

<b>केंद्रीय कर आयुक्त (अपील)</b>	
<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b>	
1st Floor, Central Excise Building,	
Near Polytechnic,	
Ambavadi, Ahmedabad-380015	
आम्बावाडी, अहमदाबाद-380015	
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क फाइल संख्या : File No : **V2(ST)072/A-III/2017-18/10491 to 10496**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-177-17-18**

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 **SD-05/18/DKJ/DC/2016-17** Dated **30.03.2017**  
Issued by Deputy Commr **STC, Service Tax, Ahmedabad**

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

**M/s. Gokul Infracon 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 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, 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 43 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

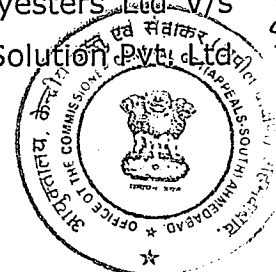
1 M/s. Gokul Infraco. Pvt. Ltd., 4<sup>th</sup> floor, Gokul House, 43, Shreemali Co-op Housing Society Ltd., Opp Shikhar Building, Navarangpura, Ahmedabad- 380 009 (hereinafter referred to as 'appellants') holding Service Tax Registration No. AADC G6028Q SD001, have filed the present appeals against the Order-in-Original number SD-05/18/DKJ/DC/2016-17 dated 30.03.2017 (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 the appellant had availed CENVAT credit on input services pertaining to period 2011-12 and 2012-13, where as they had obtained the registration with Service tax department on 06.02.2013. Thus , the CENVAT of Rs. 10,03,501/- of said input services i.e. Construction of Boundary wall, Survey of Land, Advertisements, Professional Charges, Sponsorship Service, Consulting Charges etc and other common operation services is not admissible.

2.2 Total short payment of duty Rs. 10,03,501/- was confirmed vide impugned OIO u/s 73(1) r/w rule 14 of CCR, 2004 by invoking extended period along with imposition of penalty of Rs. 10,03,501/- u/s 78 of FA, 1994 r/w rule 15(3) of CCR, 2004 . Interest was also ordered to be recovered u/s 75 of CEA, 1944 r/w rule 14 of CCR, 2004

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

- i. That the cenvat credit of input services was taken in the month of February-2013, and same was also shown in the ST-3 Return filed for the period Oct-2012 to March-2013.
- ii. Service tax paid suffered on such input services, were used for providing taxable output services on which after taking the registration with service tax, appropriate service tax was paid by us, which have been shown in the respective ST-3 returns filled time to time..
- iii. There is no bar on taking credit of service tax under CCR, 2004 for service provider. Only in case of the manufacturer, the cenvat credit of input can be taken after their receipt in factory and after taking registration.
- iv. Appellant relied upon the decisions of Wellknown Polyesters Ltd. V/s CCE, Vapi [ 2012 (25) STR 411 Tri. Ahmed.], C Metric Solution Pvt. Ltd.



[ 2012 (28) STR 460 (Tri. Ahmed.) and Hon`ble Karnataka H. C. Judgement in case of mPortal India Wireless Solution P. Ltd. [ 2012 (27) STR 134. Kar]

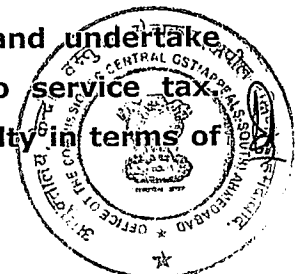
4. Personal hearing in the case was granted on 01.11.2017. Shri R. Subramanya, Advocate and Shri Nitesh Radadiya, Manager, on behalf of appellant, appeared before me and reiterated the grounds of appeal. They submitted the Hon`ble Karnataka H. C. Judgement in case of mPortal India Wireless Solution P. Ltd. [ 2012 (27) STR 134. Kar]

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.

6. For rejecting the cenvat credit availed prior to registration, adjudicating authority has relied upon the CESTAT decision in case of M/s Showa India P. Ltd. V/s Commissioner, C. Ex., and Faridabad [2012 (25) S.T.R. 152 (Tri. - Del.)]. Said judgment is rendered in case of C. Ex. Matter, for which Central Excise Act, 1944 is applicable, whereas the present case is of Service tax matter for which Finance Act, 1994 is applicable. Decision delivered in relation to the scope of interpretation of statutory provisions in one taxing statute cannot be blindly applied to the cases under different taxing statute. Applicability depends essentially on the similarity between the two provisions. My view is supported by decision in case of M/s Showa India P. Ltd. V/s Commissioner, C. Ex., and Faridabad [2012 (25) S.T.R. 152 (Tri. - Del.)]. Adjudicating authority Central Excise decision pertaining registration to Service tax dispute, which is not correct. Therefore, I am considered view that adjudicating has wrongly applied decision in case of M/s Showa India P. Ltd. V/s Commissioner, C. Ex., and Faridabad [2012 (25) S.T.R. 152 (Tri. - Del.)] to reject the service tax credit.

7. Registration is issued for identification of service provider and to comply various processes like return submission etc. in service tax department. In sixth edition of FAQ published on 16.09.2011 by Directorate of Service Tax has replied for "Why registration is necessary?" at para 2.2 which is reproduced as below-

**"Registration is identification of an assessee. Identification is necessary to deposit service tax, file returns and undertake various processes ordained by law relating to service tax. Failure to obtain registration would attract penalty in terms of**



**section 77 of the Finance Act, 1994, read with rule 4 of Service Tax Rules 1994. (Please also refer para.2.15 of this Booklet)"**

8. The combined reading of section 66, 69, 70 of Finance Act, 1994 , Rule 4, 7 of Service Tax Rules, 1994 and sub-rule 5, 6 &9 of Rule 9 of CCR, 2004 substantial meaning emerged are that every person liable for payment of service tax shall require to registered themselves, required to file returns and required to maintain records of receipt and utilization of credit of inputs. In instance case appellant was had procured the input services but since as there was not liability to pay service tax, he did not take the registration. I find that no where in Finance act, 1994 and CCR, 2004, it is mentioned to take registration for taking credit.

9. Appellant had argued that M/s mPortal India Wireless Solution P. Ltd. [2012 (27) STR 134 (Kar.)] judgment is applicable to them. I have perused the said judgment and I find that Hon'ble Karnataka High Court has allowed the argument of M/s mPortal India Wireless Solution P. Ltd. that registration is not necessary for taking credit. Relevant portion is reproduced as below-

*"7. Insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside.*

10. I find that decision in Case law of mPortal India Wireless Solution [ 2012 (27) STR 134] and CST Chennai [2013 (11) TMI 50] are squarely applicable to present case. Prime condition for allowing credit is that input services should have been utilized in providing output services. Adjudicating authority has never brought out on record that the said input services has not been utilized in output services.

11. To carry out Government intention of allowing credit of input services service to avoid cascading effect; registration and filing of returns and



cenvate accounting may be just the procedural requirement. Such procedure is not pre-condition for availing cenvat credit. Person only liable to pay service tax are required to be registered under section 69 of Finance Act, 1994. I am inclined to allow the credit and I do so. When whole credit itself is allowed, therefore, there is not question to impose penalty and interest.

12. In view of above I allow the appeal filed by appellant assessee and set aside OIO.

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

13. 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.F.A.D.:

To,  
M/s. Gokul Infraco. Pvt. Ltd.,  
4<sup>th</sup> floor, Gokul House, 43,  
Shreemali Co-op Housing Society Ltd.,  
Opp Snikhar Building, Navarangpura,  
Ahmedabad- 380 009

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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