



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय कर शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पोलिटेक्निक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015
Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)04/A-II/2017-18 / 376-79
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-240-17-18
दिनांक Date : 29-12-2017 जारी करने की तारीख Date of Issue 22/01/18

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No STC/Ref/155/E-Clinical/KMM/AC/D-III/16-17
Dated 29.12.2016 Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

M/s. eClinical Works Pvt 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, मेघानी 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 नें 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 accompanied 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

o/c

Signature
Mo. No. 9825365420
Riaji Chhawan



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 फॉर्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियों (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलिय 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 अपीलिय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामला 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 अपीलिय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1988 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 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 अपीलिय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी 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,

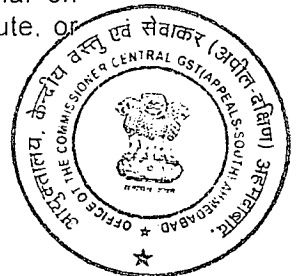
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



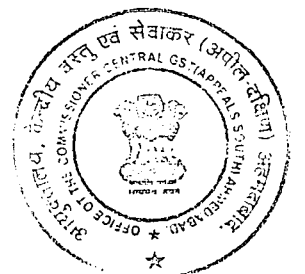
ORDER-IN APPEAL

M/s. E-Clinical Works India Pvt. Ltd, 409-414, 4th Floor, Venus Atlantis, 100ft Road, Prahaladnagar, Ahmadabad, (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number STC/Ref/155/e-clinical/K.M.MOHADIKAR/AC/Div-III/2016-17, dated 29.12.2016. (*hereinafter referred to as 'impugned orders'*) passed by the Assistant Commissioner, Service Tax, Division-III, Ahmadabad. (*hereinafter referred to as 'adjudicating authority'*)

2. Briefly stated the facts of the case are that the appellants had filed refund claim of Rs.45,94,664/- under their application dated 28.07.2016 for the period from January-2016 to March-2016, under the Notification No.27/2012-C.E.(N.T.) dated 18.06.2012, for the refund of the unutilized CENVAT credit in respect of service tax paid on various input services utilized/used for providing the output services without payment of service tax on the said output services as being exported by them. The Adjudicating Authority vide impugned order dtd. 29.12.2016 rejected refund under clause (f) of Rule 6A, stating that Claimant is a merely establishments of the e-clinical Works LLC, USA. Therefore it cannot be treated as export of services and the refund claim is inadmissible. Input service invoice No.52/15-16 dated 16.02.2016 raised by M/s. Hirkrupa Decoraters for event management service do not have any nexus with export of service hence credit of Rs.2,338/- is inadmissible and refund is liable for rejection. Disallowance of Cenvat Credit of Rs.41,217/- on the ground that the appellant has taken credit after one year from the date of issuance of invoices/challans as specified in Rule 9(1).

3. Being aggrieved by the impugned orders, the appellant filed the present appeals on the following grounds; That the Id. Assistant Commissioner has erred on facts and in law by considering claimant/appellant as merely establishment of the e-clinical Works LLC, USA. The appellant placed reliance In case of **Tandus Flooring India Private Limited, in** (Ruling No.AAR/ST/03/2013, Application No. AAR/44/ST12/12-13 decided on August 26, 2013). Credit of Rs.41,217/- has availed within one year from the date of advice of receipt of payment, and thus made no violation of Sec 11B of Central Excise Act,1944.

4. Personal hearing in the case was granted on 14.11.2017 wherein Shri C.J. Rajpara, on behalf of the said appellant, appeared before me and reiterated their Written Submission grounds of appeal and submitted that earlier refunds were sanctioned to them from 2009 to Last quarter of 2015.



5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and the Written Submission filed by the said appellant and oral submission made at the time of personal hearing. I take up the appeal for the final decision.

Question to be decided is

1. Whether as per clause (f) of Rule 6A, Claimant is a merely establishments of the e-clinical Works LLC, USA or otherwise.
2. Whether the Credit of Rs.41,217/- has availed within one year from the date of invoice/advice of receipt of payment,

It is pertinent to discuss the provisions of Rule 6A which read as under;

Rule 6A of the Service Tax Rules 1994, deals with the provisions relating to **export of services**. It states that

"The provision of any service provided or agreed to be provided shall be treated as **export of service** when,

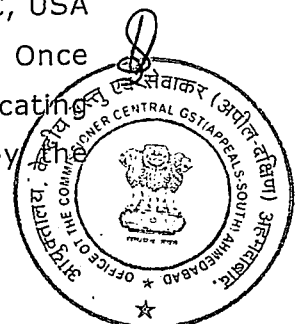
- (a) the provider of service is located in the taxable territory,
- (b) the recipient of the service is located outside India,
- (c) the service is not a service specified in section 66D of the Act,
- (d) the place of provision of service is outside India,
- (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) the provider of service and recipient of the service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.

Explanation 3 of clause (44) of Section 65B of the Act- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

From the plain reading of the text of **point (f) of Rule 6A**, it is understood that service provider and service recipient should not be a mere establishment of a **person** to qualify the provision of service as **Export Service**. Thus it implies that service provider/service receiver should not be branch, agency and representational office of other.

5.1 Here once it is established by the adjudicating authority that the said claimant is a merely establishment of the e-clinical Works LLC, USA and decided that it cannot be qualified as export of services. Once service are held to be not the export of services then adjudicating authority had to examine the taxability of services provided by



appellant as they have not paid the service tax on so called export services and also to examine the availability of Cenvat credit to the appellant.

5.2 Reliance placed by the appellant. In case of **Tandus Flooring India Private Limited, in** (Ruling No.AAR/ST/03/2013, Application No. AAR/44/ST12/12-13 decided on August 26, 2013), had not been examined by the adjudicating authority thus it is felt necessary to remand the case for to re-examine in view of the above referred citation.

5.3 As regards credit of Rs.41,217/- it is also to be examined in view of above discussions that whether the appellant is entitled for credit when services are not to be treated as export and taxability of so called export services.

6. I hereby remand the case back to adjudicating authority in view of discussion at para-5 above.

07. The appeal filed by the appellant stand disposed off in above terms.

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

उमाशंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

K.H. Singhal

(K.H.Singhal)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.
BY R.P.A.D.

To,

M/s. E-Clinical Works India Pvt. Ltd,
409-414, 4th Floor, Venus Atlantis,
100ft Road, Prahaladnagar,
Ahmedabad.

Copy To:-

1. The Chief Commissioner, Central Tax, GST Ahmedabad zone, Ahmedabad.
2. The Commissioner, Central Tax, GST South, Ahmedabad.
3. The Deputy/Assistant Commissioner, Central Tax, GST South, Division-VII, Ahmedabad South.
4. The Assistant Commissioner, System, GST South -Ahmedabad
5. Guard File.
6. P.A. File.

