
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
केंद्रीय कर शुल्क भवन, 7 th 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)0243&244/A-II/2016-17

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-224&225-17-18**

दिनांक Date : 29-12-2017 जारी करने की तारीख Date of Issue 10-1-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No **SD-02/Ref-211&212/VJP/2016-17** Dated **30.11.2016** Issued by Assistant Commr **STC**, Service Tax, Ahmedabad

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

M/s. Pankaj Bagri / Neha Bagri
Niraj Bagri / Rachna Bagri

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 सेत्राकर 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 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 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 63 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,

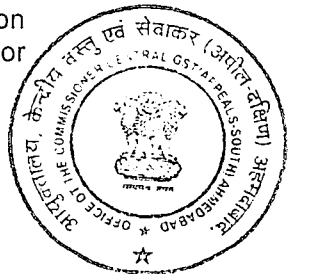
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

Two appellants namely (a) M/r. Niraj Bagri/Rachna Bagari, and (b) Mr. Pankaj Bagari/ Neha Bagari both residing in same premises at 2303/2034, Silver Arch, Shastri Nagar, Andheri West, Mumbai- 400 053(hereinafter referred to as 'appellants') have filed the present appeals against the Order-in-Original number (a) SD-02/REF-**211**/VIP/2016-17 dated 31.11.2016 and (b) SD-02/REF-**212**/VIP/2016-17 dated 31.11.2016 respectively (hereinafter referred to as 'impugned orders') passed by the Asst Commissioner, Service Tax Div-II, APM building, Anandnagar Road, Satellite, Ahmedabad- 15 (hereinafter referred to as 'adjudicating authority');

2. The facts of the case, in brief, are that the both the appellants, both the ultimate buyer of following residential property at Western Heights, Opp. Gurudwara, J. P. Road, Four Bungalows, Andheri West, Mumbai- 400 058, have filed a refund claim as shown below respectively, on ground that they have wrongly paid service tax to the service provider M/s Adani Estate Pvt. Ltd, **[PAN AAFC A6390M]** Navrangpura , Ahmedabad (in short DEVELOPER) in view of Delhi High Court Ruling in the case of Suresh Kumar Bansal & Anuj Goyal & others Versus UOI [2016 (6) TMI 192 Delhi HC].

APPELLANTS	PROPERTY	Refund amt. filing date	Appeal No./ dated	OIO No.
(a) M/r. Niraj Bagri/Rachna Bagari,	Flat No. C/1703	11,97,871/- on 06.09.2016	V2(ST) 244 /A-II/2016-17 Dt. 10.02.2017	SD-02/REF- 211 /VIP/2016-17 dated 31.11.2016
Mr. Pankaj Bagari/ Neha Bagari	Flat No. C/1702	Rs. 11,93,447/- on 04.10.2016	V2(ST) 243 /A-II/2016-17 Dt. 10.02.2017	SD-02/REF- 212 /VIP/2016-17 dated 31.11.2016

3. Adjudicating authority has rejected the both refund claim on ground of-

I. Developer has charged service tax combine for two services i.e. for preferential value and for construction service. From document submitted it is impossible to bifurcate service tax corresponding to said two services. As per said order of Hon`ble High Court, exemption of service tax on preferential value charge is not applicable.



- II. ST-3 returns of the service provider are not submitted. As the Service provided by them becomes exempted in light of the said High Court Order and they are providing both taxable and exempted service, service provider is required to reverse 6% on amount of exempted value on which becomes exempt by virtue of said judgment.
- III. Appellants had failed to produce any payment receipt and invoice, showing description and taxable value of service, issued by the service provider. Therefore appellants are ineligible as per the provisions laid down in Rule 4A of Service Tax Rules, 1994.
- IV. Appellants have failed to produce NO OBJECTION CERTIFICATE from service provider. It might be possible that service provider will make claim in future.
- V. Delhi High Court Ruling in the case of Suresh Kumar Bansal & Anuj Goyal & others Versus UOI [2016 (6) TMI 192 Delhi HC] is applicable to the agreement entered prior to year 2012 as the the High Court while passing the judgment has not expressed its opinion on Amendment of Finance Act, 2012 wherein provisions (Section 65(105) defining all the services under the Act was deleted and all services [as defined under Section 65B (44) of Finance Act, 2012] were made chargeable to Service Tax except the negative list meaning thereby that the said judgment is applicable to the agreement entered prior to the year 2012. Appellants has entered in to agreement on 28th September, 2015 with the service provider i.e. after 2012, therefore claim is ineligible and baseless as said ruling is not applicable to present case.

4. Being aggrieved with the impugned order, the both appellants preferred an appeal on 10.02.2017 before the Commissioner (Appeals Ahmedabad) wherein it is contended that –

- I. The entire amount of Service Tax is towards provisions of construction services. Therefore, there is no question of bifurcating the total consideration does not arise at all.
- II. Appellants had already submitted the letter from service provider stating the amount of consideration collected, service tax charged and collected and deposited with Government treasury. This certificate itself should be taken as a copy of receipt issued by the service provider.



- III. There is neither basis nor any requirement for the appellants to submit copy of ST-3 returns which would have been provided by Service Provider to Department.
- IV. There is no requirement to submit any copy of "NO OBJECTION CERTIFICATE" from the Service Provider. As per 11B of CEA, 1944, the refund claim is required to be filed by person who is bearing the incidence of Service Tax. Appellants have born the Service Tax.
- V. There is no change in valuation rules both pre and post July, 2012. Hence, the ratio of the aforesaid decision is equally applicable post July, 2012.

5. Personal hearing in the both case was granted on 14.11.2017. Shri Vaibhav Jajoo appeared before me for both cases and reiterated the grounds of appeal. He stated that judgment of Suresh Kumar Bansal & Anuj Goyal & others Versus UOI [2016 (6) TMI 192 Delhi HC] is applicable to present cases.

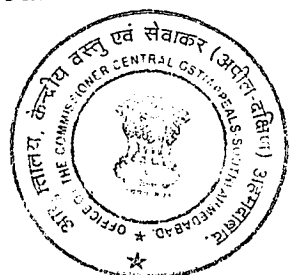
DISUSSION AND FINDINGS

6. 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.

7. I find the issue is identical for both the appeals; therefore both the appeals common order is issued. Claim is submitted on ground that appellants was not required to pay service tax to service provider M/s Adani Estate Pvt. Ltd, Navrangpura , Ahmedabad in view of Delhi High Court Ruling in the case of Suresh Kumar Bansal & Anuj Goyal & others Versus UOI. I find that adjudicating has objected the HC Case ground of filing claim but has also rejected the claim on ground of non furnishing of evidence to substantiate that said claim amount is deposited to Government A/c.

8. The claims are rejected on merit. Adjudicating authority in both cases has concluded that Delhi High Court Judgment is not applicable in post 2012





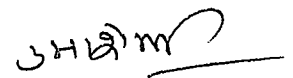
negative service era. I completely agree with adjudicating authority in this regards.

9. Both appellants have not submitted any documents before adjudicating authority and also before me to substantiate that service tax have been paid by appellants to service provider and that tax has been deposited to government exchequer. Section 11B of FA, 1994 prescribes that refund sanctioning authority should satisfy on the basis of various prescribed documents like ST-3, Duty/credit A/c ledger, duty payment challans etc. of service provider etc, that duty has really been paid to government. Only a letter dated 28.09.2016 issued by developer, in both cases, showing service tax payment detail have been submitted. Said letters does not show any Service tax registration No., and nature of service provided. Only letter is not sufficient to sanction refund. Onus lies on refund claimant to prove that duty has been credit to Government A/c. , which appellants has failed. In view of this I hold that in absence of any valid documentary evidence adjudicating authority has rightly rejected the both refunds.

7. In view of above, both the appeals filed by the appellants are rejected and both the impugned OIO is up-held.

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


8. The appeals filed by the appellants stand disposed off in above terms.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED


(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD.

To,

(a)M/r. Niraj Bagri and Rachna Bagari,

2303/2034, Silver Arch,

Shastri Nagar, Andheri West,

Mumbai- 400 053



(b) Mr. Pankaj Bagari/ Neha Bagari
2303/2034, Silver Arch,
Shastri Nagar, Andheri West,
Mumbai- 400 053

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax ,Ahmedabad- SOUTH.
- 3) The Additional Commissioner, Central Tax ,Ahmedabad- SOUTH
- 4) The Asst. Commissioner, Service Tax Div-II, APM building, Anandnagar Road, Satellite, Ahmedabad- 15.
- 5) The Asst. Commissioner(System), Central Tax ,Ahmedabad- SOUTH
- 6) Guard File.
- 7) P.A. File.

