

क फाइल संख्या : File No : **V2(ST)0254/A-II/2016-17/10418 to 10422**
 ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-001-APP-189-17-18**
 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-02/28/AC/16-17** Dated **15.12.2016** Issued
 by **Assistant Commr STC, Service Tax, Ahmedabad**

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

M/s. Sunit SudhirBhai Choksi

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 of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is 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, 1994 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 है -

- (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

M/s. Sunit Sudhirbhai Choksi, Sona Rupa Apartments, 62, Opp. Lal Bungalow, C G Road, Ahmedabad [for short – 'the appellant'] has filed this appeal against OIO No. SD-02/28/AC/2016-17 dated 15.12.2016 passed by the Assistant Commissioner, Division II, Service Tax, Ahmedabad Commissionerate [for short – 'adjudicating authority'].

2. Briefly, the facts are that during the course of audit of the appellant, it was observed that they had wrongly availed CENVAT credit of Rs. 4,98,878/- in the financial years 2013-14 and 2014-15, on nine invoices issued by various service providers, wherein the invoices [a] did not have the address of the appellant and were issued to Armaan Developers; [b] were issued to unregistered address and issued to Armaan Developers; [c] did not have address, nor registration number of the service provider and was issued to Armaan Developers; and [d] were issued to unregistered name and unregistered address.

Consequently, a show cause notice dated 6.6.2016, was issued to the appellant *inter-alia*, proposing recovery of the wrongly availed CENVAT credit along with interest. The show cause notice further proposed penalty on the appellant.

3. This notice was adjudicated vide the aforementioned OIO dated 15.12.2016 wherein the adjudicating authority confirmed the demand of the wrongly availed CENVAT credit along with interest and further imposed penalty on the appellant under Rule 15(1) of the CENVAT Credit Rules read with section 76 and under Rule 15(3) of the CENVAT Credit Rules, 2004, read with section 78 of the Finance Act, 1994.

4. Feeling aggrieved the appellant has filed this appeal, raising the following contentions:

- that the invoices are in the name of Armaan Developers which is a proprietorship concern of the appellant; that proprietorship concern and proprietor cannot have different PAN and cannot have different registrations;
- that just because address is not mentioned CENVAT credit cannot be denied; that they would like to rely on the case of Raj Khalsa & Co [2008(7) TMI 122], EUPEC, Welspun Coatings India Limited [2008(8) TMI 515];
- that the proviso to Rule 9(2) clearly states that if the document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, central excise or service tax registration number of the person issuing the invoice, the DC/AC if he is satisfied that the services have been received and accounted for in the books of the account of the receiver, the CENVAT credit may be allowed;
- that of the plethora of input services invoices only in 7 invoices, address has been left out, while the service providers address is mentioned; that it was an inadvertent omission; that it cannot be said that the services covered by the said document has not been received and accounted for in the books of account of the appellant;
- that since the appellant had accounted for the services in the books of account and their return, it is axiomatic that they have received the services;
- that not amending ST-2 return is only a procedural lapse;
- that since the office of the appellant was being shifted some of the invoices were issued to the appellant wherein only name was mentioned and in some the address of the old premises was mentioned; that the appellant has availed the credit on the basis of such invoices wherein all the details were properly mentioned except the address of the appellant;
- that they would like to rely on the case of Majestic Auto Ltd [2010 (25) STT 293], Om Textiles [2006(99) ELT 47], Sambhaji v/s Gangabhai [2009(240) ELT 161], Lambda Therapeutic Research Ltd [2013(5) TMI 753], and various other cases;



- that if at all there was any lapse in the details mentioned in the invoice the same is purely a procedural lapse not caused by any mistake on the part of the appellant therefore CENVAT credit cannot be denied;
- that the appellant is not liable to reverse the credit availed since there is no question of imposing penalty and interest;
- that larger period cannot be invoked when there is evasion of tax on account of suppression of facts, misstatement and willful act with intent to evade service tax;
- that penalty under sections 76 and 78 cannot be imposed simultaneously;
- that the benefit of Section 80 should have been given.

5. Personal hearing in the case was held on 1.11.2017. Ms. Nisha Vora, CA, appeared on behalf of the appellant and reiterated the grounds of appeal. She further stated that an additional submission would be submitted within seven days. However, no further submission is received till date.

6. I have gone through the facts of the case, the grounds of appeal and the oral contentions raised during the course of hearing. The issue to be decided is whether the appellant is eligible for input service credit on outdoor catering services.

7. The primary contention of the appellant is that the defects pointed out by the Revenue were inadvertent omission/procedural lapse and that the adjudicating authority should have condoned it by invoking the proviso to Rule 9(2) of the CENVAT Credit Rules, 2004. I find that the adjudicating authority has without discussing or giving his findings on the averments raised by the appellant confirmed the charges/demand in para 19 of the impugned OIO dated 15.12.2016.

8. In respect of the case laws cited/relied upon by the appellant I find that the adjudicating authority, without assigning any reasons in para 22 of the impugned OIO dated 15.12.2016, has held that the said citations are not applicable to the present dispute.

9. Owing to the above, I find that the order cannot be termed as a speaking order in the first instance. Further, since the appellant has not enclosed the disputed invoices in question, I am not in a position to give my findings in the matter. Ideally, it would have been prudent if the adjudicating authority had examined all the invoices in terms of proviso to Rule 9(2) of the CENVAT Credit Rules, 2004 and the judgements relied upon by the appellant before giving his findings.

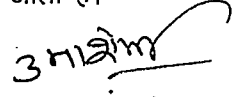
10. In view of the foregoing, I find that the ends of justice would be met if the matter is remanded back to the original adjudicating authority, in view of my findings recorded supra. Needless to state, the appellant would provide all the documentary evidence, invoices, etc to substantiate his claim that the services covered by the disputed invoices have been received and accounted for in his books of the account. While remanding back the matter I rely on the case of M/s. Associated Hotel Limited [2015(37)STR 723 Guj].

11. The appeal filed by the appellant stands disposed of in above terms.



11.

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

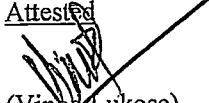


(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date: 23.11.2017

Attested


(Vinod Lukose)
Superintendent,
Central Tax (Appeals),
Ahmedabad.

By RPAD.

Tc,
M/s. Sunit Sudhirbhai Choksi,
Sona Rupa Apartments,
62, Opp. Lal Bungalow,
C G Road,
Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Deputy/Assistant Commissioner, Central Tax, Division VII, Ahmedabad South.
4. The Additional Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.

