

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

केंद्रीय कर शुल्कभक्त, सातवीं मंज़िल,प्रोलिटेकनिकके पास, 7th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015

आस्बावाडी;स्अहमदाबाद-380015

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टेलेफैक्स : 079 - 26305136

फाइल संख्या : File No : V2(ST)0235/A-II/2016-17 (3069 कि 3073

ख अपील आदेश संख्या : Order-In-Appeal No..<u>AHM-EXCUS-001-APP-086-17-18</u>

दिनाँक Date :25-09-2017 जारी करने की तारीख Date of Issue. 🗼 🚶

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No STC/Ref/46/Syx/KMM/AC/D-III/16-17 Dated
12.07.2016 Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

M/s. Syx Automations India Pvt Ltd 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 सार्वजिनक क्षेत्र बैंक के न्यायपीठ के सहायक रिजस्ट्रार 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 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 शुक्क (अपील) के आदेश की प्रतियाँ (OIA)(उसमें से प्रमाणित प्रति होगी) और अपर
- आयुक्त, सहायक / उप आयुक्त अथवा A2l9k केन्द्रीय उत्पाद शुक्क, 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 सिम्मिलित 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, बशर्त 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

M/s. Syx Automations India Private Limited, having office at House No. 6, Sharnam 7, near Chandan Party Plot, Satellite, Ahmedabad- 380 015, [for short - 'appellant'] has filed this appeal against OIO No. STC/Ref/46/Syx/K.M. Mohadikar/AC/Div.-III/16-17 dated 12.07.2016, passed by the Assistant Commissioner, Service Tax , Division III, Ahmedabad [for short – 'adjudicating authority'].

- 2. Briefly, the facts are that appellant filed a refund claim of Rs. 1,13,570/-, pertaining to the period April-2015 to June-2015 under Notification No. 27/2012-C.E. (N.T.) dated 18.06.2012 read with Rule 5 of the CENVAT Credit Rules, 2004. Appellant is providing IT Service to its holding Company namely "Syx Automations Group BVBA" situated at Netherland. The Range report was called for, and it was reported that export turn over shown in refund claim and shown in their ST-3 return is differ. Hence clarification was called for, from the appellant. The appellant also called for the details to establish the facts as regards to the services rendered by the said claimant to their overseas client are qualify as per export of Service under Rule 6 (A) of Export Services, Service Tax Rules, 1994. The appellant replied in questionnaire form to the Adjudicating authority vide letter dated 11.07.2016.
- The adjudicating authority in his OIO, held that on going 3. through the reply submitted by the appellant it is observed that in the answer to Q. No. 9" Is your Company is subsidiary company of the parent overseas Company?", the appellant replied that "Yes." Therefore in terms of Rule 6 (A) of Export of Rules of Service Tax Rules, 1994, the appellant is not eligible for said refund, as the Service provider and recipient of service are merely establishments of the distinct person in accordance with item (b) of Explanation 3 of Clause (44) of Section 65B of the Act. A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory. The appellant has mentioned in their reply that they have rendered the services to their overseas clients to their holding company. Therefore, in terms of above provisions, the claimant is not eligible for refund claim. Hence the adjudicating authority rejected their refund claim of Rs. 1,12,673/-



- **4.** Being aggrieved with the impugned order the appellants have preferred the present appeal.
- **5.** Personal hearing in the case was granted on 07.08.2017 wherein Shri Bhagyashree Bhatt & Ajit Boricha, Chartered Accountant, on behalf of the appellants appeared before me and reiterated the contents of appeal memorandum.
- I have carefully gone through the facts of the case, on records, 6. grounds of appeal in the Appeal Memorandum, the written submission filed by the appellant and oral submission made at the time of personal hearing. To begin with, I find that there has been a delay occurred in filing the appeal by the appellant. The appellant has filed an application for condonation of delay stating that the date of issue of OIO is 12.07.2016. They received OIO on 02.08.2016. Last date of filing appeal is 01.10.2016. Date of filing appeal is 31.01.2017. As such the delay of filing an appeal is 122 days. They requested for condone of delay of filing an appeal with reason that their accountant received OIO and it was accidently misplaced by him. However they were able to find out in the month of January-2017. In this regard, I find that the delay is 122 days and it is beyond statutory limit of condonation, which is 30 days only. In view of the above, I reject the appeal on the ground of limitation itself, without going into merit of the case.

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

(उमा शंकर)

2412/2

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

(S.S.Chowhan)

Central Tax (Appeals), Ahmedabad.

To,

M/s. Syx Automations India Private Limited,
At House No. 6, Sharnam 7, near Chandan Party Plot,
Satellite, Ahmedabad- 380 015

Copy to:

- 1) The Chief Commissioner, Gentral Excise, Ahmedabad.
- 2) The Commissioner, Central Excise, Ahmedabad-& (South).
- 3) The Dy. Commissioner, Division-____ Ahmedabad (South)
- 4) The Asst. Commissioner (System), HQ, Ahmedabad (South).
- 5) Guard File.
 - 6) P.A. File.

