• आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटेकनिक के पास, आमबाबाडि,
अहमदाबाद – 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/148,149&197/Ahd-II/2016-17
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-046 to 048-2017-18**
दिनाँक **13.07.2017** जारी करने की तारीख Date of Issue 11/7/17

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal)

ग Arising out of Order-in-Original No. **STC/Ref/48/Revitas/KMM/AC/Div-III/16-17** दिनाँक: **14/07/2016** issued by Asst. Commissioner,Div-III, Service tax, Ahmedabad south

Arising out of Order-in-Original No. **STC/Ref/49/Apttus/KMM/AC/Div-III/16-17** दिनाँक: **15/07/2016** issued by Asst. Commissioner,Div-III, Service tax, Ahmedabad south

Arising out of Order-in-Original No. **STC/Ref/107/Revitas/KMM/AC/Div-III/16-17** दिनाँक: **20/10/2016** issued by Asst. Commissioner,Div-III, Service tax, Ahmedabad south

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s. Revitas Technologies Pvt.Ltd
M/s Apttus Software Pvt.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 a 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 पूवोक्त 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 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।

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) OFFICE OF THE COMMISSIONER (APPEAL), CENTRAL EXCISE

(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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 मैन्टल हास्पिटल 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 in 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 अपीलो 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 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

This order arises out of appeals filed by the following appellants against OIO(in short 'impugned order') passed by the Assistant Commissioner, Service Tax Division-III, Ahmedabad(in short 'adjudicating authority') as detailed below:

Sr. No.	Appellant	Order-in-Original No. & Date.	Amount of refund involved (Rs.)	Period	Appeal No.
1	Revitas Technologies Pvt. Ltd.	STC/REF/48/Revitas/KMM/AC/DIV.III/16-17 dated 14.07.2016	4,44,193/-	April-2015 to June-2015	148/A-II/16-17
2	Apttus Software Pvt. Ltd.	STC/REF/49/Apttus/KMM/AC/DIV.III/16-17 dated 15.07.2016	9,65,605/-	April-2015 to June-2015	149/A-II/16-17
3	Revitas Technologies Pvt. Ltd.	STC/REF/107/Revitas/KMM/AC/DIV.III/16-17 dated 20.10.2016	7,04,548/-	July-2015 to Sept-2015	197/A-II/16-17

2. Briefly stated that in all the appellants were providing services to their overseas head office under the category of 'Information Technology Software service'. The adjudicating authority rejected the refund claims filed by the said appellants under Notifn. No.27/2012-CE(NT) dated 18.06.2012 read with Rule 5 of the Cenvat Credit Rules, 2004 on the ground that the services rendered by them to their overseas client does not qualify as 'export of service' under Clause(f) of Rule 6A of the Service Tax Rules, 1994.

3. Aggrieved with the impugned orders, the said appellants have filed the present appeals on the following grounds viz:

(i) adjudicating authority has not passed speaking order and failed to observe the instruction issued by the Board in Circular No.187/6/2015-ST dated 10.11.2015 (for appeal no.148/A-II/16-17 and 149/A-II/16-17)

(ii) input services availed by the appellants is not in relation to export of service and

(iii) the appellants is a branch office of its holding company and hence services provided by the appellants to its holding company cannot be construed as export of service in terms of clause(f) of Rule 6A of the Service Tax Rules, 1994 and therefore refund of unutilized cenvat credit of service tax filed under Rule 5 of the Cenvat credit Rules, 2004 read with Notifn. No.27/2012-CE(NT) dated 18.06.2012 is not admissible.

3. Personal hearing in the matter was held on 19.07.2017. Ms. Bhagyashree Bhatt and Ms. Nidhi Shah, both Chartered Accountants, appeared on behalf of the appellants and reiterated the ground of appeal.

4. I have carefully gone through the case records, appeal memorandum and submission made at the time of personal hearing. I find that the main issue to be decided is whether the impugned orders rejecting refund claims filed by the appellants are just, legal and proper or otherwise in terms of clause(f) of Rule 6A of the Service Tax Rules, 1994 and eligible for refund of unutilized cenvat credit of service tax filed under Rule 5 of the Cenvat credit Rules, 2004 (in short 'CCR,2004) read with Notifn. No.27/2012-CE(NT) dated 18.06.2012 or otherwise. I also find that since the issue involved in all the said three appeals is identical, I proceed to decide the appeals by a common order.

5. Prima facie, I find that the appellants are registered under the category of 'Information Technology Software Service' and engaged in providing data processing, data management, measurement and analysis services to its overseas clients and have filed quarterly refund claims of unutilized cenvat credit of service tax paid on input services availed, under Rule 5 of the CCR, 2004 read with Notification no.27/2012-CE(NT) dated 18.06.2012 which is conditional one. I find that the appellants have provided services of 100% of its turnover to their overseas clients which is not disputed by either side.

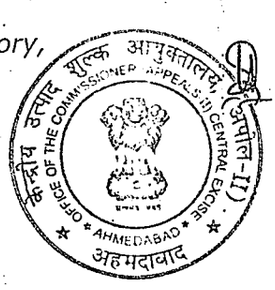
5.1 As regards para 3(i) supra, I find that the Board has issued instruction for fast track sanction of refund of accumulated cenvat credit to exporters of services. Para 4.4 of the said circular provides for issue of intimation to the claimant for inadmissible amount, issue of SCN for inadmissible amount, observing principle of natural justice and pass speaking order. In this regard, I find that the adjudicating authority has failed to issue intimation/SCN for inadmissible amount of refund claimed and giving opportunity to the appellant to represent their case before issuing speaking order. I find that the adjudicating authority has neglected this aspect and committed great error and deserves for remanding the case to decide afresh after following the procedure laid down in Section 73 of the Finance Act, 1994. Accordingly, I set-aside the impugned OIO dated 14.07.2016 and 14.07.2016 and order the adjudicating authority to decide afresh after following the principal of natural justice within 30 days of receipt of this order.

5.2 As regards para 3(ii) supra, I find that Rule 6A of the Service Tax Rules, 1994 defines 'export of service' which is reproduced below for the sake of ease:

Rule 6A-Export of Services-(1) The provision of any service provided or agreed to be provided shall be treated as export of service when-

(a) The provider of service located in the taxable territory,

(b) The recipient of service is located outside India,



(c) The service is not a service specified in the section 66D of the Act,

(d) The place of provision of the service is outside India,

(e) The payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) The provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of explanation 3 of clause (44) of section 65B of the Act.

(2) where any service.....by notification.

I find that the adjudicating authority has rejected the refund claims for violation of condition no.(f) above. I find that section 64B of the Act provides interpretations. Clause(44) defines "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include:

(a) .....

(b) .....

Explanation 3- for the purpose of this Chapter-

(a) An unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct person;

(b) *An establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishment of distinct person.*

I find that as per the definition of 'export of services' as defined in the Act stated supra, all the conditions needs to be fulfilled/satisfied. I find that there is no dispute for (a) to (e). But for (f), I find that the appellants have their establishment in the taxable territory i.e. India under the Companies Act, 1956 and have their head office in non-taxable territory i.e. USA. This fact is not in dispute by either side. Even all the appellants have stated that they have provided services to their parent company established in non-taxable territory and have filed ST-3 returns accordingly. So, I find that the 'export of service' as defined in Rule 6A supra is crystal clear when read with interpretation given in section 65B(44), Explanation 3(b) ibid and accordingly, I hold that the services provided by the appellants to their parent establishment shall not be treated as 'export of services' under Rule 6Aibid are not eligible for refund of service tax paid on input services.

5.3 As regards para 3(iii) supra, I find that appellants are registered under the provisions of the Companies Act, 1956 in the taxable territory of India by their parent companies established/registered under the provisions of the law prevailing in the respective states i.e USA which is outside India and non-taxable territory. This fact is not in dispute by the either side. I find

that though the limited company established uncer the Companies Act, 1956 is artificial person and have legal entity in the eyes of law and have provided services to their parent/holding company which is also a legal entity in the eyes of law is treated as establishment of distinct persons by virtue of provisions contained in the Finance Act, 1994, and discussed in para supra, services provided by the appellants to their parent/holding company shall not be treated as export of services and accordingly, not eligible for refund of service tax paid on input service. Accordingly, I agree with the findings of the adjudicating authority and uphold the impugned OIO dtd.20.10.2016 and set-aside the appeal filed against the said OIO.

6. The appeals are disposed off in above terms.

(Uma Shanker)
Commissioner(Appeals)
Central Tax, Ahmedabad
Dt. 31.07.2017

Attested:

(B.A. Patel)
Supdt.(Appeals)

BY SPEED POST TO:

(1) M/s. Revitas Technologies Pvt. Ltd.,
51-52, Titanium Building,
Opp. Prahladnagar Garden,
Satellite,
Ahmedabad-380051

(2) M/s.Apttus Software Pvt. Ltd.,
307,309,310, Pinnacle,
Opp. Royal Arcade, Auda Garden,
Satellite,
Ahmedabad-380051

Copy to:-

(1) The Chief Commissioner, Central Tax, Ahmedabad Zone.

(2) The Principal Commissioner, Central Tax, Ahmedabad(South)

(3) The Assistant Commissioner, Central Tax Division VII(Satellite), Ahmedabad(South)

(4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad(South)

(5) Guard file

(6) P.A. file.

(7) F.No.V2(ST)197/A-II/2016-17

(8) F.No.V2(ST)149/A-II/2016-17

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-II)
OFFICE OF THE COMMISSIONER (APPEALS-II) CENTRAL EXCISE
AHMEDABAD
अहमदाबाद


केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-II)
OFFICE OF THE COMMISSIONER (APPEALS-II) CENTRAL EXCISE
AHMEDABAD
अहमदाबाद