
 सत्यमेव जयते	<b>केंद्रीय कर आयुक्त (अपील)</b> <b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b> केंद्रीय कर शुल्क भवन, सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 टेलीफोन : 079-26305065	 7 <sup>th</sup> Floor, Central Excise Building, Near Polytechnic, Ambavadji, Ahmedabad-380015 टेलीफैक्स : 079 - 26305136
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क फाइल संख्या : File No : V2(ST)0268/A-II/2016-17 | 248-53  
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-223-17-18**  
 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 **AHM-SVTAX-000-JC-023-16-17** Dated **29.12.2016** Issued by **Joint Commissioner STC**, Service Tax, Ahmedabad

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

**M/s. Central Institute of Plastics Engineering & Technology**

**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 :-

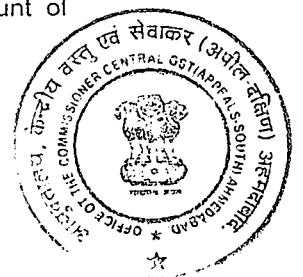
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हॉस्पिटल 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 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 apealed 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 13 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 अर्ज़ें 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,

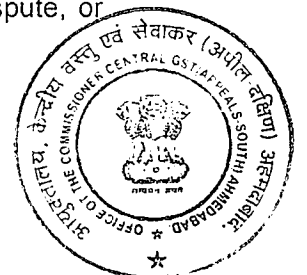
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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. Central Institute of Plastic and Technology, [CIPET] Plot No. 630, Phase-IV , GIDC, Vatva, Ahmedabad- 382 445 (STR AAAA C0606R ST006) (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number AHM-SVTAX-000-JC-023-16-17 dated 29.12.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Joint Commissioner, Service Tax, HQ, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief are that appellant, during April-2010 to March-15, had not paid Service Tax of Rs. 72,69,271/- on Technical Inspection & Certification Service of Rs., 6,15,31,700/- rendered to The Commissioner Customs, Development officer, Kandla SEZ, Gandhidham, Kutch, Gujarat. (in short "Commissioner Customs Kandla SEZ"). They have not charged Service to "Commissioner Customs Kandla SEZ" claiming following Exemption available to SEZ Developer/Co-developer or units set up in Kandla, SEZ.

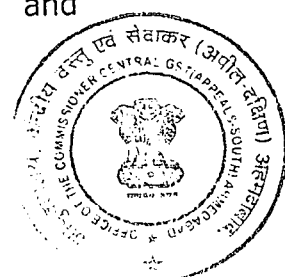
PERIOD	NOTIFICATION
01.04.2010 to 28.02.2011	09/2009-ST dt. 30.03.2009
01.03.2011 to 19.06.2012	17/2011-ST dt. 01.03.2011
20.06.2012 to 30.06.2013	40/2012-ST dt. 20.06.2012
01.07.2013 to 31.03.2015	12/2013-ST dt. 01.07.2011

3. Appellant was of view that they have render service to Development Commissioner, Kandla SEZ, Gandhidham, Kutch, Gujarat and service rendered is exempted. Therefore service tax was not paid.

4. Revenue department was of opinion that the appellant are required to pay service tax as "Commissioner Customs Kandla SEZ" was **neither-**

- a. a SEZ Developer, (in short "Development Commissioner Kandla SEZ") [section 2(g) of SEZ, Act, 2006].
- b. (b) Co-developer **nor**
- c. a unit established in SEZ, as per SEZ Act, 2005

and therefore exemption notifications stated above were not available to appellant. SCN dated 16.10.2015, invoking extended period, was adjudicated Vide impugned OIO wherein duty of Rs. 72,69,271/- has been confirmed u/s 73(1) along interest liability u/s 75. Penalty of Rs. 72,69,271/- u/s 78 for suppression of facts with intent to evade tax and penalty of Rs: 10,000 u/s 77(2) for improper self assessment and improper filing of ST-3.



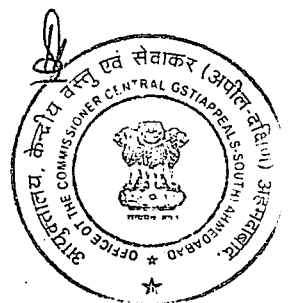
5. Being aggrieved with the impugned order, the appellants preferred an appeal on 27.02.2017 before the Commissioner (Appeals-II), Ahmadabad wherein it is contended that-

- a. SCN dated 16.10.2015 is barred by period of limitation as there is no suppression of facts. And willful misstatement. Appellant has shown said service as exempted service in returns.
- b. OIO is non-speaking.
- c. Services in question were provided to a SEZ Developer (by virtue of being an authority.)
- d. The SEZ Act, 2005 through Section 31(1) prescribes, that Central Government shall constitute an Authority (i.e SEZ Authority) for executing SEZ, Act. Second proviso to said sub-section, makes it clear that until such authority is constituted, the person or the authority including Development Commissioner shall Exercise control over such existing Special Economic Zone (SEZ) till Authority is constituted. It can be inferred that Development Commissioner was empowered to perform similar function as that of Authority until formation of Authority. As per section 31(5) of SEZ Act, 2005 Development Commissioner is one of the constitute member and Chairman of SEZ Authority.
- e. Services provided are for testing of imported goods into SEZ. Development commissioner has received services as a SEZ Authority and said services has no nexus with the Development commissioner other than as such Authority.

6. Personal hearing in the case was granted on 14.11.2017. Shree Abhishek Tiberwale, FCA, appeared before me and reiterated the grounds of appeal. He submits a letter dated 30.10.2015 of KASEZ issued by Jt. Development Commissioner, Kandla Special Economic Zone, Gandhidham and makes additional written submission dated 14.11.2017. He further submits that CIPET is Government Undertaking.

#### DISUSSION AND FINDINGS

7. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants, evidences produced at the time of personal hearing.



8. I observe that benefits of SEZ exemption notification is denied by the adjudicating authority on ground that Development Commissioner is merely one of the a constituent of the "Kandla SEZ Authority" and Development Commissioner alone in capacity of Development Commissioner is not the "Kandla SEZ Authority". Further the adjudicating authority, has denied, to consider Development Commissioner as "Kandla SEZ Authority" or a developer as envisaged in terms of Section 2 of SEZ, Act, 2005 for the purpose of service tax on services received. I find that adjudicating authority as agreed that though the invoices are in name of Commissioner Customs, SEZ but in fact invoices are for Development Commissioner, SEZ and service is received by Development Commissioner, SEZ.

9. Question to be decided is whether Development Commissioner, Kanda SEZ, Gandhidham has received service as "Kandla SEZ Authority" or as a Development Commissioner, Kandla SEZ. I find that "Kandla SEZ Authority" has so far not been constituted as envisaged under Section 31(1) of SEZ, Act, 2005 and until it is constituted, Development Commissioner is to exercise such control over SEZ in terms of Section 31(3) of SEZ, Act, 2005. I am of the considered view that services have been received, by Development Commissioner, in capacity of "Kandla SEZ Authority". In simple language I can say that Development Commissioner, Kandla SEZ is acting as (a) Development Commissioner, Kandla SEZ as well as (b) "Kandla SEZ Authority". From the invoices submitted it show the name of recipient as Development Commissioner, Kandla SEZ but, as matter of fact, service has been received in capacity of "Kandla SEZ Authority" and for use of "Kandla SEZ Authority".

10. I perused letter dated 30.10.2015 of Jt. Development Commissioner, Kandla Special Economic Zone, wherein it is sated that "Kandla SEZ Authority" functions as "Developer" of Kandla Special Economic Zone" and "Section 26(1)(e) of the SEZ, Act, 2005 which provides for "exemption from service tax under Chapter-V of the Finance Act, 1994 on taxable service provided to "Developer" or Unit to carry on the authorized operation in a Special Economic Zone." Further it is stated that CIPET has provided services in Kandla Special Economic Zone. In view of the above I hold that services has been received by "Kandla SEZ Authority".

*(Signature)*



10.1 Having concluded that Development Commissioner, Kandla SEZ is a also a "Kandla SEZ Authority" acting as developer of SEZ, now, I shall proceed further to examine whether exemption notifications are available to appellant or not. No where in impugned OIO, it is conclude that services has not been received in Kandla Special Economic Zone. Further no where it is concluded in impugned OIO, that services received are utilized in un-authorized operation in SEZ. I find that services rendered to developer in SEZ is exempted ab-intio from 01.03.2011 vide notification No. as shown below-

PERIOD	NOTIFICATION
01.03.2011 to 19.06.2012	17/2011-ST dt. 01.03.2011
20.06.2012 to 30.06.2013	40/2012-ST dt. 20.06.2012
01.07.2013 to 31.03.2015	12/2013-ST dt. 01.07.2011

In view of above I hold that services rendered after 01.03.2011 till 31.03.2015 is exempted ab-intio and appellant is not required to pay service tax on that.

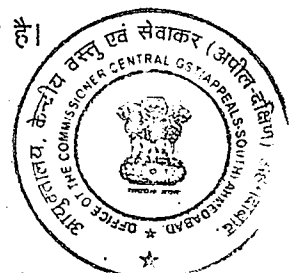
11. For period 01.04.2010 to 28.02.2011, Notification 9/2009-ST dated March 3, 2009 granted exemption to service received and utilized by SEZ by way of filing refund claim. Notification No. 15/2009-Service Tax, dated 20.05.2009 amended the Notification 9/2009-ST dated March 3, 2009 to provide unconditional exemption to services, consumed within the SEZ, without following the refund route thus dispensing with the requirement of first paying the tax by the service provider and then claiming the refund by developer/unit. Thus, I hold that, from 01.04.2010 to 28.02.2011 also ab-initio exemption is available to appellant in terms of notification 9/2009-ST r/w 15/2009-ST.

12. Having allowed the exemption from payment of service tax from period 01.04.2010 to 31.03.2015, I am inclined to set aside all penalty imposed u/s 78 and 77 in impugned OIO, as question of imposing it does not arise.

13. In view of above, appeal filed by the appellants is allowed and impugned OIO is set aside.

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

*(Signature)*



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

*अशि म*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

*R.R. Patel*

(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

M/s. Central Institute of Plastic and Technology, CIPET

Plot No. 630, Phase-IV ,

GIDC, Vatva, Ahmedabad- 382 445

Copy to:

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

