



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,

7<sup>th</sup> Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015



079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/203/Ahd-I/2017-18  
Stay Appl.No. NA/2017-18

228740 2291

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-402-2017-18  
दिनांक Date : 03-03-2018 जारी करने की तारीख Date of Issue

9/4/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST-VI/Ref-64/Technobrain/17-18 दिनांक: 21/12/2017  
issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Technobrain IT Solution**  
**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 अतत 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।

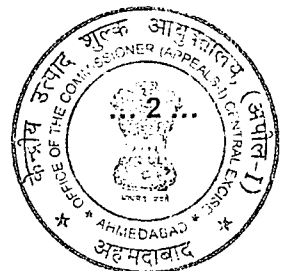
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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 वह 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।



(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 मामलों 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/- की 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.

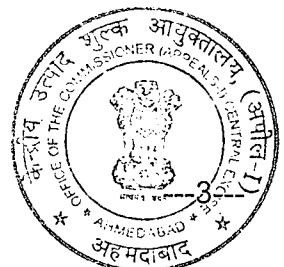
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, मेघानी 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 यथास्थिति 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 Appellate 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 यथास्थिति 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 रुपए 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 where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s. Techno Brains IT Solutions Pvt. Ltd., Shop No. 304, 3<sup>rd</sup> Floor, Binali Complex, Opposite Torrent Power Zonal Office, Naranpura, Ahmedabad-380013 (*hereinafter referred to as the 'appellant'*) has filed the present appeal against the Order-in-Original No. CGST-VI/REF-64/TECHNO BRAINS/2017-18 dated 21.12.2017 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Div-VI, Central GST, Ahmedabad South Commissionerate (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant filed refund of service tax paid on input services received by them for providing export of output service (Information Technology Software Services) in terms of Notification No. 27/2012 CE (NT) dated 18.06.2012, along with relevant documents. On scrutiny of the documents, the refund sanctioning authority in order to make sure that the refund filed is correct and proper, issued a letter dated 12.12.2017 to the appellant asking for submission of certain documents and details within 5 days. However, no reply was obtained from the appellant regarding submission of the documents and an order was passed *ex parte* by the adjudicating authority rejecting the refund claim.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that:

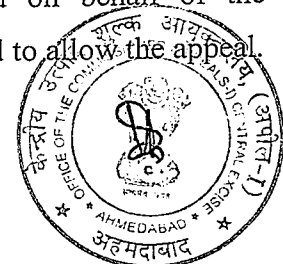
(i) they received the copy of the letter dated 12.12.2017 on 18.12.2017 and the impugned order was passed on 21.12.2017 rejecting the refund claim despite the fact that five days required for submission of documents and details had not lapsed and proper opportunity of being heard was not given to them and thus the adjudicating authority did not follow the principles of natural justice while passing the order. Further, the adjudicating authority demanded copy of audited Balance Sheet, Form 26AS, Income Tax return for the Financial Year 2016-17 of their service provider Shri Hiral Shah; that the adjudicating authority also demanded copy of the ST-3 return for October, 2016 to March, 2017 along with copies of the service tax challans related to the said return, of the service provider. ; that as the service provider Shri Hiral Shah, is legally not bound to furnish the documents to the appellant, the demand of the aforementioned documents by the adjudicating authority seems unreasonable.

(ii) since no show cause notice was issued the principles of natural justice were violated.

(iii) the adjudicating authority has wrongly categorized the input service "*Dedicated Developer to work on HHA, Home Healthcare Portal*" as "*Manpower Recruitment or supply Agency Service*"; that as the input service falls under the category of Information Technology Service only and hence they are not liable to pay tax under Reverse Charge Mechanism.

The appellant further requested to set aside the impugned order.

4. Personal hearing in the matter was held on 14.03.2018 wherein Shri Jasmal Jidija and Shri Punit Prajapati, both Chartered Accountants, appeared on behalf of the appellant. They reiterated the grounds of appeal and further requested to allow the appeal.

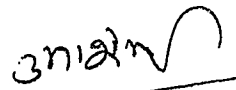


5. I have gone through the facts of the case and submissions made in the appeal memorandum as well as during the personal hearing. The question to be decided is whether the appellant is eligible for service tax refund under notification No. 27/2012 CE (NT) dated 18.06.2012 or otherwise. In the instant case, I find that the adjudicating authority passed the impugned order rejecting the refund claim without giving sufficient time for submission of the documents and sufficient opportunity of being heard. Further, I also find that the adjudicating authority sought certain documents and details [as discussed in Para 3(i)], *supra* which were related to the service provider Shri Hiral Shah of the appellant. Seeking service provider's documents from the appellant I find is not supported by law.

5.1 I find that the appellant in their grounds of appeal has argued that the adjudicating authority wrongly categorized the input service "Dedicated Developer to work on HHA, Home Healthcare Portal" on which CENVAT credit has been availed as falling under the category "Manpower Recruitment or supply Agency Service" while passing the impugned order. This finding is not legally tenable since the adjudicating authority cannot assess the classification of the appellant's supplier. The ideal person to decide this issue would be jurisdictional proper officer of the appellant's supplier. In case, this has not been challenged by the said proper officer, the question of disputing the classification simply does not arise.

6. However, since the appellant is himself on record that he was not provided appropriate time to submit the documents, it would be proper to remand the matter back to the adjudicating authority. The adjudicating authority is directed to keep in mind the directions mentioned in para *supra* while deciding the issue/refund. Needless to state, the adjudicating authority will ensure that the principles of natural justice are not violated. The appellant is also directed to submit all the documents, to substantiate his case, subject to my observations recorded *supra*.


7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
7. The appeals filed by the appellant stands disposed of in above terms.



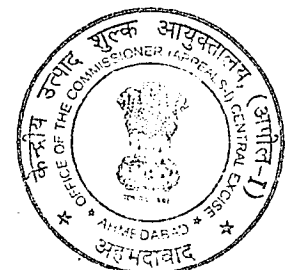
(उमा शंकर)

आयुक्त (अपील्स)

Attested

  
(Vinod Lukose)  
Superintendent (Appeals)  
Central Tax, Ahmedabad

BY R.P.A.D.



To,  
M/s Techno Brains IT Solutions Pvt. Ltd.,  
Shop No. 304, 3<sup>rd</sup> Floor, Binali Complex,  
Opposite Torrent Power Zonal Office,  
Naranpura, Ahmedabad-380013

Copy to:

1. The Chief Commissioner of Central Excise Zone, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad South.
3. The Additional Commissioner,(Systems) Central Excise, Ahmedabad South
4. The Dy./Asstt. Commissioner, Central Excise, Division –VI (Vastrapur) Ahmedabad South
5. Guard file
- ✓ 6. P. A. file.

