केंद्रीय कर आयुक्त (अपील)

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

सत्यमेव जयते केंद्रीय कर शुल्कभवन, सातवीं मंजिल,पोलिटेक्नीकके पास, आम्बावाडी, अहमदाबाद-380015

7th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015

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क फाइल संख्या : File No : **V2(ST)0240/A-II/2016-17**/1538 to 1542

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-EXCUS-001-APP-084-17-18**

दिनाँक Date :25-09-2017 जारी करने की तारीख Date of Issue 10-10-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No **STC/Ref/132/Modern/KMM/AC/D-III/16-17**

Dated **07.12.2016** **Issued by Assistant Commr STC,** Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s. Modern Power Services
Ahmedabad

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 मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद–380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar,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 विरूद्ध 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 वहां 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 वहां 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 accompany ed 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 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–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 A2l9k 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 शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 होगे।

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 तब दण्ड के 10% भुगतान पर की जा सकती है।**

4(1) 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 is an appeal filed by M/s Modern Power Services (herein after referred to as the appellants) against the OIO No. STC/Ref/132/Modern/K.M.Mohadikar/AC/Div-III/16-17 dtd. 07.12.2016 (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. 09.09.2016 for Rs. 14,19,951/-. The Assistant Commissioner, vide the impugned order rejected the refund of Rs. 14,19,951/- for non fulfilling the conditions of Notification No. 09/2016-ST dtd. 01.03.2016 and on some other grounds.

3. Being aggrieved by rejection of refund claim of Rs. 14,19,951/-, the appellants have filed this appeal on the following grounds:

(a) That there were no conditions prescribed in the Notification No. 9/2016-ST dtd. 01.03.2016 and the conditions were only specified in Section 102 of the Finance Act, 1994;

(b) That the appellants were availing exemption under notification no. 25/2012-ST which prescribes five major conditions:

1. Service must be provided to Government, local authority or a Govt. authority;
2. Such services must be by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a civil structure;
3. Such contract must have been entered into before 01.03.2015;
4. Such refund claim must be filed within six months from the date on which finance bill, 2016 receives Presidential assent
5. Assessee claiming refund should not have collected service tax from govt. or local authority or Governmental authority (unjust enrichment)

That in the instant case, the appellants have fulfilled all the aforesaid conditions and the same can be demonstrated through the copies of work orders issued to appellant by various government authority or division;

(c) That they have filed the refund claim within the time limit of six months from the date on which the Financial Bill received assent from the President on 14.05.2016;

(d) That the refund claim has been rejected in casual manner stating all the conditions are not fulfilled. It is imperative to point out the deficiency found in refund claim before rejecting it and therefore the impugned order is non-speaking order;

(e) That value of taxable services provided in ST-3 returns for the period April, 2015 to March, 2016 will not tally with the documents submitted for the reason that there are certain contracts which are entered by the appellants after 1st March, 2016 on which refund is not claimed. The gross amount shown in ST-3 returns include taxable as well as exempt service value whereas the refund of service tax is only available for the specified services. Hence the value will not tally;

(f) That they have availed credit on one-to-one basis i.e. if the taxable contract has been received from the govt. authority is sub-contracted to another party then, only on such case, they have availed the cenvat credit of service tax. Therefore there will be no question of reversal of cenvat credit as per Rule 6(3) of the CCR, 2004;

(g) That the adjudicating authority has passed the order without giving the opportunity being heard and by ignoring the submission furnished by the appellant, the principal of natural justice has been violated;

(h) That as per CBEC Circular No. 187/6/2015-ST dated 10.11.2015, there are certain guidelines provided but the same have not been followed while passing the impugned order;

(i) The appellants sought support from the following case laws:

IT infra Services (P) Ltd. vs. Commissioner of Central Excise, Noida – 2013 (35) Taxmann.com 26 (New Delhi-Cestat) regarding violation of principal of natural justice and Auto Transport Services vs. CCE – 2006 (5) STT -396 (New Delhi-Cestat) in which it was categorically said that department cannot exercise its power beyond the provisions of Act, Rules etc.

4. The personal hearing in the case was held on 07.09.2017 in which Bhagyashree Bhatt and Shree Ajit Boricha, both Chartered Accountants appeared on behalf of the appellants. They reiterated the grounds of appeal and submitted that the impugned order does not specify which conditions not fulfilled and the opportunity of being heard was denied.

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 whether the refund claim has been properly rejected.

7. From the findings given in the impugned order, I find that the findings have been recorded without any specific reasoning. In para 6 of the impugned order, I find that it has been held merely that the conditions of the Notification No. 9/2016-ST have not been fulfilled but it has not been discussed as to which conditions were required to be followed and have not been followed. I have carefully gone through the notification No. 9/2016-ST and I find there are no conditions prescribed to be followed for availing the benefits of that notification. I also find that the adjudicating authority has found that no documentary proof for ascertainment of payment of stamp duty but I fail to understand where it has been provided that the proof of payment of stamp duty is required to be submitted for availing the benefit of the said notification.

8. From the findings given in the impugned order in para 7, it has been noted that the value of taxable services provided in ST-3 returns are not tallying with the documents submitted with the refund claim and it has also been noted that the appellant was asked to provide bifurcation of the turn over which the said appellant failed to provide. From this finding, it is not forthcoming what efforts were made to get the required information. From the records, it is obvious that there are two letters addressed to the appellant dated 25.11.2016 and 30.11.2016 and the adjudicating authority has signed the order on 02.12.2016. It is obvious that the appellant was not given sufficient time to represent their case.

9. I also find that there is no discussion about the personal hearing whether any opportunity was provided to the appellant or not.

10. In view of these findings, I hold that the impugned order has been passed without detailed findings and discussion about the refund claim which render it non-speaking order and is liable to be set aside and remanded for passing speaking order after giving the appellant reasonable opportunity of being heard. This has been specifically provided in the Instruction F. No. 390/CESTAT/24/2016-JC, dated 13-4-2016.

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

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

(उमा शंकर)
केन्द्रीय कर आयुक्त (अपील्स)
अहमदाबाद.
Date: .. 2017

ATTESTED

(D.UPADHYAYA)
SUPERINTENDENT (APPEALS),
CENTRAL GST, AHMEDABAD.
BY R.P.A.D.

M/s. Modern Power Services,
404, 4th Floor, Sakar-4,
Opp. M.J.Library,
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Ahmedabad-380 015

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.