



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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



☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)050&55/ RA/A-II/2016-17 / 384-89
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-249&250-17-18
दिनांक Date : 17-1-2018 जारी करने की तारीख Date of Issue 29/01/18

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No STC/ref/156/Syx/Kmm/AC/D-III/16-17 Dated 29.12.2016 STC/ref/94/Syx/Kmm/AC/D-III/16-17 Dated 10.10.2016 Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

M/s. Syx Automations.

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 मैन्टल 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 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 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



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 फॉर्म 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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 अर्जों 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,

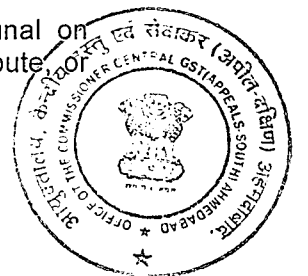
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

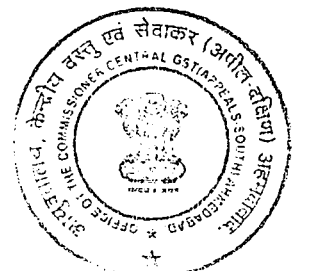


ORDER IN APPEAL

Revenue department has filed the present two appeals on 06.02.2017 and 29.03.2017 against the Refund Orders-in-Original number (a) STC/Ref/94 /syx/ K. M. Mohadhikar/ AC/ Div-III/2015-16 dated 06.10.2016 and (b) STC/Ref/156/syx/K. M. Mohadhikar/AC/ Div-III/16-17 dated 29.12.2016 (*hereinafter referred to as 'impugned orders'*) respectively passed by the Asst. Commissioner, Service Tax, Div-III, APM Mall, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*) in respect of M/s. Syx Automation India Pvt. Ltd., House No. 6, Sharman 7, Near Chandan Party Plot, Ahmedabad- 15 (*hereinafter referred to as 'respondents'*);

2. Respondent has filed a following two refund claim under Notification No. 27/2012- CE (NT) dated 18.06.2012 read with rule 5 of CCR, 2004 for refund of unutilized and accumulated CENVAT credit.

Refund filing dt. & claim amt.	Period of refund	Refund amount & [OIO dt]	Appeal No. and date of appeal [Appeal filed for amount- unregistered premises matter][review order No}
30.06.2016 [1,12,586/-]	7/2015 to 9/2015	1,12,586/- ALLOWED [06.10.16]	V2(ST)50/RA/A-II/2016-17 dt. 06.02.17..... [Rs.68,572/-] [Revenue review order No. 45/16-17 dated 17.01.2017]
29.03.17 [1,06,197/-]	10/201 5 to 12/201 5	1,04,021/- ALLOWED [29.12.2016]	V2(ST)55/RA/A-II/2016-17 dt. 29.03.2017... [Rs.63,665/-] [Revenue review order No. 51/16-17 dated 20.03.2017]
Note- In OIO dt. 29.12.2016 amount 1,04,021/- is shown to be "REJECTED" in ORDER portion but by of corrigendum word "REJECTED" was changed to "SANCTIONED".			



3. Appellant revenue has filed two appeal for rejecting the claim of Rs. 68,572/- and 63,665/- allowed vide OIO dated 06.10.2016 and 29.12.2016 respectively as said refund claims are in respect of service tax paid on rent of unregistered premises i.e. 901 to 904, 9th floor, Abhishree adroit, near Mansi circle, Vastrapur, Ahmedabad. It is stated by appellant revenue that as per ST-2 registration certificate the registered premises is located at House No. 6, Sharman 7, Near Chandan Party Plot, Ahmedabad- 15. Claim Rs. 68,572/- and 63,665/- of service tax paid on unregistered rented premises was allowed even tough invoices shows address of premises, other then those shown in registration.

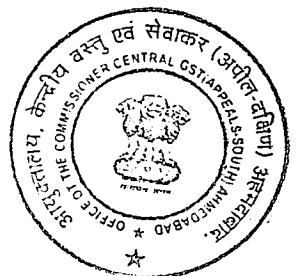
4. Being aggrieved with the impugned orders granting refund of Rs. 68,572/- and 63,665/-, the revenue preferred an appeal before the Commissioner (Appeals-II) wherein it is argued that the input service is utilized at unregistered premises; that the said utilization input service has no nexus with the out put service; that the refund claim has not fulfilled the condition of rule 4(1) of CCR, 2004; that the respondent has not taken registration for ISD procedure for unregistered premises and that the adjudicating authority has failed appreciate that in a judgment of M/s Market Creators Ltd Vs CCE, Vadodara reported in ELT 2014 (3) ECS (185)(Tri. Ahmd.), wherein CESTAT has held that the appellant were not eligible for cenvat credit of Service Tax paid on input services used at unregistered premises.

5. Personal hearing in the both the cases was granted on 01.12.2017. Ms. Pooja Sheth, CA on be half of respondent appeared before me. She stated that cross objection in both the cases would be submitted within 7 days.

6. Respondent has filed his defense reply dated 05.12.2017 wherein it is stated that-

- I. 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 has engaged in export of "information Technology Service"
- II. By reading the provisions of notification 27/2012- CE 9NT) and rule 5 of CCR, 2004, it is not necessary to take registration.
- III. Provider of output service is 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.

IV. Case law of mPortal India Wireless Solution [2012 (27) STR 134] and CST Chennai [2013 (11) TMI 50] and of M/s Shell India Markets Pvt. Ltd. [2013 (11) TMI 50] are squarely applicable to respondent.

7. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the revenue and oral/written submissions made by the respondents at the time of personal hearing.

8. I observe that refund of accumulated credit is denied because input service credit itself on renting service is argued to be inadmissible. Revenue in their appeal memo has argued that though the respondent is registered with service tax but credit of service tax paid on rent of other rented premises which is not registered in ST-2 is not admissible as said Service of "renting of immovable property" is not utilized in registered premises shown in ST-2 registration certificate.

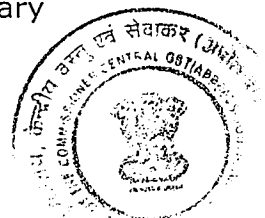
9. I have perused the copy of service tax registration dated 12.12.2014. I find that respondent has taken centralized registration for providing services i.e. (a) Information Technology service (b) Rent-a-cab service, and (c) Manpower recruitment services from following declared premises in ST-2 registration-

a. M/s. Syx Automation India Pvt. Ltd., House No. 6, Sharman 7, Near Chandan Party Plot, Ahmedabad- 15. [REGISTERED OFFICE under companies Act.]

b. M/s. Syx Automation India Pvt. Ltd.,901 to 904, 9th floor, Abhishree adroit, near Mansi circle, Vastrapur, Ahmedabad. [CORPORATE OFFICE]

Allegation of department that premises at **901 to 904, 9th floor, Abhishree adroit, near Mansi circle, Vastrapur, Ahmedabad** is un-registered does not hold water

10.1 Now I shall answer question whether or not input services utilized at corporate office i.e. at so called un-registered office can be taken as cenvat credit. From centralized ST-2 registration it is inferred that out put services are provided from said un-registered premises (corporate office). Appellant revenue has not brought on record by way of documentary



evidence or by way of investigation, to substantiate that so called unregistered premises is not used for providing out-put service. Therefore I am of considered view that all the input service, including renting service, availed at so called unregistered premises is eligible for cenvat credit.

10.2 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".

11. In worst cum worst case, let us presume that, only office and documentation work is carried out and no any out put service is provided from said unregistered premises (corporate office). Now, I shall proceed to decide whether or not input services utilized by such corporate office of the out put service provider, from where no service is provided, is admissible?. I find that input service definition given in rule 2(l) of CCR, 2004 covers, the services utilized at such office of the manufacturer or output service provider. Definition of input service is reproduced below-

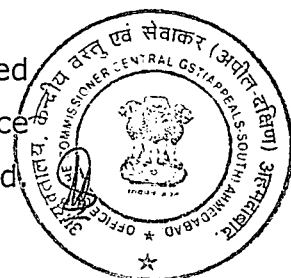
"RULE 2(l) : Input Services

"Input Service" means any service,-

(i) used by a provider of output service for providing an output service; or

*(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, **premises of provider of output service or an office relating to such factory or premises, advertisementup to the place of removal; but excludes,**"*

12. Now , next question law is whether such corporate office is required to take ISD registration for transmitting the cenvat credit of input service utilized at such corporate office from where no out put service is provided.



Appellant revenue has not provided any documentary evidence that respondent have availed cenvat credit on invoices bearing the address of so called unregistered premises i.e. invoices in name and address of corporate office. Let us presume that invoices were in name and address of corporate office, in that scenario also cenvat credit is admissible to respondent as-

(a) Adjudicating authority has not proved that services received at corporate office is not utilized in export of services or in providing output services,

(b) Provider of output service is 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. There is no allegation from revenue that invoices were not issued under rule 4A of service tax rules 1994.

(c) Adjudicating authority has not refuted that said service is not utilized in output service exported, therefore substantial benefit can not be denied. My view is supported by following judgments-

- I. Wipro Limited Vs. Union of India [2013] 32 Taxmann.com 113 (Delhi High Court)
- II. Kothari Infotech Ltd V/S Commissioner of Central Excise, Surat – [2013] 38 taxmann.com. 298 (Ahmadabad – CESTAT)
- III. Mannubhai & Co. Vs. Commissioner of Service Tax (2011)(21)STR(65)- CESTAT (Ahmadabad)
- IV. M/S Mangalore Fertilizers & Chemicals Vs Deputy Commissioner 1991 (55) ELT 437
- V. CST Delhi vs. Convergys India Private Limited 2009 –TIOL -888-CESTAT –DEL-2009 (16) STR 198 (TRI. – DEL)
- VI. CST Delhi vs. Keane Worldzen India Pvt. Ltd. 2008 – TIOL -496 – CESTAT –DEL: 2008 (10) STR 471 (Tri. – Del)

13. Now , I shall proceed to examine the appellant revenue`s allegation that the respondent has not taken registration for ISD procedure for unregistered premises and that the adjudicating authority has failed appreciate that in a judgement of M/s Market Creators Ltd Vs CCE, Vadodara reported in ELT 2014 (3) ECS (185)(Tri. Ahmd.) wherein

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CESTAT has held that the appellants were not eligible for CENVAT credit of Service Tax paid on input services used at unregistered premises.

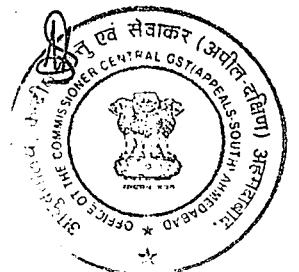
14. In denying the refund adjudicating authority and appellant revenue has relied upon CESTAT decision in case of M/s Market Creators (2014 (36) S.T.R. 386 (Tri. - Ahmd.)). Said CESTAT decision is not said applicable to the instant case due to following difference.

	M/s Market Creators	Present case
What is the issue	Service provider cannot take credit of the document issued BY a premises not registered as an Input Service Distributor under the service tax provisions	Appellant revenue has not substantiated by evidence that documents are issued by so called unregistered premises i.e. corporate office
Whether unregistered premises is used for providing output service	NO	YES, because centralized ST-2 shows that output services are provided. Further revenue appellant has not proved that said corporate office is not used in providing output service
Whether unregistered premises is acting as ISD	YES	NO

In view of above said decision of M/s Market Creators (supra) is not applicable in present case.

15. In view of above, I reject the above two appeals filed by the revenue.

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



16. The appeals filed by the revenue stands disposed off in above terms.

U. M. Sharma

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

R.R. Patel
(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

M/s. Syx Automation India Pvt. Ltd.,

House No. 6, Sharman 7,

Near Chandan Party Plot,

Ahmedabad- 15

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-VI, Ahmedabad South
- 5) The Asst. Commissioner(System), Hq, Ahmedabad South.
- 6) Guard File.
- 7) P.A. File.



