



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, GST Building,

Near Polytechnic,

Ambavadi, Ahmedabad-380015



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6714 to 6718

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)85to88/Ahd-South/2018-19  
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-065 to 068-2018-19  
दिनांक Date : 11-09-2018 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-VI/Ref-42to45/Cloud-9/18-19 दिनांक: 25.06.2018  
issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Cloud 9 infra space LLP  
Addis Infracon LLP  
Addor Reality Pvt Ltd  
Ahmedabad

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

(1) 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।

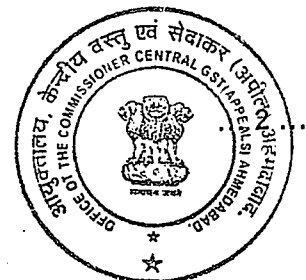
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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 प्रकिया 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।



(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.

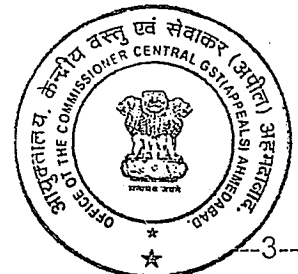
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैटल हॉस्पिटल कम्पाउण्ड, मेघाणी 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 Appellate 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।

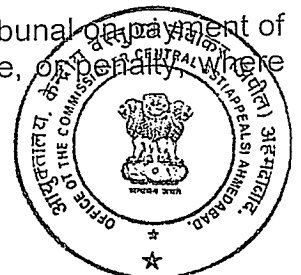
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 alone is in dispute."



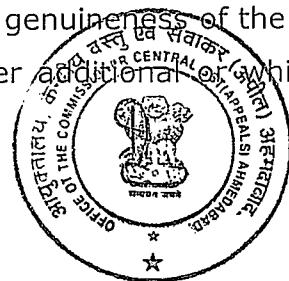


documents/details which were essential to verify the genuineness of the refund claims. In reply, the appellants requested vide letter dated 14.06.2018 that they may be allowed time till 31 July 2018 to submit the documents asked in the said letter. The adjudicating authority was not agreed with the request of the appellants to provide them further time till 31 July 2018 and proceeded to decide the case on the basis of available documents/evidences. The adjudicating authority vide the above mentioned impugned orders rejected the refund claims mainly on the following grounds:

- a) The burden of service tax has not been borne by the appellants. The appellants had not paid service tax out of their pocket.
- b) It also appear from the documents submitted by the appellants that the BU may have already been issued in respect of the present project case as some bookings in respect of which refund has been sought were made in early 2015. Therefore, it appears that the provision of the service had been completed before cancellation of the bookings and accordingly the question of refund does not arise.
- c) The documents and details asked in the said letter are essential to arrive at whether pre GST regime booking were genuinely cancelled and also to see whether refund claim is clear from all aspects.
- d) The appellants have been given sufficient opportunity to submit the documents, but they failed to submit the same.

4. Feeling aggrieved, the appellants have filed these appeals against the rejection of the refund claims, on the grounds *which are inter alia mentioned* that:

- a) Refund claims have been rejected on the grounds of non-submission of relevant documents to substantiate that the claims are genuine.
- b) The documents/details sought by the adjudicating authority were voluminous and the same could not be provided in a week.
- c) They received the said letter on 14 June and they had submitted a reply on 15<sup>th</sup> June itself seeking additional time. They have been denied of law of natural justice by rejecting the refund application simply on request of additional time.
- d) The letter to submit additional details/documents was issued after 3 months from the date of submission of their refund applications and after that their applications were rejected merely because of failure to submit such a detailed data within 7 days.
- e) The provided data was enough to prove the genuineness of the claims. The data demanded vide the letter is either additional or which was already submitted.



- f) The adjudicating authority has not quoted any facts to prove that the burden of service tax is not borne by the appellants.
- g) The BU for the said project has not been issued till date. Appellants have not mentioned anywhere that the BU has been issued for the project. The refund applications have been rejected on false grounds that the cancellation has been made after issuance of BU.

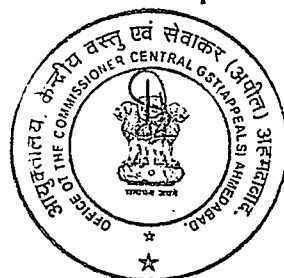
5. Personal hearing in the matter was held on 06.09.2018 wherein Shri. Abhishek Shah, Chartered Accountant, appeared on behalf of the appellants and reiterated the contents of appeal memorandum. He also added that some additional time had been requested for submission of documents/details, but the additional time was not allowed; therefore, he requested to remand the case.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum, oral submissions made by the appellants at the time of personal hearing. I find that issue to be decided is whether the appellants are eligible for refund or otherwise.

7. In the present case, I find that the appellants had decided to file the claims of refund on the ground that some of their customers who had made their booking and partial payment before 1 July 2017, have cancelled their booking post 1 July 2017. Since the service tax had been paid but the output service was cancelled due to cancellation of their booking, they applied for refund of the service tax paid by them. In view of the above, I would like to reproduce the relevant paras of Section 11B of the Central Excise Act, 1944 (as made applicable in the case of Service Tax matter vide Section 83 of the Finance Act, 1944) for proper clarity;

"Section 11B. Claim for refund of duty and interest, if any, paid on such duty -

(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and **the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :**



.....  
 (2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:  
 .....

....."*[Emphasis supplied]*

8. On examining the refund claims in this backdrop I find that -

(a) The appellants have filed the refund claims under Section 11B of the Central Excise Act, 1944 as made applicable in the case of Service Tax matter vide Section 83 of the Finance Act, 1944;

(b) The appellants have filed the refund claims within the stipulated time limit prescribed under Section 11B of Central Excise Act, 1944.

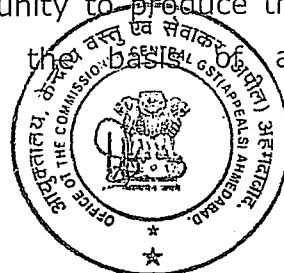
(c) The appellants have filed the refund claims on the ground that some of their customers who had made their booking and partial payment before 1 July 2017, have cancelled their booking post 1 July 2017. Since the service tax had been paid but the output service was cancelled, the service tax was no longer payable and accordingly they had applied for refund of service tax paid by them;

(d) Sec.11B of the Central Excise Act provides that refund application may be made in such form and in such manner as may be prescribed and accompanied by documentary evidence as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax, in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any paid on such duty had not been passed on by him to any other person;

(e) The appellants failed to produce the basic and essential corroborative documentary evidences before the adjudicating authority to substantiate their refund claims.

(f) The adjudicating authority has rejected the refund claims mainly in absence of the basic and essential corroborative documentary evidences which were essential to substantiate their refund claims.

(g) The appellants have not denied for providing the essential corroborative documents/details to the adjudicating authority. But, the appellants have not been given proper opportunity to produce the same and the refund claims were decided on the basis of available documents/evidences with the department.



9. Thus, in view of the above findings and in the fitness of things, it would be just and proper to remand the matter to the Adjudicating Authority to decide afresh, after considering the submission of the appellants. Needless to say that, the adjudicating authority shall give proper opportunity to produce the documents/details before passing the order. The appellants are also directed to put all the essential documents and evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority.

10. In view of the foregoing the aforementioned appeals are disposed of by remanding the matter back to the adjudicating authority in terms of the discussion held above.

11. अपीलकर्ता द्वारा दर्जकी गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeals filed by the appellants stand disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Attested



(Vinod Lukose)

Superintendent (Appeals)

Central Tax, Ahmedabad

BY SPEED POST TO:

M/s Cloud 9 Infraspac LLP, M/s. Addis Infracon LLP,  
M/s. Addis Infrabuild LLP and M/s Addor Reality Pvt Ltd.,  
Address- 32, 3rd Floor, Roopa Building, Sona Roopa,  
Opp. Lal Bungalow, C G Road, Ahmedabad-380009.

Copy to:

- (1). The Chief Commissioner, Central GST, Ahmedabad Zone.
- (2). The Commissioner, Central GST, Ahmedabad South.
- (3). The Assistant Commissioner, Central GST Division-VI, Ahmedabad South.
- (4). The Asstt. Commissioner(System), Central GST HQ, Ahmedabad.  
(for uploading the OIA on website)
- (5). Guard file

