


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

क फाइल संख्या : File No : V2(ST)0260/A-II/2016-17 , V2(ST)43/RA/A-II/2016-17, & V2(ST)68/Ahd-I /2017-18 / 1511 to 1516

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-097 to 099-17-18

दिनांक Date : 28-09-2017 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/127/Paperchase/KMM/AC/D III/16-17 Dated 02.12.2016 , STC/Ref/80/Paperchase/KMM/AC/D III/16-17 Dated 23.09.2016 , & STC/Ref/49/Paperchase/D.K.Jangid/DC/D III/17-18 Dated 09.06.2017 issued by Assistant Commr STC, Service Tax, Ahmedabad

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

**M/s. Paperchase Accountancy Ind 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 :-

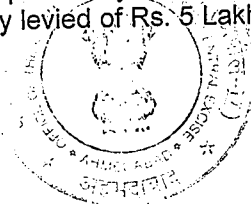
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघानी 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 रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 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 फॉर्म 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 23 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,

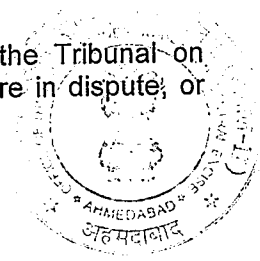
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



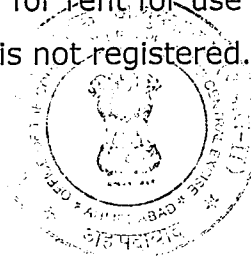
**ORDER IN APPEAL**

I take up for hearing following three appeals filed against following refund OIO passed by the Assistant Commissioner, Service Tax Div-III, APM building, Anandnagar Road, Satellite, Ahmedabad- 15 (*hereinafter referred to as 'adjudicating authority'*) in respect of M/s. Paperchase Accountancy India Pvt. Ltd, 2<sup>nd</sup> floor, 206, Shivalik Corporate Park, B/h IOC Petrol Pump, 132 feet ring road, Satellite, Ahmedabad - 380 015, (*hereinafter referred to as 'assessee'*).

Sr.	Appeal No. & Period covered	Filed by & Amount	Filed against OIO
A	B	C	D
1	43/21.2.17 July-Oct-2015	Department 1,27,757/-	STC/Ref/80/paperchase/KMM/AC/Div-III/16-17dated 23.09.2016
2	260/21.2.17 Oct-Dec-2015	Assessee 1,48,665/-	STC/Ref/127/paperchase/KMM/AC/Div-III/16-17 dated 02.02.2016
3	68/31.7.17 Jan- March-16	Assessee 1,46,916/-	STC/Ref/49/paperchase/KMM/AC/Div-III/17-18dated 09.06.17

2. The facts of the case, in brief, are that the assessee were engaged in providing BAS-taxable service and was holding Service Tax registration number AADC P5642F ST001. Appellant had filed refund claim for above three quarter period shown in column-B u/r 5 of CCR r/w Notification No. 27/2012- CE (NT) dated 18.06.2012. Issue is identical in all three appeals. Issue is regarding admissibility of CENVAT credit & consequently refunds thereof, on invoices raised in respect of un-registered premises. In OIO dt. 23.09.2016 credit has been allowed and consequently refund is allowed but in rest two OIO credit has been denied and consequently refund has been denied.

3. Claim of Rs. 1,27,757/- shown at Sr. No.1 (column-B) was allowed by the adjudicating authority against which department has filled appeal (Review Order No. 38/2016-17). Claim of Rs. 1,48,665/- and 1,46,916/- shown at Sr. No.2 and Sr. 3 (column-B) was rejected by the adjudicating authority against which assessee has filled two separate appeal. All present three appeals are regarding admissibility or non-admissibility of input tax credit on invoices raised by Strategic Info system Pvt. Ltd for rent for use of Shivalik Corporation Park Office as some part of premises is not registered.



4. The appellant's revenue preferred (shown at sr. No. 1) an appeal wherein it is stated that invoices raised by Strategic Info system Pvt. Ltd for rent for use of Shivalik Corporation Park Office No. 204, 205A are not registered office and only office No. 206 to 210 are registered premises, therefore proportional service tax for the invoice is inadmissible for refund. Shivalik Corporation Park Office No. 204, 205A are not registered office as per ST-2 registration certificate, hence in accordance with condition in terms of rule 4(1) of CCR, 2004 credit is not admissible and consequently refund is not admissible.

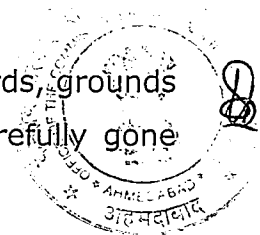
5. Adjudicating authority in OIO shown at appeal Sr. No. 2 and 3 held that Shivalik Corporation Park Office No. 204, 205A are not registered office as per ST-2 registration certificate, hence in accordance with condition in terms of rule 4(1) of CCR, 2004 credit is not admissible and consequently refund is not admissible. The assessee has filed above two appeals shown at sr. No. 2 and 3 against the respective OIO.

6. In counter reply and appeal submitted by assessee, it is stated that the Strategic Info system Pvt. Ltd raised the Invoices for rent with particulars "Being rent for the month of....." for use of Shivalik Corporation Park office No. 206 & office No. 204 to 205A. Office No. 206 to 210 is registered with service tax where is office No.204 to 205A is not registered. But office No. from 204 to 210 is entirely one premise without any wall or partition in between office no. 204 to 210. Assessee has further argued that invoice of whole office is one as well as owner is one.

7. Personal hearing in the case was granted on 07.09.2017. Shri D. N. Belani, Chartered Accountant, the assessee's representative, appeared before me and reiterated the grounds of appeal and stated that earlier refund has been allowed. They further stated that earlier same issue of same assessee has been decided in assessee's favor vide OIA AHM-EXCUS-001-APP-023-2017-18 dated 21.07.2017

#### DISCUSSION AND FINDINGS

8. I have carefully gone through the facts of the case on records, grounds of revenue appeal in the Appeal Memorandum. I have also carefully gone

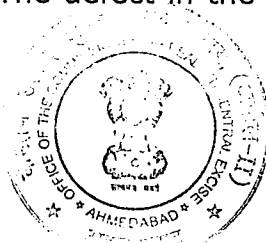


through cross objection submitted and oral submissions made by the assessee at the time of personal hearing. Assessee's has requested vide letter dated 06.09.2016 requesting hold hearing together for all the above three appeals as the issue is same. I allow the request made and hereby pass the common order for above three appeals.

9. Issue to be decided is to whether or not service tax credit of tax paid on rent of office No. 204 and 205A (unregistered office) is allowed when whole premises from office No. 204 to 210 is one entity without any partition or walls in-between different office and when service tax registration is for only office No. 206 to 210. Appellant revenue though disputed but has not produced any copy of above said three Invoices. Assessee has stated that said invoices are issued collectively for office No. 204, 205A and 206. Only 206 is registered and other two 204 and 205A are not. Revenue has appealed to reject the whole invoice service tax paid for office No. 204, 205A and 206 without considering the fact that 206 is registered. I am of considered view that credit in proportion to 206 (registered premises) could have been allowed.

10. Now issue whether credit in respect of adjoining and continuous, un-partitioned office 204 and 205A , the un-registered premises can be allowed or not. when whole premises from 204 to 210 is single entity and when used by same assessee and when used solely for 100% export activity and when said receipt of service is properly accounted for and when there is no rendering of domestic service from 204 to 210 and when there is nothing on record to substantiate that said rent service has not been received and utilized in export activity, I am of considered view that credit in respect of said un-registered offices 204 and 205A can not be denied.

11. The Hon'ble CESTAT, Delhi in the case of M/s. Allspheres Entertainment Pvt. Ltd. Vs. CCE, Meerut [2015 (8) TMI 953 - (CESTAT DELHI)] has held that in the absence of any such dispute regarding availment of Impugned Services and their utilization for payment of Service tax or proper accounting of the same, the denial of Cenvat Credit of Service tax paid on Impugned Services by Nainital office of the Appellant on the sole ground that the invoices issued are in the name of the Appellant's unregistered Delhi office is unjustified since the head office which is registered with the Department has discharged the Service tax liability of Delhi office. The defect in the invoices is only procedural lapse or rather a curable defect.



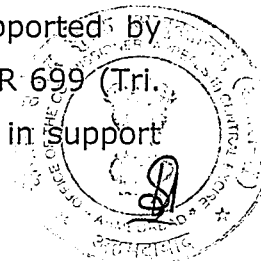
12. Registration is issued for identification of service provider and to comply various processes like return submission etc. in service tax department. In sixth edition of FAQ published on 16.09.2011 by Directorate of Service Tax has replied for "Why registration is necessary?" at para 2.2 which is reproduced as below-

**"Registration is identification of an assessee. Identification is necessary to deposit service tax, file returns and undertake various processes ordained by law relating to service tax. Failure to obtain registration would attract penalty in terms of section 77 of the Finance Act, 1994, read with rule 4 of Service Tax Rules 1994. (Please also refer para 2.15 of this Booklet)"**

13. The combined reading of section 66, 69, 70 of Finance Act, 1994 , Rule 4, 7 of Service Tax Rules, 1994 and sub-rule 5, 6 &9 of Rule 9 of CCR, 2004 substantial meaning emerged are that every person liable for payment of service tax shall require to registered themselves, required to file returns and required to maintain records of receipt and utilization of credit of inputs. In instance case assessee is 100% exporter hence he is not required to pay service tax and consequently he was not required to even register.

14. In case of E-care India Pvt. Ltd 2011(22) STR 529 TRI Chennai it is held that registration not necessary for refund rule 5. For claiming refund of credit under rule 5 of CCR, 2004, a person should be engaged in providing export of service. In present case assessee is engaged in export of "information Technology Service". Being provider of output service they are eligible to avail CENVAT credit on the basis of proper documents issued as per rule 9(1) of CCR. In present case credit is availed under proper invoices issued under rule 4A of service tax rules 1994, by service provider.

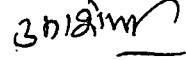
15. Non inclusion of two adjacent office 204 and 205A in the registration certificate, where the entire premises office no. 204 to 2010 is one entity without any partition, is merely technical lapse and rectifiable mistake for which benefits of claim can not be denied. Moreover revenue department or the adjudicating authority (for sr. 2 & 3 OIO) has also not adduced any proof of premises not being used by the assessee. On such technical lapses credit and subsequent refund can not be rejected. My view is supported by judgment in case of M/s Bharat Sanchar Nigam Ltd. [2009(14)STR 699 (Tri. Chennai.) And M/s UM Cables Ltd. [2013-TIOL 386 HC MUM CX) in support of their contention.



16. In view of above I reject the department appeal shown at sr. No.1 and allow the assessee's appeal shown at Sr. No. 2 and 3.

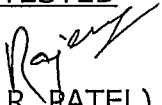
17. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

17. All the three appeals filed stand disposed off in above terms.

  
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

  
(R.R. PATEL)

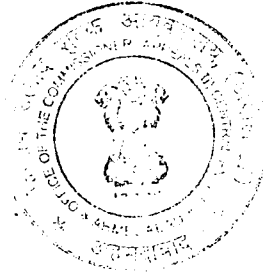
SUPERINTENDENT (APPEAL),  
CENTRAL TAX, AHMEDABAD.

To,

M/s. Paperchase Accountancy India Pvt. Ltd,  
2<sup>nd</sup> floor, 206, Shivalik Corporate Park,  
B/h IOC Petrol Pump,  
132 feet ring road, Satellite,  
Ahmedabad - 380 015

**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, S.Tax., Div-III, Ahmedabad-I(old jurisdiction).
- 5) The Asst. Commissioner(System), GST South, Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.



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