

	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 079-26305065		टेलीफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(ST)167/Ahd-II/2016-17/1135 to 1139
Stay Appl.No. NA/2016-17
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-076-2017-18
दिनांक 13.09.2017 जारी करने की तारीख Date of Issue 28/9/17
- श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)
- ग Assistant Commissioner, Div-III, STC, Ahmedabad द्वारा जारी मूल आदेश सं
STC/Ref/67/Mazda/KMM/AC/Div-III/16-17 दिनांक: 03/08/2016 से सृजित
- Arising out of Order-in-Original No. STC/Ref/67/Mazda/KMM/AC/Div-III/16-17 दिनांक: 03/08/2016
issued by Assistant Commissioner, Div-III, STC, Ahmedabad.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**M/s. Mazda Consultancy Services
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, 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 प्रक्रिया 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 ...



(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 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 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 प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 43 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 अर्ज़ी 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 तो दण्ड के 10% भुगतान पर की जा सकती है।



ORDER IN APPEAL

M/s. Mazda Consultancy Service, 901, Atlantics Corporate Park, 100 ft. Road, Nr. Shell Petrol Pump, Prahladnagar, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number STC/Ref/67/Mazda/K.M.Mohadikar/AC/Div-III/2016-17 dated 03.08.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

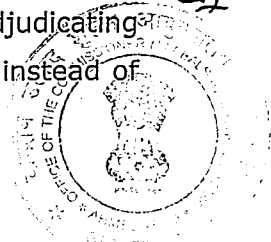
2. The facts of the case, in brief, are that the appellants are registered with the Service Tax department under the category of "Business Support Service" with Service Tax registration number APZPP2825ASD001 and had filed a refund claim of ₹ 58,037/- on 08.04.2016 under the Notification number 27/2012-CE(NT) dated 18.06.2015.

3. During scrutiny of the above claim, the adjudicating authority had found that the appellants had availed CENVAT credit amounting to ₹ 48,910/- but had claimed ₹ 58,037/- as refund. Thus he considered the amount of ₹ 48,910/- as eligible for the refund. Moreover, the adjudicating authority found that out of ₹ 48,910/-, an amount of ₹ 18,288/- was not related with the core area of export and did not qualify as an eligible input service and accordingly rejected the same. Further, it was noticed that a particular invoice, raised by M/s. Maersk Line did not pertain to the period related to the refund (credit amount ₹ 1,078/-). Thus, the adjudicating authority, after considering the refund amount of ₹ 48,910/-, rejected an amount of ₹ 19,366/- and sanctioned an amount of ₹ 29,544/-.

4. Being aggrieved with the impugned order the appellants have preferred the present appeals. The appellants stated that they have rightly availed CENVAT credit for procuring, repairing and maintaining of furniture and fittings of their office which was used for their official work. The tables were used for keeping computers and printers without which the business of the appellants could not progress and therefore, the said input credits had direct nexus with the output service they provided. Thus, the appellants, citing the above reason, requested to allow the refund claim of ₹ 18,288/-.

5. Personal hearing in the matter was granted and held on 21.08.2017. Shri Vipul Khandhar, CA appeared before me and reiterated the contents of the appeal memo.

6. 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. At the very onset, I find that the appellants have filed the appeal with a request to allow only ₹ 18,288/-. This means that the appellants have accepted the fact that the adjudicating authority has rightly considered the actual claim to be ₹ 48,910/- instead of

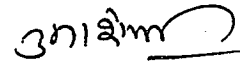


₹58,037/- and rightly rejected the amount of ₹1,078/- as it was pertaining to the period prior to July 2015 to September 2015. Now comes the issue of allowing ₹18,288/- as, according to the appellants, they had availed the CENVAT credit for procuring, repairing and maintaining the furniture and fittings which were used for their official work. In this regard, I find that there are two invoices viz. MUM/585 dated 04.09.2016 and 402001188 dated 09.09.2016. Regarding the first invoice, I find that the service was provided for 'furniture, home decoration articles, lights, bath tub and fittings, sanitary goods, TV, indoor board games etc'. In their argument, the appellants have stated that the services were utilized for preparing and affixing tables and chairs and the tables were used for keeping computers and printers. However, the appellants did not clarify as to how their office needed a bath tub for progress of their business. I am wondering that how a TV and indoor board game would help in business. Also, how home decoration articles and lights would increase their business prospects? Thus, it is quite clear that the appellants are wrongly arguing their case as they are trying to avail the benefit of Notification number 27/2012-CE(NT) dated 18.06.2015 erroneously. Further, in the case of invoice number 402001188 dated 09.09.2016, it is mentioned that the services availed were related to export/import of goods. This again is vague and not supported by any documentary evidence by the appellants that the services were related to their business and not for their personal use.

7. Accordingly, as per the above discussion, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.

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

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



(उमा शंकर)

CENTRAL TAX (Appeals),

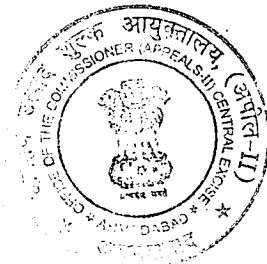
AHMEDABAD.

ATTESTED


(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.

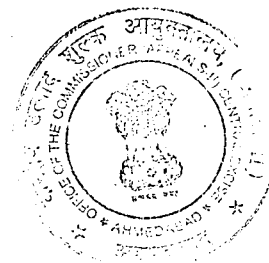


To,

M/s. Mazda Consultancy Service,
901, Atlantics Corporate Park, 100 ft. Road,
Nr. Shell Petrol Pump, Prahladnagar,
Ahmedabad-380 015.

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Commissioner, Central Tax, Ahmedabad (South).
3. The Dy./Asst. Commissioner, Central Tax, Division-VII (Satellite), Ahmedabad (South).
4. The Asst. Commissioner (System), Central Tax Hq, Ahmedabad (South).
5. Guard File.
6. P. A. File.



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