

क फाइल संख्या : File No : **V2(ST)099/A-II/2017-18** / 1455 to 1459
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-188-17-18**
 दिनांक Date : 23-11-2017 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-02/03/AC/2017-18** Dated **31.03.2017**
 Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

M/s. Veeda Clinical Research 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 :-

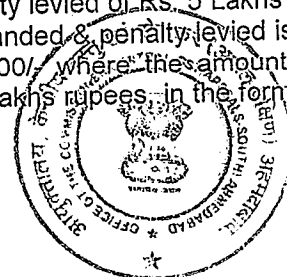
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 crder 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 फॉर्म 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 24) 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,

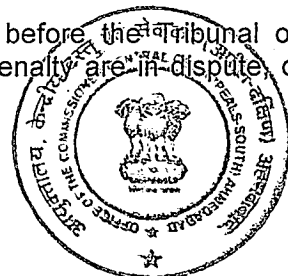
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



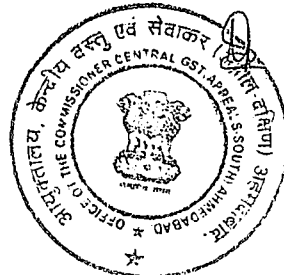
ORDER

M/s Veeda Clinical Research Pvt Ltd, Shivalik Plaza-A, IIM Road, Ambavadi, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal Order-in-Original No. SD-02/03/AC/2017-18 dated 31.03.2017 (*hereinafter referred to as 'impugned order'*) passed by the then Assistant Commissioner, Service Tax, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case are that the appellant was engaged in Technical Inspection and Certification Agency Services, Management or Business Consultant Service, Scientific and Technical Consultancy Services, Event Management Service, Business Auxiliary Services and Business Support Service and was registered with Service Tax Department having Service Tax Registration number AACCC3633QST001. During the course of audit and on verification of records of the appellants for the period 2014-15, it was observed that the appellants had wrongly availed CENVAT credit on outdoor catering and insurance service as input service amounting to ₹73,345/- and ₹59,565/- respectively (total ₹1,32,910/-). The said input services were neither used for providing output services nor covered under the definition of input services.

3. Thus, a show cause notice dated 14.10.2016 was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority disallowed the Cenvat credit availed by the appellants amounting to ₹1,32,910/- under Rule 14 of CENVAT Credit Rules, 2004 read with Section 73 of the Finance Act, 1994. He also ordered to recover interest under Section 75 of the Finance Act, 1994 and imposed penalty under Sections 77 and 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order the appellant has preferred the present appeal. The appellants have submitted that the input services were used for providing output service and they have rightly availed the Cenvat credit on the basis of proper documents as per Rule 9 of Cenvat Credit Rules, 2004. They stated that they are engaged in the service of medical research, where research have to be carried out on human being to whom, as per medical advice, they have to provide nutritional food for which the appellants have hired catering service. So the service availed for the catering of the subject is having direct nexus with providing of the output service. Regarding insurance charges for the



employees, the appellants argued that they have been working on testing and analysis on human being for the new and old drugs. So as per hygienic health measure, it is compulsory for the appellants to provide health insurance to the employees. They further stated that the facts of the case are in knowledge of the department and therefore the extended period of limitation cannot be invoked since there is no suppression, willful misstatement on the part of the appellant.

5. Personal hearing in the matter was granted and held on 01.11.2017. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellants and reiterated the contents of appeal memorandum. He explained that as per medical requirement, food is served to their patients and not to their employees. This is part of patient's treatment requirements. He further quoted decisions of some cases in Tribunal and claimed that the said decisions are in their favour.

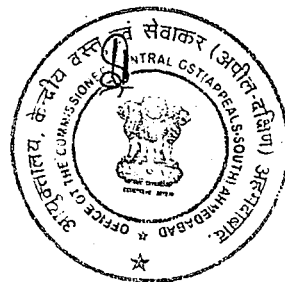
6. I have carefully gone through the impugned order, appeal memorandum and written as well as oral submission made at the time of personal hearing. I now proceed to decide the case as per merit and available records.

7. The issue is related to disallowances of the cenvat credit amounting to ₹ 1,32,910/-. The adjudicating authority has disallowed the Cenvat credit availed by the appellants on Catering Charges and Health Insurance to the Employees. In this regard, I find that the appellants have satisfactorily clarified the matter. Regarding catering service, it has been submitted that this catering takes care of the patient's needs as per the advice of the doctor. For easy understanding, I will now discuss what actually an input service is. Meaning of Input Service: Input service is used by the service provider to provide output service. Tax paid on the input service can be utilised as CENVAT Credit. The definition of input service as provided under Rule 2(1)(l) has been replaced by the Finance Act, 2011 with a new definition which is comparatively more restrictive and excludes some of the services clearly out of its purview. The new definition provides as follows: "input service" means any service, — (i) used by a provider of taxable service for providing an output service; or (ii) used by a 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. It is significant to note that in the main part of the definition, while defining input service for a manufacturer, it is said that



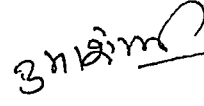
'input service' means any service used by a manufacturer whether directly or indirectly, in or in relation to the manufacture of final products....' and while defining the same for a service provider, it is said that 'input service' means any service used by a provider of taxable service for providing an output service. Thus while the words 'directly or indirectly' have been used in context of a manufacturer, the same have not been used in context of a service provider. This may be in the light of the fact that the goods being tangible, it is possible to establish direct or indirect nexus of input services to the output goods, but the services being intangible, establishing nexus of input services with output services may not be a feasible option all the time and also may not be warranted for determining good input credit. Thus, the main part of the definition provides that input service is any service used for the provision of output service which can practically lead to an interpretation where all legitimate input services procured for business can get covered under the definition. Therefore the credit of Service Tax paid on activities although not directly or indirectly related to manufacture of goods, is admissible as input service credit to the appellants treating the same as activities in relation to business. The denial of such credit by the adjudicating authority is illegal and without any justification. In view of the discussion above, I do not agree with the views of the adjudicating authority. Moreover, the food supplied by the outdoor caterer was provided to the patients who were related to the medical research (as per the doctor's advice). Thus, I consider that the input service of outdoor catering is directly related to the output service in the instant case. Regarding the issue of health insurance of the employees, I agree with the argument of the appellants that the health insurance is to counter the hazard of acute infections which the employees have to face in the service. Here, the employees, who are engaged in the testing and analysis of drugs, are susceptible to various kinds of infections and drugs and chemical hazards. If the employees get infected during the course of research, their safety becomes the prime subject of the employer. The employees would work more confidently when they are aware that their wellbeing is taken care of by the employer. Therefore, in this case also, I find that the input service (i.e. employee's health insurance) is having direct nexus with the output service.

8. As per the above discussion, I reject the impugned order and allow the appeal filed by the appellants. Thus the appeal filed by the appellants is disposed off in above terms.



9. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

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



(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED


(S. DUTTA)

SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.

To,
M/s Veeda Clinical Research Pvt Ltd,
2nd Floor, Shivalik Plaza-A, IIM Road, Ambavadi,
Ahmedabad.

Copy to:

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

