
	केन्द्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केन्द्रीय कर शुल्क भवन, सातवीं मजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
☎ : 079-26305065		टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)086/A-II/2017-18

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-203-17-18

दिनांक Date : 30-11-2017 जारी करने की तारीख Date of Issue 20/12/2017

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No MP/02/AC/DIV-III/2017-18 Dated 17.04.2017

Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

M/s. GURUDEV Dyestuff (India) 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 मैनटल 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 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 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 A2I9K 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 25) 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

M/s. Gurudev Dyestuff (India) Pvt. Ltd, Plot no. 541, Phase -II, GIDC, Vatva, Ahmedabad-382445 (*hereinafter referred to as 'appellant'*) has filed the present appeal against the Order-in-Original No. MP/02/AC/DIV-III/2017-18 dated 17.04.2017 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central Excise, Div-III, Ahmedabad-I Commissionerate (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that during the audit and scrutiny of records of the appellant, it was revealed that the appellant had wrongly availed the CENVAT credit of service tax of Rs. 3,21,155/- for the period from July-2012 to March-2014 on the basis of invoices issued by the service provider M/s. Krupalu Job Management, a Proprietary firm engaged in supply of Man Power Supply services. As per serial no. 8 of notification No. 30/2012-ST dated 20.06.2012 (effective from 01.07.2012), the service provider has to discharge 25% of the total service tax payable and the service recipient has to discharge 75% of the total service tax payable on the said service. In the instant case the service provider paid 100% of the total amount of service tax payable and the service receiver M/s. Gurudev Dyestuff India Pvt. Ltd, a body corporate though they had not discharged the 75% of the tax liability and availed 100% of credit of service tax on the basis of invoices issued by service provider. Thus, the appellant had availed excess CENVAT credit to the extent of 75% on the basis of invoices issued by the service provider M/s. Krupalu Job Management; that ought to have been availed only on the basis of challan evidencing payment of 75% of service tax payable by the service recipient. Consequent to this audit, a show cause notice was issued *inter alia*, alleging that the appellant had availed excess CENVAT credit to the extent of 75% on the basis of invoices issued by the service provider, without discharging their service tax liability; that they wrongly availed and utilized the credit for payment of duty with an intention to evade payment of Service Tax and the department would never come to know the act of the appellant, but for the audit objection. The said notice therefore, proposed recovery of the wrongly availed CENVAT credit along with interest and further proposed equal penalty on the appellant. This Show Cause Notice was adjudicated by the adjudicating authority vide above said impugned order wherein the adjudicating authority, upheld the demand and recovery of CENVAT Credit of Rs. 3,21,155/- along with interest and imposed

S



penalty under the provisions of Rule 15(2) of the CENVAT Credit Rules, 2004, read with section 11AC(1)(c) of the Central Excise Act, 1994.

3. Being aggrieved, the appellant has filed the present appeal on the grounds:

(i) that the service provider has charged the service tax at full rate in the invoices raised and had discharged the service tax liability and there is no loss to the Government exchequer and thus demanding duty again on the same service will lead to a situation of double taxation;

(ii) that the appellant have been audited by the service tax authorities from time to time and all the activities carried by them are well within the knowledge of them, in such circumstances alleging willful suppression, misstatement & invoking extended period is not legal and proper;

(iii) that they have not suppressed anything from the department and thus imposing penalty under the provisions of Rule 15(2) of CENVAT Credit Rules, 2004 read with Section 11AC (1)(c) Central Excise Act, 1994, is without legal basis.

4. Personal hearing in the case was granted on 14.11.2017. Ms. Madhu Jain, Advocate, appeared before me and reiterated the grounds of appeal and requested to allow the CENVAT Credit taken and further requested to waive off the penalty imposed.

5. I have carefully gone through the facts of the case on records, grounds of appeal and oral submissions made by the appellant at the time of personal hearing. The issue involved is whether the appellant is eligible for the 75% excess CENVAT credit taken or otherwise.

6. As per Sr. No. 8 of the notification No. 30/2012-ST dated 20.06.2012, appellant, being service receiver, was required to pay service tax on 75% of taxable value and M/s. Krupalu Job Management, the service provider, was required to pay service tax on 25 % of taxable value. M/s. Krupalu Job Management however, paid 100% service tax instead of 25% liability and appellant thereafter, availed CENVAT credit on the basis of invoices issued by M/s. Krupalu Job Management. Contention of department is that M/s. Krupalu Job Management was liable to pay only 25% of service tax, therefore appellant is eligible for only 25% of service tax under Rule 15(2) of CENVAT Credit Rules, 2004.



of CENVAT Credit Rules, 2004, even though 100% service tax payment had been made by M/s. Krupalu Job Management. The excess credit taken i.e. 75% of service tax, comes to Rs. 3,21,155/-.

6.1 Rule 9 of the CENVAT Credit Rules, 2004 states as follow:

Rule 9. Documents and accounts.-

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a)

(b)

(c)

(d)

(e) **a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994; or**

[Emphasis Supplied]

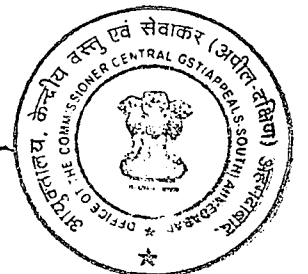
6.2 As per Para 1(e) of rule 9 of CENVAT Credit Rules "a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax" is proper document to take credit. Since NO service tax payment has been made as a recipient of service under notification no. 30/2012- ST dated 20.06.2012, no credit is allowable to appellant.

7. The aforesaid provisions very clearly stipulate that the CENVAT Credit shall be taken by the service recipient on the basis of a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax. The liability of payment of tax on the appellant can not be discharged by M/s. Krupalu Job Management, the service provider. I also find that the appellant has not discharged his own liability and availed the excess CENVAT credit and thus contravened the provisions of Rule 9 of CENVAT Credit Rules, 2004, hence the appellant is not eligible for CENVAT credit.

8. I would like to quote the charging Section 66B of the Finance act, 1994 which states that

"SECTION 66B. Charge of service tax on and after Finance Act, 2012.—There shall be levied a tax and collected in such manner as may be prescribed."

§



I find that in present case, the taxes have been levied on service provider and service receiver in certain manner and only that person in such manner as prescribed can discharge the tax liability.

9. Section 68(1) makes it mandatory for service provider to pay tax. Section 68(1) is reproduced as below

"(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed."

The analysis of above section 68(1) gives us vital points that tax shall be paid in such manner as may be prescribed.

10. Section 68 (2) makes it mandatory that for notified services, the receiver or receiver and provider on shared basis will pay the service tax. Section 68(2) is reproduced as below-

"(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider."

11. The analysis of above section 68(2) gives us vital points that tax shall be paid in such manner as may be prescribed. Notification No. 30/2012-ST dated 20.06.2012 issued under section 68(2) for certain services has notified that some services tax liability shall be shared between provider and receiver of service to the extent of percentage prescribed in notification.

11.1 The mandate of this section 68(1) and 68(2) is very clear and does not give any scope of interpretation leading to the conclusion **that the**



tax liabilities casted on one person cannot be discharged by any other person in the manner, which is not prescribed by the law. The plain and simple reading of section 68(1) and 68(2) is that the person on whom the tax liability is casted, he only should discharge it and also in the manner specified.

11.2 In view of above, excess service tax paid by M/s. Krupalu Job Management, service provider, is without authority of law, therefore it is in nature of deposit, and therefore credit of same is not eligible to the appellant. Only "duty" can be availed as credit and not the "deposit".

12. Hon'ble High Court of Mumbai has interpreted it in case of Idea Cellular [2016(42)STR 823]. Hon'ble High Court has very clearly stated as follows:

"..... As postulated by Article 265 of the Constitution of India a tax shall not be levied except by authority of law i.e., a tax shall be valid only if it is relatable to statutory power emanating from a statute. The collection of VAT on the sale of SIM cards, not being relatable to any statutory provision, must be held to be without authority of law and as a consequence non est...." (para 12).

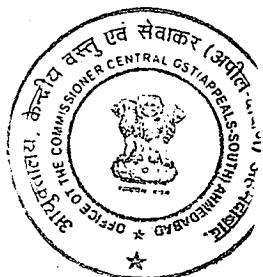
13. When it is crystal clear in notification that service provider will pay 25% and service receiver shall pay 75% of service tax, then there should not be any reason to by-pass clear provision by M/s. Krupalu Job Management to pay 100% of service tax. In a catena of judgments the Apex court has ruled that "Enlarging scope of legislation or legislative intention is not the duty of Court when language of provision is plain - Court cannot rewrite legislation as it has no power to legislate..."

DHARAMENDRA TEXTILE PROCESSORS 2008 (231) E.L.T. 3 (S.C.)

Interpretation of statutes - Principles therefor - Court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous - A statute is an edict of the legislature - Language employed in statute is determinative factor of legislative intent.

PARMESHWARAN SUBRAMANI 2009 (242) E.L.T. 162 (S.C.)

Interpretation of statutes - Legislative intention - No scope for court to undertake exercise to read something into provisions which the legislature in its wisdom consciously omitted - Intention of legislature to be gathered from language used where the language is clear - Enlarging scope of legislation or legislative intention not the duty of Court when language of provision is plain



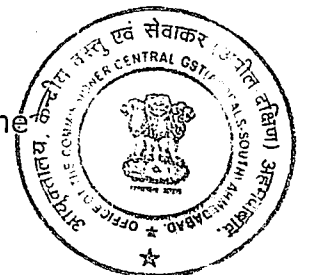
- Court cannot rewrite legislation as it has no power to legislate - Courts cannot add words to a statute or read words into it which are not there - Court cannot correct or make assumed deficiency when words are clear and unambiguous - Courts to decide what the law is and not what it should be - Courts to adopt construction which will carry out obvious intention of legislature. [paras 14, 15]

14. **Article 265** of the Constitution of India state that "Taxes not be imposed saved by the authority of law. No taxes shall be levied or collected except by authority of law". Therefore no tax shall be **levied** or **collected** without an authority of law. It further states that "Taxes not to be imposed save by authority of law". **Article 265 contemplates two stages** - one is **levy of tax** and other is **collection of tax** and that levy of tax includes declaration of liability and assessment, namely, quantification of the liabilities. After the quantification of the liability follows the collection of tax and it should be only by an authority of law.

15. Appellant had relied upon various tribunal judgments wherein it is held that in cases where duty liability of service receiver is discharged by service provider and vice-versa, there is no revenue loss to exchequer. But Tribunal judgments cited by appellant in their appeal memo, has not dealt with this vital Constitutional point of Article 265. Hon'ble Tribunal has also not considered the legal position as well as constitutional provision in their order.

16. Now coming to imposition of penalty under the provisions of Rule 15(2) of CENVAT Credit Rules, 2004 read with Section 11AC(1)(c) of Central Excise Act, 1994. The adjudicating authority has imposed the said penalty on the grounds of suppression with intent to evade payment of duty. In the present case, wrong avilment of CENVAT credit by the appellant unearthed during the course of Audit and subsequent inquiry undertaken by the Department. Had it not been detected by the Audit, the said wrong avilment of CENVAT credit would have gone unnoticed. Hence, the adjudicating authority was justified in invoking extended period of limitation and for imposition of penalty under Section 11AC(1)(c). I therefore upheld the imposition of penalty under Section 11AC(1)(c) *ibid*.

17. In view of the above, I am of the opinion that no interference in the



order of the adjudicating authority is needed. Therefore, I reject the appeal filed by the appellant.

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

18. The appeal filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

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

To,

M/s. Gurudev Dyestuff (India) Pvt. Ltd,
Plot no. 541, Phase -II,
GIDC, Vatva
Ahmedabad-382445

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Ahmedabad- South.
- 3) The Asst. Commissioner, Div-III, Vatva-II, Ahmedabad- South.
- 4) The Additional Commissioner, Ahmedabad- South.
- 5) The Asst. Commissioner(SYSTEMS), Ahmedabad- South
- 6) Guard File.
- 7) P.A. File.



1-1-6

