



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,  
केंद्रीय कर भवन, 7<sup>th</sup> 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) 195/A-II /2016-17

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-001-APP-037-17-18  
दिनांक Date 25.07.2017 जारी करने की तारीख Date of Issue

श्री उमाशंकर, आयुक्त (अपील) केन्द्रीय कर, अहमदाबाद द्वारा पारित

Passed by Shri Uma Shankar Commissioner (Appeals) Central Tax, Ahmedabad

ग Assistant Commissioner, Div-III, STC, Ahmedabad द्वारा जारी मूल आदेश सं  
STC/Ref/68/Solusoft/AC/KMM/Div-III/16-17 दिनांक : 04.08.2016 से सृजित

Arising out of Order-in-Original No STC/Ref/68/Solusoft/AC/KMM/Div-III/16-17 दिनांक :  
04.08.2016 Issued by:

Assistant Commissioner, Div-III, STC, Ahmedabad

घ अपीलकर्ता / प्रतिवादी का नाम एवं पता Name & Address of The Appellants/Respondents

M/s. Solusoft Technologies Pvt. Ltd.

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 :-

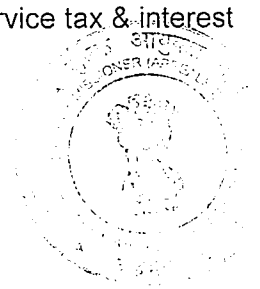
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मेंटल हास्पिटल  
कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20,  
Meghani Nagar, New Mental Hospital Compound, 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी  
होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए  
5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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 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-धारा (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/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ ( उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For 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 or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise 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 adjuration 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, 1988 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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 अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

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)(i) 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।

**ORDER IN APPEAL**

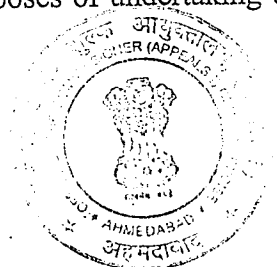
This is an appeal filed by M/s Solusoft Technologies Pvt. Ltd. (herein after referred to as the appellants) against the OIO No. STC/Ref/68/Solusoft/AC/K.M.Mohadikar/Div-III/16-17 dtd. 04.08.2016 (herein after referred to as the impugned order) passed by the Assistant Commissioner.

2. The brief facts of the case are that the appellants filed a refund claim dtd. 07.04.2016 for the period from July, 2015 to September, 2015 for Rs. 22,00,843/-

The Assistant Commissioner, vide the impugned order allowed refund of Rs. 3,90,434/- and rejected the refund claim for Rs. 18,10,409/- as per provisions of Notification No. 27/2012-C.E (NT) dtd. 18.06.2012 and Section 11B of the Central Excise Act, 1944 made applicable to Service Tax matters vide Section 88 of the Finance Act, 1994 as the appellant fulfilled all the conditions laid down in the Notification No. 27/2012-CE (NT) dtd. 18.06.2012.

3. Being aggrieved by rejection of refund claim of Rs. 18,10,409/-, the appellants have filed this appeal on the following grounds:

- (a) The adjudicating authority has not appreciated the documents submitted alongwith the refund claim and have not considered the fact that the major part of their turnover was to an SEZ unit but the clearances to the SEZ units have been considered as domestic clearances;
- (b) That before rejecting the refund claim for Rs. 18,10,409/-, no show cause notice was issued thereby violating the principle of natural justice;
- (c) That they have provided service to a unit located in Special Economic Zone and these services are exempted as per Notification No. 12/2013 dtd. 01.07.2013 and should have been included in the value of export;
- (d) That as per Rule 5 of the Cenvat Credit Rules, 2004, export of services meant only those services which satisfied the prescriptions of Rule 6A of the Service Tax Rules, 1994 and as per Circular No. 1001/8/2015-CX dtd. 28.04.2015, supply of goods and services made from DTA to SEZ shall be considered as export for the purpose of claiming refund of accumulated cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004.
- (e) That as per Section 53 of the SEZ Act, 2005, a special economic zone shall be deemed to be a territory outside the customs territory of India for the purpose of undertaking the authorized operations;
- (f) That all the clarifications pertaining to supply of goods to SEZ would be equally applicable to supply of services In SEZ.
- (g) As an alternative plea, they submitted that they would be eligible to claim refund of the entire amount of Rs. 24.15 lakh as the entire input service was exclusively availed for providing services to an SEZ unit.
- (h) That the adjudicating authority is expected to pass on benefits which are legally available to an assessee even if he doesn't claim them due to ignorance of law;
- (i) That as pre DGEP Circular No. 29/2006-Cus dated 27.12.2006 also provides clarification that supply of goods to SEZ units and SEZ developers for their authorised operations may be treated as in the nature of export and this provision has been specifically made in Section 53 of the Special Economic Zone Act, 2005 as per which a SEZ shall be deemed to be territory outside the Customs territory of India for the purposes of undertaking the authorised operations.
- (j) The appellants sought support from the following case laws:



Union of India vs. Steel Authority of India – 2013 (335) ELT A162 (SC) in which it was categorically said that goods supplied to SEZ can be treated as export under the provisions of Custom and Central Excise Act.

Sai Wardha Power Ltd. vs. CCE, Nagpur – 2016 (332) ELT 529 (Tri-LB) in which it was held that if DTA supplies to SEZ were not treated as export, it would mean no rebate could be sanctioned and it would render all circulars/rules under Special Economic Zones Act, 2005 ineffective and without jurisdiction for grant of rebate on goods supplied from DTA to SEZ

Sirmaxo Chemicals Pvt. Ltd. vs. CCE, Thane-II – 2016 (337) ELT 425 (Tri-Mum.) in which it was held that any supplies made to SEZ from DTA shall be considered as export and all export benefits as per rules shall be eligible to supplier.

4. The personal hearing in the case was held on 19.07.2017 in which Shri Nitesh Jain, Chartered Accountant appeared on behalf of the appellants. He reiterated the grounds of appeal and made additional written submission. He pointed out Board's Circular No. 1001/8/2015-CX dtd. 28.04.2015.

5. I have carefully perused the documents pertaining to the case and submitted by the appellant alongwith the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing .

6. I find that the issue to be decided in the instant case is the calculation of refund claim amount on the basis of value of clearances under various categories i.e. total, exempted, for export etc. for arriving at the admissible refund.

7. From the findings given in the impugned order, I find in para 7 that the value of export during the relevant time has been taken at Rs. 37,44,960/-, Rs. 3,69,993/- for domestic clearances and value of exempted service (other than export) has been taken at Rs. 1,88,70,058/- and accordingly, the amount of refund as per Rule 5 of the Cenvat Credit Rules, 2004 has been arrived at Rs. 3,90,434/-.

8. In the appeal memorandum, the appellants have submitted that the value shown in exempted category consists of clearances made to Special Economic Zone. This is the amount shown by the appellants in their ST-3 return for the relevant period for the quarter ending September, 2015.

9. The appellants have also submitted the copy of work order given by SEZ unit and a copy of authorisation in FORM-A-2 required under Notification No. 12/2013-ST dtd. 1<sup>st</sup> July, 2013. As the authorisation, the SEZ unit M/s Biocon Ltd. Has given details of specified service to be received from the appellants. The receipt of authorisation in FORM-A-2 is a primary condition to be fulfilled by any unit which wants to avail the ab-initio exemption on the specified services received by the SEZ unit and used exclusively for the authorised operations.

10. I find that as per the documents submitted by the appellants, the appellants have fulfilled the conditions for availing ab-initio exemption for the clearances made to SEZ unit and therefore are entitled for benefit under Rule 5 of the Cenvat Credit Rules.

11. It is now held position that the clearances made to SEZ units are considered as export and are entitled for consequent benefits and I also hold accordingly. I also find support from a decision cited at 2016 (338) E.L.T. 616 (Tri. - Ahmd.) in the case of COMMISSIONER OF C. EX. & S.T., RAJKOT Vs PARTH TRADING CO in which it has been held that the issue is no more res integra in view of the recent Board Circular No. 1001/8/2015-CX.8, dated 28-4-2015 and the recent decisions of Tribunal. It can thus be seen that according to the SEZ Act, supply "(3) of goods from DTA to the SEZ constitutes export. Further, as per Section 51 of the SEZ Act, the provisions of the SEZ Act shall have riding effect over provisions of any other law in

case of any inconsistency. Further Section 53 of the SEZ Act makes an SEZ a territory outside the customs territory of India.

12. In view of the above position I allow the appeal with consequential relief.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किय जाता है।  
The appeals filed by the appellant stand disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

AHMEDABAD.

Date: 29.7.2017

ATTESTED

*उमा शंकर*

(D. UPADHYAYA)  
SUPERINTENDENT (APPEALS),  
CENTRAL GST, AHMEDABAD.

**BY R.P.A.D.**

M/s. Solusoft Technologies Pvt. Ltd.,  
704/705, Shapath-IV,  
Opp. Karnawati Club,  
S.G.Highway  
Ahmedabad-380 051

**Copy To:-**

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad (South).
- (3) The Assistant Commissioner, CGST, Div-VII, Ahmedabad (South)
- (4) The Assistant Commissioner, Systems, CGST, Ahmedabad (South)
- (5) ~~Guard File.~~
- (6) P.A. File.

