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

क फाइल संख्या : File No : **V2(ST)054/A-II/2017-18**

ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-001-APP-204-17-18**  
दिनांक Date : 30-11-2017 जारी करने की तारीख Date of Issue **28/12/2017**

**श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित**

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No **SD-05/15/DKJ/DC/2016-17** Dated **29.03.2017**  
Issued by Deputy Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता  
**Name & Address of The Appellants**

**M/s. Shanti Inorge Chem (Guj.) P. 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, 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 (सीस्टेट) 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 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 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.



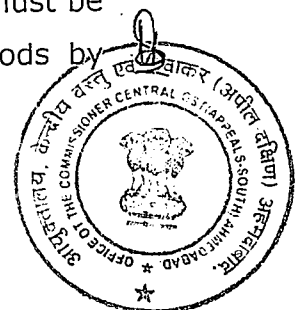
**ORDER IN APPEAL**

This is an appeal filed by M/s Shanti Inorgo Chem (Guj) pvt. Ltd., Unit No.I (herein after referred to as the appellants) against the OIO No. SD-05/15/DKJ/DC/2016-17 dtd. 29.03.2017 (herein after referred to as the impugned order) passed by the Dy. Commissioner, Division-V, Service Tax, Ahmedabad (herein after referred to as the adjudicating authority).

2. the brief facts of the case are that the appellants were engaged in manufacture of goods falling under Chapter 29 of the Central Excise Tariff Act, 1985 and were also registered under Service Tax. During the central excise audit in 2016, it was observed that the appellants had short paid service tax by Rs. 35,248/- on payments made to goods transport agency as notified under the Notification No. 36/2004-ST dtd. 31.12.2004 as amended. It was informed by the appellants that the said services were for transportation of goods to a unit located in SEZ. It was observed that the appellants were not eligible for exemption for services used and specified under sub-section (2) of Section 68 of the Finance Act, 1994 ("the Act" for brevity). They were required to pay service tax but they had not discharged service tax amounting to Rs. 35,248/-. Accordingly, a notice under Section 73 (1) of the Act was issued to the appellants. The adjudicating authority, after having considered their defence arguments and case records, held that the appellants were not eligible for exemption contained in Notification No. 12/2013 since they failed to produce the copy of the authorisation for services to be used in the SEZ and therefore, vide the impugned order, confirmed the demand of service tax of Rs. 35,248/- alongwith interest and also imposed penalty of equal amount under Section 78 of the Act.

3. being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That the adjudicating authority has violated the principles of the natural justice as no personal hearing was given to them and their all the contentions were not considered;
- b) That it is not the case of the department that the goods cleared from the factory of the appellants did not reach the SEZ unit;
- c) That they had approached the SEZ unit for a copy of the authorisation but the same was not supplied by the SEZ unit by stating that the authorisation is required to be supplied to the service provider and as the appellants were not the service provider, the SEZ unit did not provide the copy of the authorisation;
- d) That a presumption has to be drawn that the said SEZ unit must be in possession of authorisation showing transportation of goods by road;



- e) That the interest of justice could have been met in the present case by extending the enquiry to the SEZ unit to ascertain as to whether the said SEZ unit had been issued authorisation showing transportation of goods by road as one of the authorised operations;
- f) That the entire exercise is revenue neutral as the amount of service tax paid by the appellants would be available as refund under the said notification;
- g) That the adjudicating authority has failed to put on record the facts which were suppressed by the appellants and in case of revenue neutrality, there cannot be any intention to evade the payment of service tax;
- h) The appellants sought support from the following case laws:

Liladhar Pasoo Forwarders P. Ltd. Vs. Commissioner of Customs, Mumbai - 2000 (122) ELT-737 (Tri.), Hindustan Steel Ltd. Vs. State of Orissa - AIR 1970 (SC) (253) (1979) ELT (J402), Akbar Jiwani vs. Collector of customs - 1990 (47) ELT - 161 (SC).

4. The personal hearing in the case was held on 30.11.2017 in which Shri N.K. Tiwari, Consultant appeared on behalf of the appellants. They reiterated the grounds of appeal and pleaded the jurisdiction of Audit-I for unit in Jambusar.

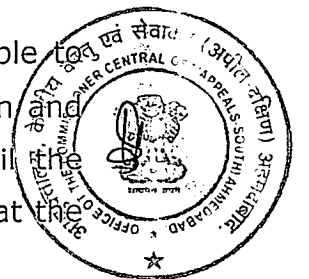
5. I have carefully perused the documents pertaining to the case and submitted by the appellants alongwith the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issue to be decided in the instant case is whether the service tax has been rightly demanded on the services provided by the appellants to a unit situated in SEZ.

7. I find that the appellants have claimed the benefit of exemption contained in the Notification No. 12/2013-ST dtd. 01.07.2013. the relevant part of the notification is produced herein below for ready reference:

*"hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to as the Developer) **and used for the authorised operation** from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon." (emphasis provided)*

From the above, it is very clear that this notification is applicable only those services which have been used for the authorised operation. The procedure has been given in the notification as to how to avail the benefit of this notification. On reading this notification, it is evident that



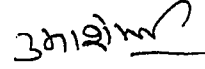
service provider is required to provide a certified list of authorised operations so that the eligibility can be checked. From the case records, it is evident that the appellants did not produce the certified list of authorised operations and in absence of that, it is not possible for the department to conclude that the services were provided to be used in the authorised operations and were therefore eligible for exemption contained in that Notification. This is the condition of the notification that only those services which were provided to be used in the authorised operations were only eligible for exemption. In view of this fact that the appellants have failed to produce necessary documents to substantiate their claim, I am of the view that substantive benefit should not be denied for procedural infractions, I would like to remand the case <sup>to</sup> the adjudicating authority to ascertain the fact that whether the services in question have been provided to the units located in SEZ or not. If it is found that the services have been provided to the units located in SEZ, then the impugned order shall stand set aside

8. I now take up the plea raised by the appellants at the time of personal hearing that Audit-I had conducted audit in Jambusar i.e. the question of jurisdiction. In this regard, I have gone through the concerned audit report and find that the unit audited is situated at Vatva, Ahmedabad so I therefore rejected the plea.

9. In view of the above findings, the appeal is allowed by way of remand with consequential relief.

10. The appeal is disposed off accordingly.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !




(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित  
  
(धर्मेंद्र उपाध्याय)  
अधीक्षक (अपील्स),  
केंद्रीय कर, अहमदाबाद

**By R.P.A.D.**

To:  
M/s Shanti Inargo Chem (Guj.) Pvt. Ltd. (Unit-I),  
Plot No.2015,  
Krishna Estate-GIDC,  
Phase-III, Vatva,  
Ahmedabad-382445

**Copy to:-**

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (South),
- (3) The Dy./Astt. Commissioner, CGST, Div.-III, Ahmedabad (South),
- (4) The Dy./Astt. Commissioner(Systems),CGST, Ahmedabad (South)
- ~~(5) Guard File,~~
- (6) P.A.File.

