



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/55/Ahd-I/2017-18 / 826 to 830
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-282-2017-18
दिनांक Date : 29-01-2018 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 Assistant Commissioner, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं
STC/Ref/24/vodafone/K.M.Mohadikar/AC/Div-III/17:18 दिनांक: 9/5/2017, से सृजित

Arising out of Order-in-Original No. STC/Ref/24/vodafone/K.M.Mohadikar/AC/Div-III/17:18
दिनांक: 9/5/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Vodafone Mobile services 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 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 अतल 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 वड 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 ...



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(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।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- को फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल हॉस्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथार्थिती अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथार्थिती निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रूपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

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।

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, or penalty alone is in dispute."



:: ORDER-IN- APPEAL ::

M/s. Vodafone Mobile Services Ltd., Vodafone House, Building-A, Corporate Road, Prahladnagar, Ahmedabad (*hereinafter referred to as 'appellant'*) has filed the present appeal against the Orders-in-Original No. STC/Ref/24/Vodafone/K.M.Mohadikar/AC/Div-III/17-18 dated 11.05.2017 (*hereinafter referred to as 'impugned orders'*) passed by the Assistant Commissioner, Service Tax, Division-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The background facts of the case, in brief, are that the appellants were registered with the Service Tax, New Delhi (Division-VI, Commissionerate Delhi-II, New Delhi) holding registration number AAACS4457QST001 under the category of "Telephone Services, Banking and Financial Services, Goods Transport Operator Services, Maintenance or Repair Services, Business Auxiliary Services, Transport of Goods by Air, IPR Services, Sponsorship Services, Business Support Services and Information Technology Software Services". They had filed rebate claims as mentioned below.

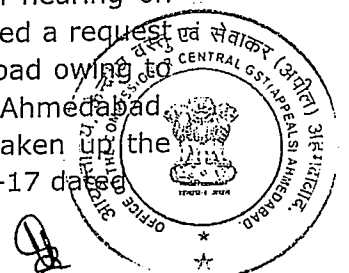
Sr. No	OIO No.	OIO date	Amount of rebate claimed (₹)	Date of filing the rebate claim
1	12/ST-II/Div-VI/REBATE/BH/2015-R	24.06.2015	6,34,27,140	09.11.2011
2	13/ST-II/Div-VI/REBATE/BH/2015-R	24.06.2015	3,90,74,456	30.09.2011
3	14/ST-II/Div-VI/REBATE/BH/2015-R	24.06.2015	1,24,53,886	28.03.2012
4	15/ST-II/Div-VI/REBATE/BH/2015-R	30.06.2015	20,515	08.02.2013
5	16/ST-II/Div-VI/REBATE/BH/2015-R	30.06.2015	1,09,086	09.05.2013
6	17/ST-II/Div-VI/REBATE/BH/2015-R	30.06.2015	1,44,998	05.03.2014
7	33/ST-II/Div-VI/REBATE/Amreeta Titus/2015-R	17.09.2015	2,52,657	26.06.2012

On scrutiny of the said rebate claims filed by the appellants certain deficiencies were noticed. Several correspondences were made with the appellants and ultimately opportunity of personal hearing was awarded to them. However, no show cause notices were issued to the appellants. The adjudicating authority, vide the above mentioned impugned orders, rejected the above mentioned claims on the grounds of limitation (except in the OIO No. 14/ST-II/Div-VI/REBATE/BH/2015-R dated 24.06.2015) and non-submission of certain required documents without going to the merits of the above cases.

3. Being aggrieved with the impugned orders the appellant filed appeals before the Commissioner (Appeals-I), New Delhi. In their plea, they stated that the above impugned orders were passed without issuance of show cause notice which denied the appellants with natural justice. Regarding the issue of rejection of the claims on limitation, they claimed that no time limit has been prescribed under the Rebate Notification read with Rule 5 of Export Rules for filing rebate claim. Regarding the

issue of non-submission of documents, the appellants stressed that they had submitted required documents along with the claims.

4. The Commissioner (Appeals-I), New Delhi had fixed personal hearing on 22.02.2016 however, the appellants, vide letter dated 22.02.2016, filed a request seeking the transfer of the files to Commissioner (Appeals), Ahmedabad owing to the fact that they had obtained Centralized Registration in Ahmedabad. Accordingly, the files were transferred here before me and I have taken up the matter for decision. Vide OIA No.AHM-SVTAX-000-APP-051 to 057-16-17 dated



25.07.2017; the matter was remanded to present adjudicating authority to decide a fresh. However the adjudicating authority in remand decided the matter vide impugned order and rejected as time barred.

5. Being aggrieved with the impugned order the appellant filed appeal on the grounds that;

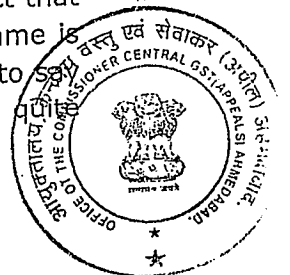
- i) Principle of natural justice has been violated in the instant case.
- ii) Documents required for processing rebate claims have already been submitted.
- iii) Responsibility to transfer the files and records in case of change in jurisdiction to new adjudicating authority is of the department.
- iv) Re-submission of all the documents to be considered as valid submission for processing the rebate claims.
- v) Impugned order has been passed by the Respondent in gross violation of judicial discipline.
- vi) Services provided by the Appellant qualify as export.
- vii) Service qualifies as telecommunication services.
- viii) Service Tax has been paid on IIR services for which rebate have been claimed.
- ix) Liberal approach should have been followed by the respondent.

6. Personal hearing was granted to the appellants on 22.01.2018 wherein Shri Arun Jain, Advocate, appeared before me on behalf of the said appellant and reiterated the grounds of appeal. He points out that the original authority has not considered their documents.

7. 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. Various citations and written submission submitted at the time of personal hearing. I find that the claims were rejected on the ground of limitation without going into the merit. Though in discussion at para 7.5 to 7.10 of the impugned OIO the adjudicating authority has discussed that the original documents are not received from Service Tax Delhi, and without going into the merits the matter is being decided.

8. Regarding the issue of rejection of the claims i.e. on the ground of limitation, the applicability of Section 11B of the Central Excise Act, 1944 was not properly discussed in the impugned order. There are several judgments for and against the applicability of limitation on the claim of rebate which need to be discussed properly. Without verification of the documents the matter has been decided very vaguely as time barred. Further it is observed that adjudicating authority has decided the case in remand in a very casual approach i.e. seven OIA's remanded has been decided vide single order, which is an astonishing act.

9. Regarding the issue of non-submission of required documents, the adjudicating authority has not properly discussed the same. The appellants have stated that they have submitted all the required documents along with the rebate claims. I believe that this issue needs to be properly verified by the present adjudicating authority. It is evident that the adjudicating authority has made efforts to get the record transferred from the Service Tax Delhi, but simply quoting that the Service Tax Delhi has sent the records by speed post to "Assistant Commissioner Gujarat", but not received by them does not conclude that the records are not available or not filed by the appellant. It is also fact that the records were submitted to proper authority at Delhi, to transfer the same is not the responsibility of the appellant but of the department, it is needless to say that sincere efforts could have resulted in finding the records; it is



unbelievable that the records sent through Speed Post are not traceable. It is directed to take up the matter with proper authority if required with higher authority of the department at Delhi, and with postal department to trace the consignment of speed post. Simultaneously on the basis of documents submitted by the appellants adjudicating authority should examine from legal point of view/merit of eligibility of rebate, it is also directed to the appellant to give co-operation to the department for such purpose. Substantial rights of the assessee if any cannot be denied without verification and natural justice.

10. In light of the above discussion, I remand back the matter to the present adjudicating authority to decide the case afresh preferably within four weeks from the receipt of this order, following the principle of natural justice as per the discussion above.

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

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:- 29/1/2018

ATTESTED

K.H. Singhal
(K.H. Singhal)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

BY R.P.A.D.

To,
M/s. Vodafone Mobile Services Ltd.,
Vodafone House, Building-A,
Corporate Road, Prahladnagar,
Ahmedabad-380 015

Copy To:-

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

