered. So it is deemed as if the contract has been allotted to them on 19.02.2015 which is earlier to 01.03.2015. Thus, according to the appellants, the contract clearly falls under the provisions of Notification number 09/2016-ST dated 01.03.2016 read with Section 102 of the Finance Act, 2016 and Section 11B of the Central Excise Act, 1994. They pleaded before me to set aside the impugned order and allow their appeal.



4. Personal hearing in the case was granted on 07.11.2017 wherein Shri Alkesh B. Patel, Chartered Accountant, appeared before me, on behalf of the appellants, and reiterated the contents of the grounds of appeal. Shri Patel also made additional submission before me.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that the appellants have been engaged in providing services to the Gujarat State Roads & Building Department/Water Department which were exempted from payment of Service Tax vide Notification number 25/2012-ST dated 30.06.2012 as amended vide Notification number 6/2015-ST dated 01.03.2015 where the benefit of the exemption was withdrawn. But, lately, in the Union Budget of 2016, the said exemption was restored retrospectively, vide Notification number 09/2016-ST dated 01.03.2016. During the period when the exemption was withdrawn, the appellants were paying Service Tax but not charging or collecting the same from the service receiver. The appellants also, did not avail the CENVAT credit of input services used in the project for which they had filed the refund. This has been testified by the adjudicating authority in paragraphs 11 and 12 of the impugned order.

6. Now, the main issue remains to me is whether the adjudicating authority has rightly rejected the claim on the ground that the contract was awarded to them after 01.03.2015, or otherwise. I find that the adjudicating authority has not denied the legitimacy of the refund claim in terms of Mega Exemption Notification number 25/2012-ST dated 30.06.2012. The claim was rejected only on the ground that the contract was delayed by eleven days. Thus, I start with the question that whether under Section 102 of the Finance Act, 2016, the date of contract has been limited to 01.03.2015 or otherwise. 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;

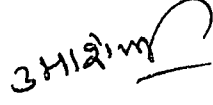
102. (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local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

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business profession;

(b) a structure meant predominantly for use as--

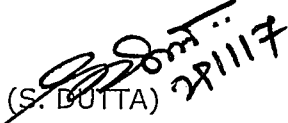


8. The appeals filed by the appellant stand disposed off in above terms.


(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED


(S. BUTTA) 21/11/17

SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.

To,
M/s. Nikunj M. Patel,
47, Shreyas park Society,
Jodhpur Tekra, Ramdevnagar,
Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad (South).
- 3) The Dy./Asst. Commissioner, Central Tax, Division-VII (Satellite), Ahmedabad (South).
- 4) The Asst. Commissioner (System), Central Tax, Ahmedabad (South).
- 5) Guard File.
- 6) P.A. File.

