

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

रजिस्टर्ड डाक ए.डी. द्वारा

6700 to 6704

क फाइल संख्या : File No : V2(ST)46/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-064-2018-19

दिनांक Date : 14-09-2018 जारी करने की तारीख Date of Issue _____

23/10/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/Div-VI/08/Vini/17-18 दिनांक: 29.03.2018 issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Vini Cosmetics Pvt. Ltd.
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि 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 :

(i) 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 ...



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(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।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

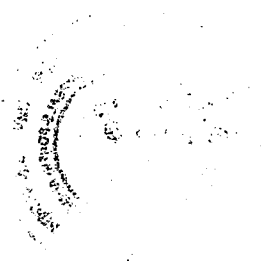
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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

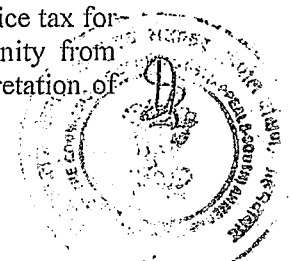
This appeal has been filed by M/s. Vini Cosmetics Private Limited, Janki House, 2 Sunrise Park, Drive in Cinema, Bodakdev, Ahmedabad 380 054 [for short –‘appellant’] against OIO No. CGST/Div VI/08/Vini/2017-18 dated 29.3.2018 passed by Assistant Commissioner, CGST, Division VI, Ahmedabad South Commissionerate [for short –‘adjudicating authority’].

2. The genesis of the dispute is that internal Audit while auditing the accounts of the appellant raised an objection vide their FAR No. 496/2015-16 dated 3.11.2015. Consequent to the audit objection, a show cause notice dated 27.1.2017 was issued to the appellant inter alia proposing demand of service tax of Rs. 37,00,176/- by invoking extended period along with interest alleging that the appellant had received Business Support Service from foreign service providers having no business establishments in India during the Financial Year 2013-14, 2014-15 and 2015-16. The show cause notice further proposed penalty on the appellant under sections 77 and 78 of the Finance Act, 1994.

3. This notice was adjudicated vide the impugned OIO dated 29.3.2018 wherein the adjudicating authority confirmed the demand along with interest and further proposed penalty under sections 77(2) and 78 of the Finance Act, 1994.

4. Feeling aggrieved, the appellant has filed this appeal raising the following grounds:

- that the impugned OIO is not proper, correct and legal & has been issued without considering the fact regarding the service tax payment particulars on record;
- that they had sought adjournment in the personal hearing held on 24.3.2018 & had filed a request letter on 9.4.2018, which was not considered by the adjudicating authority;
- that in respect of the demand for the year 2013-14, they had already paid Rs. 3,63,540/- vide GAR 7 challan dated 31.3.2014; that the demand raised in the show cause notice is only for Rs. 3,38,788/-; that the payment particulars are also reflected in the ST-3 returns;
- that in respect of the demand for the year 2014-15, they had already paid Rs. 12,59,245/- vide GAR 7 challan dated 30.3.2017; that the demand raised in the show cause notice is only for Rs. 12,50,127/-; that the delay caused was due to interpretation of statutory provisions in case of inward service as per Rule 5(2) of the Service Tax Valuation Rules, 2006, which excludes cost and expenditure of pure agent;
- that in respect of the demand for the year 2015-16, they had already paid Rs. 10,86,261/- vide GAR 7 challan dated 31.3.2017; that the demand of Rs. 21,11,261/- raised by misconceiving the ledger account ; that of the total expenses out of Rs. 1,48,11,843/-, Rs. 77,41,683/- was the expenses booked on which service tax under RCM was to be paid by the appellant; that the rest of the amount of Rs. 77,41,683/- was a provision by way of a journal voucher as per the Income Tax law and as per Rule 7 of the Determination of the Point of taxation Rules, 2011, in respect of persons paying tax under RCM, shall be the date on which payment is made; that they have discharged service tax on expenses of Rs. 77,41,683/-;
- that the payment particulars with the copy of GAR 7 was furnished to the Range Superintendent before adjudication;
- that the appellant had furnished all relevant documents and copies of ledgers vide letter dated 23.12.2016, the notice should have been issued within 18 months from the date of acquiring knowledge, but the notice was issued after 18 months and therefore is barred by limitation;
- that in para 5 of the impugned OIO, the adjudicating authority has recorded that payment particulars were submitted;
- they further prayed that [a] to allow the appeal as entire payment of service tax paid before the adjudication; [b] drop the charges of suppression as payment of service tax for the FY 2013-14 was made on 31.3.2014 within time limit; [c] grant immunity from penalty for the FY 2014-15 and 2015-16 since delay was the result of interpretation of statutory provisions contained in Rule 5(2) of the Valuation Rules;



5. Personal hearing in the matter was held on 24.8.2018 wherein Shri J N Bhagat, Advocate and Dr. Shilpa Shah, appeared on behalf of the appellant. The Learned Advocate reiterated the grounds of appeal. Thereafter he drew my attention to page 6 of the grounds of appeal and showed that they have paid more than the tax demanded. He further stated that the FY 2015-16 delayed payment has not been appropriated.

6. Let me deal with the issues one after the other. The appellant states that during the course of personal hearing they had sought an adjournment. However, nothing as contended is recorded by the adjudicating authority in his impugned OIO. The appellant in the appeal papers has also enclosed a copy of letter dated 9.4.2018, which surprisingly states that personal hearing could not be attended since the concerned employee dealing with registration of brand /trade name is out of State. They sought a month's time. The OIO clearly records that in the personal hearing held on 24.3.2018, three persons from the appellant's side attended the personal hearing. I find that the appellant's letter seeking adjournment is dated 9.4.2018 and the date of order in the OIO is 29.3.2018, though it was issued only on 25.4.2018. Therefore, acceding to the request for adjournment was not plausible for the adjudicating authority.

7. Moving on to the merits of the case, I find that the appellant has nowhere questioned the merits nor has he stated that they are not leviable to service tax under RCM in respect of the expenditure incurred on this account. His only grouse is that the payment's already made were never considered. As far as the year 2013-14 is concerned, the appellant states that they had already paid the amount vide GAR 7 challan on 31.3.2014. The copy of the challan is enclosed with the appeal papers. However, on going through the same, I find that the tax paid is under the heads Legal consultancy, Manpower recruitment and GTA. Therefore, the claim of the appellant needs a thorough verification by the adjudicating authority. Needless to state, if the claim is correct, the question of demand in respect of the FY 2013-14, demand of interest and imposition of penalty would not arise. But this is only if the claim is found to be correct.

8. In respect of the FY 2014-15, the appellant has again stated that they had paid the service tax albeit late vide challan dated 30.3.2017. The reasons for delayed payment of service tax is already mentioned *supra*. However, on going through the challan, which is enclosed with the appeal papers, I find that the service tax paid is towards Sponsorship services. Now this again would need to be thoroughly verified to examine the claim of the appellant that the payment made was towards the demand under RCM towards Business Support Service. One thing is for sure that since the payment is delayed, the consequential action regarding interest and penalty would follow.

9. For the FY 2015-16, the appellant has again stated that they had paid the service tax vide challan dated 30.3.2017. Even in this case, on going through the challan which is enclosed with the appeal papers I find that the service tax paid is towards Sponsorship services. The appellant claims that this was towards the service tax which is demanded under RCM under

Business Support Service. This also needs to be verified and since the appellant himself has admitted delayed payment, the appellant would be liable for interest and penalty.

10. As far as the appellant's claim for invocation of extended period is concerned, the appellant's contention I find, is not correct. In terms of proviso to Section 73(1) of the Finance Act, 1994, in case of suppression, as held by the adjudicating authority, a notice can be issued within five years from the relevant date which is also defined under section 73 of the Finance Act, 1994. Therefore, I find that the adjudicating authority has correctly invoked the extended period. The argument of the appellant that no extended period is invocable and that the notice is barred by limitation is therefore untenable.

11. In view of the foregoing, since the appellant is not disputing the payment of tax under RCM, the only question that needs to be looked into by the adjudicating authority is the claim of the appellant as is mentioned in para 7, 8 and 9. The appellant is directed to produce all the documents to substantiate his claim that the service tax stands paid and the adjudicating authority will after adhering to the **principles of natural justice**, decide the issue by giving a proper finding in the matter, in terms of direction in paras above.

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

12. The appeal filed by the appellant stands disposed of in above terms.

उमाशंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 14/09/2018.

Attested



(Vinod Lukose)
Superintendent (Appeal)
Central Tax, Ahmedabad.

BY R.P.A.D

M/s. Vini Cosmetics Private Limited,
Janki House,
2 Sunrise Park,
Drive in Cinema,
Bodakdev,
Ahmedabad 380 054

Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Principal Commissioner, CGST, Ahmedabad South Commissionerate.
3. The Addl./Joint Commissioner, (Systems), CGST, Ahmedabad South.
4. The Dy. / Asstt. Commissioner, CGST, Division- VI, Ahmedabad South.
5. Guard file.
6. P.A

