
	<b>केंद्रीय कर आयुक्त (अपील)</b>	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,	7 <sup>th</sup> Floor, Central Excise Building,	
केन्द्रीय कर शुल्क भवन,	Near Polytechnic,	
सातवीं मंजिल पोलिटेकनिक के पास,	Ambavadi, Ahmedabad-380015	
आम्बावाडी अहमदाबाद-380015		
079-26305065		टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)0226&220/A-III/2016-17/1548 & 1553  
 ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-095&096-17-18  
 दिनांक 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 SD-02/21&19/AC/2016-17 Dated 29.11.2016 & 21.10.2016 respectively Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

**M/s. Tipson Consultancy Services 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 :-

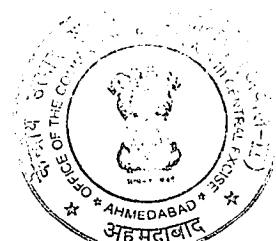
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल 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 विरुद्ध 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 और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ 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 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 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 13 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 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**

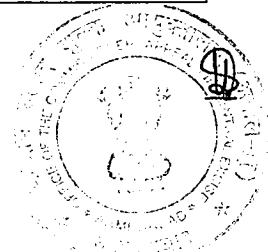
M/s. Tipson Consultancy Services Pvt. Ltd, 401, 4<sup>th</sup> floor, Sherton House, Polytechnic Road, Ambawadi, Ahmedabad- (*hereinafter referred to as 'appellants'*) have filed the present appeals, against the Order-in-Original number SD-02/19/AC/2016-17 dated 21.10.2016 and SD-02/21/AC/2016-17 dated 29.11.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax, Division-II, APM Mall, Satellite, Anandnagar road, Ahmedabad-380015 (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that appellant were engaged in providing exempted service (trading of securities viz. Bonds and Government Securities) in addition to providing taxable service and was availing all the common input service. Appellant was providing Exempted and taxable service but were neither paying 6%/8% in terms of Rule 6(3)(i) of CCR 2004, on Exempted service value nor paying proportionate to turnover of Exempted service value under Rule 6(3)(ii) of CCR 2004. Department in terms of Rule 6(3)(i) issued SCN dated 01.03.2016 and dated 12.04.2016. . On being pointed out by audit, appellant, instead of paying 6%/8% in terms of Rule 6(3)(i), be lately chose to reversed/pay as following . Appellant also paid appropriate penalty for the same. Appellant reversed all the input service credit except for that input service which is used exclusively in providing taxable output service

Period Covered	SCN.dt./demand ammt. u/r 6(3)(i)	OIO dt.	Voluntarily Reversed/paid u/r 6(1) r/w 6(2)
2012-13 2013-14	Dt. 1.3.2016 2,18,513/-	21.10.2016	37,368/- cash & 3,812/- (penalty)
2014-15	Dt. 12.4.16 2,36,112/-	29.11.2016	13,806/- reversed

3. Adjudicating authority disregarded above voluntary reversal/payment and concluded that appellant is required to pay 6% of exempted output service in terms of rule 6(3)(i).Vide impugned respective OIO both the SCN`s were confirmed with interest liability and imposed following penalty

SCN dt.	Confirmed demand	Section 77(2)	Section 78
01.03.2016	2,18,513/-	10,000.00	2,18,513/-
12.04.2016	2,36,112/-	10,000.00	2,36,112/-



4. Being aggrieved with the impugned OIO, appellant have filed present appeal dated 06.01.2017 and 17.01.2017 wherein it is requested to set aside the impugned OIO wherein demand has been confirmed in terms of rule 6(3)(i) and argued that having reversed/paid all the common input service tax credit availed, now they are not required to pay 6% of exempted service value as demanded in SCN.

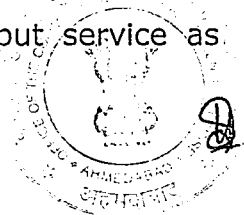
5. Personal hearing in the both cases was granted on 17.09.2017. Shri Hiren Vadaliya and Shri Mitesh Vadaliya, both CA, appeared before me and reiterated the grounds of appeal.

#### DISUSSION AND FINDINGS

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 and judgments produced by the appellants at the time of personal hearing.

7. There is no dispute that the appellant is required to make payment as per rule 6 of CCR, 2004, as he is providing taxable as well as Exempted/Non-taxable service simultaneously and taking credit on all common input Services. On being pointed out, Appellant has voluntarily reversed the full amount of common input tax credit of Rs. 37,368/- and Rs. 13,806/- that was used for providing taxable service and exempted service. Appellant also paid appropriate penalty for the same. Appellant reversed all the input service credit except for that input service which is used exclusively in providing taxable output service. Department has disapproved this reversal stating that once credit is taken on input services going in use of exempted output service, then service provider is compulsorily required to make payment of 6% of value of exempted service value in terms of rule 6(3).

8. I find that appellant is denied by department, the benefits u/r rule 6(2) r/w 6(1) and they are compulsorily forced to follow rule 6(3)(i) wherein payment 6%/8% of Exempted service value is prescribed. Question to be decided is whether appellant can be allowed to reverse at a later stage, the input tax credit taken on input services going in providing exempted output service so as to avoid payment of 6% on exempted out put service as required u/r 6(3)(i).



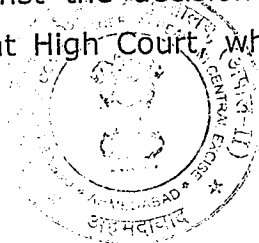
9. I find that in rule 6 of CCR, 2004, following three options are available to service provider providing both taxable and exempted service.

- a. Take credit of input service used only for providing taxable out service and never take credit of input services used in providing both taxable service as well as in exempted service.[ rule 6(1) r/w rule 6(2)].
- b. Take credit of common input service used in providing both taxable services as well as in exempted service but reverse 6% of value of exempted output service. [Rule 6(3)(i)].
- c. Take credit of common input service used in providing both taxable services as well as in exempted service but reverse/pay in proportionate to turnover of Exempted service value under Rule 6(3)(ii) of CCR 2004. For availing proportional payment under Rule 6(3)(ii), prior intimation to Superintendent is required and proportional payment amount is to be calculated as per formulas prescribed in rule 6(3A) of CCR, 2004. [Rule 6(3)(ii) of CCR 2004]

10. Further I am view that there is no condition provided in the rule that if a particular option out of three are not opted, then only option of payment of 6%/8% provided u/r 6(3)(i) shall be compulsorily made applicable. Therefore revenue should not insist the appellant to avail particular option. The main object of rule 6 is to ensure that the assesses should not avail the CENVAT credit in respect of input or input services which are used in relation to manufacture of exempted goods or for exempted service. My view is supported by CESTAT judgment in case of Mercedes Benz India Pvt. Ltd. [2015 (40) STR 381 (Tri.- Mumbai)].

11. In Judgment in case of M/s Sirpur Paper Mill ltd V/s CCE Hhydrabad 2006(205) ELT 188 (Tri-Bang),it is held that cenvat credit attributed inputs used in exempted product is reversed; there is no justification in demanding 8% of sale amount again.

12. Appellate Tribunal, Ahmedabad, in case of Maize Products reported in 2007 (79) RLT 662, held that the demand on the basis of 8% /10% of the value of the exempted final products was not valid even if the assessee had taken Cenvat credit of duties paid on the inputs used in relation to manufacture of the exempted products because the assessee could reverse the amount of Cenvat credit even at a later stage ; that the assessee in that case was allowed to reverse amount of Cenvat credit within 4 weeks from the date of receiving communication from the Department as regards any short-fall in reversal. The Revenue's Tax Appeal against the decision of Appellate Tribunal in the said case, the Hon'ble Gujarat High Court, while



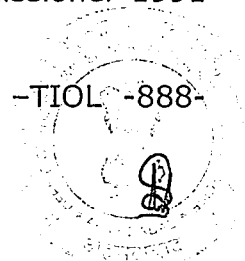
upholding the decision of the Appellate Tribunal reported in 2008 (89) RLT 211 (Guj.), had held that re-determination of credit in accordance with law ordered by the Appellate Tribunal was in accordance with Rule 6 of the Cenvat Rules. Revenue's Special Leave Petition before the Hon'ble Supreme Court against the above judgement of the Hon'ble Gujarat High Court, was also dismissed

13. Following decisions which held that reversal of the credit of the inputs used in relation of the manufacture of exempted final product/ exempted service even at a later stage was a compliance of the scheme of Rule 6 and placed reliance on these decisions.

- I. Franco Italian Co. Pvt. Ltd. V/s Commissioner reported in 2000 (120) ELT 792 (Tribunal - LB).
- II. Hello Minerals Water (P) Ltd. Ws U01 reported in 2004 (174) ELT 422 (AU).
- III. Hi-Line Pens Pvt. Ltd. V/s Commissioner reported in 2003 (158) ELT 168 (Fri.-Do)
- IV. Bharat Earth Movers Ltd. V/s Collector reported in 2001 (136) ELT 225 - Bang.)
- V. Tube Investments of India Ltd. V/s Commissioner reported in 2004 (177) ELT 880 (Tribunal - Chennai)
- VI. Kitply Industries Ltd. V/s Commissioner of Customs, New Kandla reported in 2001 (130) ELT 236 (PH. - Kolkata)

14. I am of opinion that that substantial benefit can not be denied merely on technical/procedural lapses if otherwise assessee is eligible. My view is supported by following judgments-

- I. Wipro Limited Vs. Union of India [2013] 32 Taxmann.com 113 (Delhi High Court)
- II. Kothari Infotech Ltd V/S Commissioner of Central Excise, Surat - [2013] 38 taxmann.com 298 (Ahmadabad - CESTAT)
- III. Mannubhai & Co. Vs. Commissioner of Service Tax (2011)(21)STR(65)- CESTAT (Ahmadabad)
- IV. M/S Mangalore Fertilizers & Chemicals Vs Deputy Commissioner 1991 (55) ELT 437
- V. CST Delhi vs. Convergys India Private Limited 2009 -TIOL-888-CESTAT -DEL-2009 (16) STR 198 (TRI. - DEL)



VI. CST Delhi vs. Keane Worldzen India Pvt. Ltd. 2008 – TIOL -496 –  
CESTAT –DEL: 2008 (10) STR 471 (Tri. – Del)

15. Appellant has paid back excess tax credit (attributed to services used in exempted out put service) of Rs. 37,368/- and Rs. 13,806/- which he was not entitled in terms of rule 6(1) r/w rule 6(2). Having paid back such excess credit taken mistakenly, it would be injustice to demand u/r 6(3)(i), the 6% of exempted output service value. Having paid Rs. 37,368/- and Rs. 13,806/-, I set aside the demand of Rs. 2,18,513/- and Rs. 2,36,112/-. Needless to say appellant is required to pay interest at applicable rate u/s 75 of FA 1992 on reversed amount. Penalty u/s 78 is hereby reduced to Rs. 37,368/- and Rs. 13,806/-. Further Penalty u/s 77(2) is reduced Rs. 2000/- from 10,000/- in respect of both the impugned OIO.

16. In view of above, appeal filed by the appellants is partially allowed with above modification.

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

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

*उमा शंकर*  
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

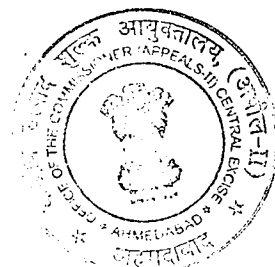
*Rajendra*  
(R. R. PATEL)

SUPERINTENDENT (APPEAL),  
CENTRAL TAX, AHMEDABAD.

To,

M/s. Tipson Consultancy Services Pvt. Ltd,  
401, 4<sup>th</sup> floor, Sherton House,  
Polytechnic Road, Ambawadi,  
Ahmedabad

Copy to:



- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner Central Tax, GST South, Ahmedabad-.
- 3) The Additional Commissioner, Central Tax , GST South, Ahmedabad
- 4) The Asst. Commissioner, Service Tax Div-II, Ahmedabad(old jurisdiction).
- 5) The Asst. Commissioner(System), GST South, Hq, Ahmedabad.
- 6) ✓ Guard File.
- 7) P.A. File.

