केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

सत्यमेव जयते

केंद्रीय उत्पाद शुल्क भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/32/RA/A-II/2016-17
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-023-2017-18**
दिनाँक 21.07.2017जारी करने की तारीख Date of Issue 07/08/2017

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग **Asstt. Commissioner** ,Div-III केन्द्रीय कर, Service Tax द्वारा जारी मूल आदेश सं **STC/REF/31/Paperchase/K.M.Mohadikar/AC/Div-III/16-17** दिनाँक: **20/06/2016,** से सृजित

Arising out of Order-in-Original No. **STC/REF/31/Paperchase/K.M.Mohadikar/AC/Div-III/16-17** दिनाँक: **20/06/2016** issued by **Asstt Commissioner** ,Div-III , Central Tax, Service Tax

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s PAPERCHASE ACCOUNTANCY INDIA PVT LTD.,
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person a aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

... 2 ...

ORDER IN APPEAL

This appeal is filed by revenue department *(hereinafter referred to as 'appellants')* in pursuance of review order No. 28/2016-17 dated 27.09.2016 against the Order-in-Original number STC/Ref/31/ paperchase/K.M. Mohadikar/AC/Div-III/16-17 dated 20.06.2016 *(hereinafter referred to as 'impugned orders')* passed by the Assistant Commissioner, Service Tax Div-III, APM building, Anandnagar Road, Satellite, Ahmedabad-15 *(hereinafter referred to as 'adjudicating authority')*. Said impugned OIO is passed in respect of M/s. Paperchase Accountancy India Pvt. Ltd, 2nd floor, 206, Shivalik Corporate Park, B/h IOC Petrol Pump, 132 feet ring road, Satellite, Ahmedabad - 380 015 have filed the present appeals, *(hereinafter referred to as 'respondent')*

2. The facts of the case, in brief, are that the respondent were engaged in providing BAS-taxable service and was holding Service Tax registration number AADC P5642F ST001. Appellant had filed refund claim on 31.03.2015 of Rs. 1,79,083/- for quarter April-2015 to June-2015 u/r 5 of CCR r/w Notification No. 27/2012- CE (NT) dated 18.06.2012. Claim of Rs. 866/- (stationer and printing charge service tax) was rejected but rest of claim of Rs. 1,78,217/- was allowed by the adjudicating authority. Rs. 1,78,2017/- included service tax of Rs. 1,27,757/- paid on rent vide invoices dated 01.05.2016, 01.06.2016 and 01.07.2016 raised by Strategic Info system Pvt. Ltd for rent for use of Shivalik Corporation Park Office.

3. Being aggrieved with the impugned order allowing refund of Rs. 1,78,217/-, the appellant's revenue preferred an appeal on 06.11.2016 before the Commissioner (Appeals-II) wherein it is stated that invoices dated 01.05.2016, 01.06.2016 and 01.07.2016 raised by Strategic Info system Pvt. Ltd for rent for use of Shivalik Corporation Park Office No. 204, 205A are not registered office and only office No. 206 to 210 are registered premises, therefore proportional service tax for the invoice for Rs. 1,27,757/- found inadmissible for refund. Shivalik Corporation Park Office No. 204, 205A are not registered office as per ST-2 registration certificate, hence in accordance with condition in terms of rule 4(1) of CCR, 2004 credit is not admissible and consequently refund is not admissible.

4. In counter reply respondent has submitted written reply dated NIL wherein it is stated that the Strategic Info system Pvt. Ltd raised the Invoices dated 01.05.2016, 01.06.2016 and 01.07.2016 for rent with

particulars "Being rent for the month of April, May and June, 2015" for use of Shivalik Corporation Park office No. 206 & office No. 204 to 205A. Office No. 206 to 2010 is registered with service tax where is office No.204 to 205A is not registered. But office No. from 204 to 210 is entirely one premise without any wall or partition in between office no. 204 to 210. Respondent has further argued that invoice of whole office is one as well as owner is one.

5. Personal hearing in the case was granted on 19.06.2017. Shri D. N. Belani, Charted Accountant, the respondent`s representative, appeared before me and reiterated the grounds of appeal and stated that earlier refund has been allowed

DISUSSION AND FINDINGS

6. I have carefully gone through the facts of the case on records, grounds of revenue appeal in the Appeal Memorandum. I have also carefully gone through cross objection submitted and oral submissions made by the respondent at the time of personal hearing.

7. Issue to be decided is to whether or not service tax credit of tax paid on rent of office No. 204 and 205A (unregistered office) is allowed when whole premises from office No. 204 to 2010 is one entity without any partition or walls in-between different office and when service tax registration is for only office No. 206 to 210. Appellant revenue though disputed but has not produced any copy of above said three Invoices. Respondent has stated that said invoices are issued collectively for office No. 204, 205A and 206. Only 206 is registered and other two 204 and 205A are not. Revenue has appealed to reject the whole invoice service tax of Rs. 1,27,757/- paid for office No. 204, 205A and 206 without considering the fact that 206 is registered. I am of considered view that credit in proportion to 206 (registered premises) could have been allowed.

8. Now issue whether credit in respect of adjcining and continuous, un-partitioned office 204 and 205A , the un-registered premises can be allowed or not. when whole premises from 204 to 210 is single entity and when used by same respondent and when used solely for 100% export activity and when said receipt of service is properly accounted for and when there is no rendering of domestic service from 204 to 210 and when there is nothing on record to substantiate that said rent service has not been received and

utilized in export activity, I am of considered view that credit in respect of said un-registered offices 204 and 205A can not be denied.

9. The Hon'ble CESTAT, Delhi in the case of M/s. Allspheres Entertainment Pvt. Ltd. Vs. CCE, Meerut [2015 (8) TMI 953 – (CESTAT DELHI)] has held that in the absence of any such dispute regarding availment of Impugned Services and their utilization for payment of Service tax or proper accounting of the same, the denial of Cenvat Credit of Service tax paid on Impugned Services by Nainital office of the Appellant on the sole ground that the invoices issued are in the name of the Appellant's unregistered Delhi office is unjustified since the head office which is registered with the Department has discharged the Service tax liability of Delhi office. The defect in the invoices is only procedural lapse or rather a curable defect.

10. Registration is issued for identification of service provider and to comply various processes like return submission etc. in service tax department. In sixth edition of FAQ published on 16.09.2011 by Directorate of Service Tax has replied for "Why registration is necessary?" at para 2.2 which is reproduced as below-

> **"Registration is identification of an assessee. Identification is necessary to deposit service tax, file returns and undertake various processes ordained by law relating to service tax. Failure to obtain registration would attract penalty in terms of section 77 of the Finance Act, 1994, read with rule 4 of Service Tax Rules 1994. (Please also refer para 2.15 of this Booklet)"**

11. The combined reading of section 66, 69, 70 of Finance Act, 1994 , Rule 4, 7 of Service Tax Rules, 1994 and sub-rule 5, 6 &9 of Rule 9 of CCR, 2004 substantial meaning emerged are that every person liable for payment of service tax shall require to registered themselves, required to file returns and required to maintain records of receipt and utilization of credit of inputs. In instance case respondent is 100% exporter hence he is not required to pay service tax and consequently he was required to even register.

12. In case of E-care India Pvt. ltd 2011(22) STR 529 TRI Chennai it is held that registration not necessary for refund rule 5. For claiming refund of credit under rule 5 of CCR, 2004, a person should be engaged in providing export of service. In present case respondent is engaged in export of "information Technology Service". Being provider of output service they are eligible to avail CENVAT credit on the basis of proper documents issued as

per rule 9(1) of CCR. In present case credit is availed under proper invoices issued under rule 4A of service tax rules 1994, by service provider.

13. Non inclusion of two adjacent office 204 and 205A in the registration certificate, where the entire premises office no. 204 to 2010 is one entity without any partition, is merely technical lapse and rectifiable mistake for which benefits of claim can not be denied. Morover revenue department has also not adduced any proof of premises not being used by the respondent. On such technical lapses credit and subsequent refund can not be rejected. My view is supported by judgment in case of M/s Bharat Sanchar Nigam Ltd. [2009(14)STR 699 (Tri. Chennai.) And M/s UM Cables Ltd. [2013-TIOL 386 HC MUM CX) in support of their contention.

14. In view of above I uphold the impugned OIO and appeal filed by the appellant revenue is rejected.

15. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

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

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

(R.R. PATEL)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

To,
M/s. Paperchase Accountancy India Pvt. Ltd,
2nd floor, 206, Shivalik Corporate Park,
B/h IOC Petrol Pump,
132 feet ring road, Satellite,
Ahmedabad - 380 015

Copy to:

1) The Chief Commissioner, Central Tax, Ahmedabad.

2) The Commissioner, Service Tax ,Ahmedabad-.

3) The Asst. Commissioner, Service Tax Div-III, APM building, Anandnagar Road, Satellite, Ahmedabad- 15.

4) The Asst. Commissioner(System), Central Tax- South Ahmedabad Hq, Ahmedabad.

5) The Asst. Commissioner(System), Central Tax- North Ahmedabad Hq, Ahmedabad.

6) Commissioner Central Tax- North- Ahmedabad,

7) Commissioner Central Tax- South Ahmedabad

8) Guard File.

9) P.A. File.