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

क फाइल संख्या : File No : V2(ST)035/A-II/2017-18 / 243-47  
 ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-217-17-18  
 दिनांक Date : 26-12-2017 जारी करने की तारीख Date of Issue 17/01/18

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No STC/Ref/30/DK Jangid/DC/Div-V/16-17  
 Dated 10.02.2017 Issued by Deputy Commr STC, Service Tax, Ahmedabad

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

**M/s. Hiral Construction . Co.**

**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 नमित 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 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, 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 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,

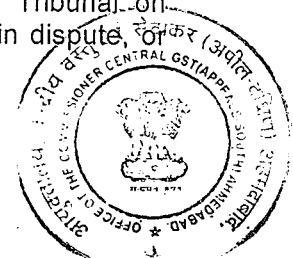
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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**

M/s. Hiral Construction Co., 99, Hariganga Society, Opp. CMC, Odhav, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number STC/Ref/30/DK Jangid/DC/Div-V/16-17 dated 10.02.2017 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, Division-V, Service Tax, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants were engaged in providing services under the category of 'Works Contract Service' and hold valid registration number ALSPS8774QSD001. The appellants had filed a refund claim of ₹ 1,18,040/- on 15.11.2016 for the period from October 2015 to March 2016. The said refund claim was filed under Notification number 09/2016 dated 01.03.2016 in respect of Service Tax paid on the specified services used for Government, a local authority or a government authority. During scrutiny of the claim, it was noticed that the claim was time barred. Thus, the adjudicating authority, vide the impugned order, rejected the entire claim of refund of ₹ 1,18,040/-.

3. Being aggrieved with the impugned order, the appellants preferred the present appeal before me. The appellants argued that the adjudicating authority has wrongly rejected the refund claim of ₹ 1,18,040/- vide the impugned order which is not sustainable at all. They further stated that they had executed the work of construction of RCC road and paver block for and on behalf of Ahmedabad Municipal Corporation (*hereinafter referred to as 'AMC'*) on which Service Tax to the tune of ₹ 1,18,040/- was paid by the appellants. Upon raising a claim of reimbursement of the said Service Tax, the AMC rejected the claim. Thus, the appellants argued, the refund claim involved construction of road which is covered by entry number 13(a) of the Mega Exemption Notification number 25/2012-ST dated 20.06.2012. Thus, the provisions of Sections 101, 102 and 103 of the Finance Act, 1994 will not be applicable to the refund.

4. Personal hearing in the case was granted on 29.11.2017 wherein Shri Rahul Patel, Chartered Accountant, appeared before me on behalf of the appellants and reiterated the contents of the grounds of appeal. He once again argued that the refund is related to road construction which is exempted vide the mega exemption notification and hence, Sections 101 and 102 of the Finance Act, 1994 will not be applicable to it.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that construction of road is



exempted vide serial number 13(a) of the Mega Exemption Notification number 25/2012-ST dated 20.06.2012. For more clarity, I quote below, the related portion of the said notification;

*"Service Tax Mega Exemption Notification No 25/2012  
[TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY,  
PART II, SECTION 3, SUB-SECTION (i)]*

*Government of India*

*Ministry of Finance*

*(Department of Revenue)*

*Notification No. 25/2012-Service Tax*

*New Delhi, the 20<sup>th</sup> June, 2012*

*G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17<sup>th</sup> March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17<sup>th</sup> March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-*

*.....*

*13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-*

*(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;*

*(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;*

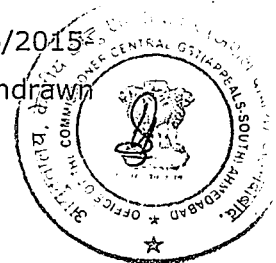
*(c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;*

*(d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;*

*....."*

Thus, from the above, it can be seen that the service provided by the appellants is listed in serial number 13(a) of the said notification.

Now, I quote below the contents of the Notification number 6/2015 6/2015 ST dated 01.03.2015 vide which the benefit of the exemption was withdrawn



from certain services listed in the Mega Exemption Notification number 25/2012-ST dated 20.06.2012;

"G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012-Service Tax, dated the 20<sup>th</sup> June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467 (E), dated the 20<sup>th</sup> June, 2012, namely:-

1. In the said notification,-

(i) for entry 2, the following entry shall be substituted, namely,-

"2. (i) Health care services by a clinical establishment, an authorised medical practitioner or para-medics;

(ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above;"

(ii) in entry 12, items (a), (c) and (f) shall be omitted;

(iii) in entry 14, in item (a), the words "an airport, port or" shall be omitted;

(iv) for entry 16, the following entry shall be substituted, namely:-

"16. Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, if the consideration charged for such performance is not more than one lakh rupees:

Provided that the exemption shall not apply to service provided by such artist as a brand ambassador.";

(v) in entry 20, for item (i), the following item shall be substituted, namely:-

"(i) milk, salt and food grain including flours, pulses and rice;"

(vi) in entry 21, for item (d), the following item shall be substituted, namely:-

"(d) milk, salt and food grain including flours, pulses and rice;"

(vii) in entry 26A, after item (c), the following item shall be inserted, namely-

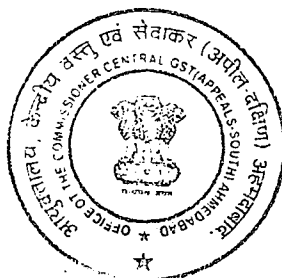
"(d) Varishtha Pension Bima Yojana;"

(viii) in entry 29, items (c), (d) and (e) shall be omitted;

(ix) in entry 30, in item (c), for the words "any goods", the words "any goods excluding alcoholic liquors for human consumption," shall

be substituted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint;

(x) entry 32 shall be omitted;



(xi) after entry 42, the following entries shall be inserted, namely,-

"43. Services by operator of Common Effluent Treatment Plant by way of treatment of effluent;

44. Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables;

45. Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo;

46. Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members;"

(xii) after entry 46 so inserted, the following entry shall be inserted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, namely:-

"47. Services by way of right to admission to,-

(i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet;

(ii) recognised sporting event;

(iii) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than Rs 500 per person."

2. In the said notification, in paragraph 2 relating to Definitions,-

(a) after clause (xa), the following clause shall be inserted, namely:-

'(xaa) "national park" has the meaning assigned to it in the clause (21) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972);'

(b) after clause (zaa), the following clause shall be inserted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, namely:-

'(zab) "recognised sporting event" means any sporting event,-

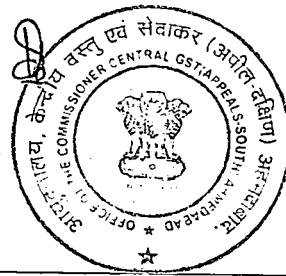
(i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country;

(ii) covered under entry 11.;" (c) for the clause (zi), the following clauses shall be substituted, namely:-

'(zi) "tiger reserve" has the meaning assigned to it in clause (e) of section 38K of the Wild Life (Protection) Act, 1972 (53 of 1972);

(zj) "trade union" has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926);

(zk) "wildlife sanctuary" means sanctuary as defined in the clause (26) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972);



(z) "zoo" has the meaning assigned to it in the clause (39) of the section 2 of the Wild Life (Protection) Act, 1972 (53 of 1972)."

The said notification above, does not withdraw the exemption on the construction of road as mentioned in the serial number 13(a) of the Mega Exemption Notification number 25/2012-ST dated 20.06.2012. Thus, the said refund is not affected by the Notification number 09/2016 dated 01.03.2016. Surprisingly, in the impugned order, the adjudicating authority fails to mention even the details of the service provided by the appellants to the AMC and all the details were provided by the appellants in their grounds of appeal.

Going through the grounds of appeal, I come to the conclusion that, the appellants had started paying the Service Tax on their own volition with a misunderstanding that the exemption on their service has been withdrawn vide Notification number 06/2015-ST dated 01.03.2015. However, when they saw the Notification number 09/2016 dated 01.03.2016, they understood that they were not supposed to pay duty at all as the exemption on their service was never withdrawn. When they requested AMC to reimburse the Service Tax paid by them, AMC flatly refused to do so and hence, they filed the refund. I find that the appellants have rightly filed the refund for the Service Tax paid by them which was not required to be paid.

6. Now, the main issue remains to me is whether the adjudicating authority has rightly rejected the claim on the ground of limitation, or otherwise. I find that the adjudicating authority has not denied the legitimacy of the refund claim in terms of Mega Exemption Notification number 25/2012-ST dated 30.06.2012. The claim was rejected only on the ground that it was delayed on time limit as per the provisions under Section 102 of the Finance Act, 2016. However, as the exemption on serial number 13(a) of the Mega Exemption Notification number 25/2012-ST dated 30.06.2012 was never withdrawn; the provisions of Section 102 of the Finance Act, 2016 would not be applicable on it. In the instant case, the conditions, as mentioned in Section 11B, would be applicable and it can be seen that, as per Section 11B, the refund claim is well within the time limit. Further, had the claim of the refund, been delayed by more than 1 year, still the limitation under Section 11B would not have been applicable to the case. The reason for this is that the appellants paid duty on the service which is exempted vide the Mega Exemption Notification number 25/2012-ST dated 30.06.2012. Thus, the provision of time limit, under Section 11B, will not be applicable to them as the amount paid by them in the government exchequer is to be treated as deposit and not duty.

7. In view of my above discussions and findings, I set aside the impugned order and allow the appeal filed by the appellants.



8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeals filed by the appellant stand disposed off in above terms.

*उमा शंकर*  
(उमा शंकर)

CENTRAL TAX (Appeals),  
AHMEDABAD.

ATTESTED

*26/2/17*  
(S. DUTTA)

SUPERINTENDENT,  
CENTRAL TAX (APPEALS),  
AHMEDABAD.

To,  
M/s. Hiral Construction Co.,  
99, Hariganga Society, Opp. CMC, Odhav,  
Ahmedabad

Copy to:

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

