



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)



O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय कर शुल्क भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, Central Excise Building,
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क फाइल संख्या : File No : V2(ST)0288/A-III/2016-17 / 505-10
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-256-17-18
दिनांक Date : 19-1-2018 जारी करने की तारीख Date of Issue 24/01/18

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No STC/Ref/173/Jannus/KMM/AC/D-III/16-17
Dated 14.02.2017 Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

M/s. Janus Global Trade 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 :-

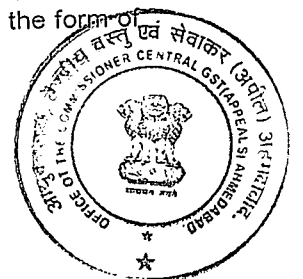
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल 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 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 शर्ता 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 न्यायाधिकरण (सीस्टेट) 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 अर्जें 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,

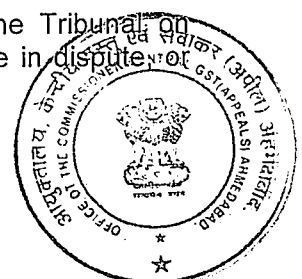
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



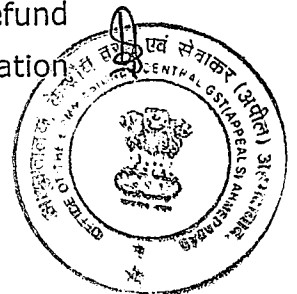
ORDER IN APPEAL

M/s. Jannus Global Trade Pvt. Ltd., 803, Pinnacle Business Park, Corporate road, Prahladnagar, Ahmedabad- 380 015 (STR AACC J0678G SD002) (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number STC/Ref/173/Jannus/K.M. Mohadikar/AC/ Div-III/ 16-17 dated 14.02.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax, Div-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief are that appellant is "APEDA" registered Merchant Exporter of rice and other edible good. Appellant had filed refund claim under Notification No. 41/2012-ST dated 29.06.2012 for refund claim for the period 23.10.2015 to 31.03.2016 of (i) GTA services of Rs. 2,18,913/- and (ii) non-GTA services like CHA , Port service, Cargo Handling Etc. of Rs. 5,87,348/-, utilized in export of goods . GTA services claim has been filed on 17.06.2016 and Non-GTA service claim has been filed on 21.10. 2016 on the basis of same Shipping Bill and for same period, therefore claim of Rs. 5,87,348/- was rejected vide impugned OIO dated 14.02.2017, holding that for same SB, two different refund claim for same period, can not be filed in terms of clause 1(b) and 1(c) of notification No. 41/2012-ST.

3. Claim of GTA services of Rs. 97,389/- (out of Rs. 2,18,913/-)was earlier sanctioned vide OIO No. number STC/Ref/102/Jannus/K.M. Mohadikar/AC/ Div-III/ 16-17 dated 17.10.2016 and Rs. 97,389/- has been credited to appellant on 27.12.2016. This OIO dated 17.10.2016 is not disputed by appellant but present appeal is with regard to OIO STC/Ref/173/Jannus/K.M. Mohadikar/AC/ Div-III/ 16-17 dated 14.02.2017.

4. Being aggrieved with the impugned order, the appellants preferred an appeal on 15.03.2017 before the Commissioner (Appeals-II), Ahmadabad wherein it is contended that appellant has travelled beyond SCN and personal hearing was not granted; that they have availed option given at para 3 of the said notification and claimed refund on actual basis; that there is no provision in notification that refund claim can not be filed separately for separate service ; refund can not rejected by stating provision of para 2 of the said notification



when applicant had opted refund under para 3 of the said notification

5. Personal hearing in the case was granted on 06.10.2017. Shree R.R. Dave, Consultant appeared before me and reiterated the grounds of appeal. He stated that there is no provision that 2nd refund for other services can not be filed.

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/written submissions made by the appellants, evidences produced at the time of personal hearing.

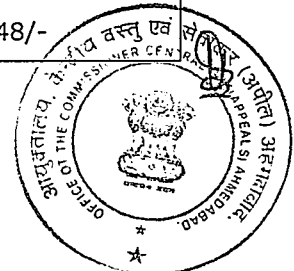
7. I observe from notification 41/2012-ST, that Merchant Exporter of goods can claim rebate of service tax paid on services used in exportation of goods in following two ways-

- a. As per para 2 of Notification No.41/2012-ST- (fix % age of FOB basis. %age schedule is given in notification for different goods exported) or
- b. para 3 of Notification No.41/2012-ST (Actual payment of service tax basis)

In cases where difference of refund between amount calculated in terms of para 2 and amount calculated in terms of para 3 is less then 20% of para 2 amount, then refund is compulsorily granted on fix % age of FOB basis as stated in para 2 of said notification. In such scenario exporter is not allowed to file claim under para-3.

8. I find that two separate refund claims has been filed under para 3 of said notification on the basis of same SB but for different services as below-

| Claim amt. & Filing dt. | Servi ces | para of noti. | OIO date | Order of OIO |
|----------------------------|-------------|---------------|----------------|----------------------------|
| 2,18,913/- (17.06.2016) | GTA | PAR A-3 | 17.10.201 6 | Sanctioned Rs.97,389/- |
| 5,87,348/- (21.10.2016) | Non- GTA | PAR A-3 | 14.02.201 7 | Rejected Rs. 5,87,348/- |



9. I observe from para 5.2 of impugned OIO dated 14.02.2017 that first GTA service claim of Rs. 2,18,913/- was filed for refund of actual service tax paid on GTA, which implies that claim was filed under para 3 of said notification. It is stated in appeal memo that subsequent claim is also filed under para-3. Appellant has stated that as difference in refund amount is more than 20%, they have opted para 3 of said notification and had filed refund on actual basis, albeit in two different claim- one for GTA service and other for non-GTA services.

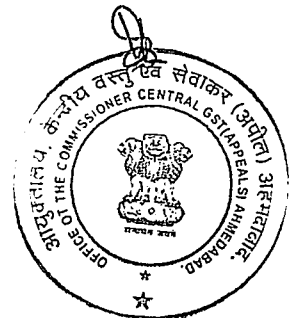
10. Claim of Rs. 5,87,348/- of Non-GTA services filed subsequent to earlier has been rejected by adjudicating authority on ground that two separate claim on same Shipping Bill and for same period can not be filed. I agree with this conclusion of adjudicating authority due to following reasons that-

- a. appellant has argued that there is no clear cut restriction in said notification that two separate claims can not be filed under para-3 of said notification but I find that , it is also not mentioned that appellant can file two claims on same SB, for two different services availed in exportation of same goods vide same Shipping Bill and for same period. Notification 41/2012-ST at para 1(a) mention that“The REBATE shall be granted by way of refund of service tax paid on the specified service”, and at par 2 it is mentioned that..... “the REBATE shall be claimed in the following maner, namely;”. I find that in notification word REBATE is used in singular terms, which implies that only one claim can be filed for single export.
- b. Refund is given on %age of FOB price shown in SB. In such cases no second refund can be filed as second refund claim on same SB, would amount to double benefits.

In view of above I conclude that Para 1(c) of said notification, which is used for rejecting the claim, is applicable in present case and I hold that appellant is not eligible for second time refund.

12. In view of above, appeal filed by the appellants is rejected and impugned OIO is upheld.

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



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

34/8/17
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

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

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

M/s. Jannus Global Trade Pvt. Ltd.,

803, Pinnacle Business Park, .

Corporate road, Prahladnagar,

Ahmedabad- 380 015

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

