



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,

Ambavadi, Ahmedabad-380015



079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)178/Ahd-South/2018-19 / 11361 to 11365

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-27-2019-20
दिनांक Date : 25-06-2019 जारी करने की तारीख Date of Issue 09/07/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Pr. Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST-VII/Ref-123/SKC/Radhe/18-19 दिनांक: 30.11.2018
issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Radhe Developers India Pvt.Ltd
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथति 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, 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।



(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 हास्पिटल 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 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 where penalty alone is in dispute."



ORDER-IN-APPEAL

This appeal has been file by M/s Radhe Developers India Limited, 1st floor, Chimanbhai Chambers, Opp. National Chambers, Ashram Road, Ahmedabad [for short-'appellant'] against Order-in-Original No.CGST-VI/Ref-123/SKC/Radhe/18-19 dated 30.11.2018 [for short-'impugned order'] passed by the Assistant Commissioner of CGSt, Division-VI, Ahmedabad-South [for shot-'adjudicating authority'].

2. Briefly, the facts are that the appellant filed a refund claim on 15.02.2018 for Rs.1,11,000/- in respect of excess payment of service tax as a consequence of cancellation of advance booking by one Mrs. P.A.Parikh. Vide Order-in-Original dated 23.03.2018, jurisdictional Assistant Commissioner rejected the said refund claim on the grounds that [i] copy of statement was not provided depicting details of advances received from the customer and the appellant did not confirm and correlate challan against payment of service tax in respect of the advance booking; [ii] that no details of PU Permission was provided and [iii] copy of bank statement was not provided to substantiate their claim that the appellant had refunded the amount to customer along with the service tax amount. The appeal filed against the said OIO was remanded by the Commissioner (Appeals), vide OIA No.AHM-EXCUS-001-APP-055-2018-19 dated 10.09.2018 with a direction to adhere to principles of natural justice. Vide impugned order, the adjudicating authority has decided the matter by rejecting the refund claim.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- BU Permission in connection to the Radiance Residency has been granted on 17.10.2017 and the entire consideration had been received from the customer on 17.03.2017, hence the amount so received towards booking of unit would be considered as service in terms of Section 66 B(44) of FA and liable for service tax.
- They had submitted copy of bank statement of customer which depicts the amount refunded to the customer along with cheque number; that they had also submitted bank statement of them in which amount has been debited. However, the adjudicating authority has passed without taking into consideration of such documents.
- The adjudicating authority has erred in appreciating the fact that they are eligible to claim the refund of service tax paid in excess by filing refund. They relied on various case laws in their favour.

4. Personal hearing in the matter was held on 22.05.2019. Ms Nishka Mashroowala, Chartered Accountant and Shri Harshik Patel appeared for the same. The Ld. Chartered Accountant reiterated the grounds of appeal and further submitted that the adjudicating authority has not considered their submissions.



5. I have carefully gone through the facts of the case of and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the matter is regarding refund of service tax paid by the appellant on the cancellation of booking of unit in a residential complex.

6. I find that the instant issue was earlier remanded back by me vide OIA dated 19.09.2018 with a direction to the [a] appellant to provide all the documents to the adjudicating authority which has not provided to the adjudicating authority and [b] to decide the case by the adjudicating authority on receipt of documents submitted by the appellant after granting principles of natural justice.

7. The appellant has vehemently contested that the adjudicating authority has not considered the documents submitted by them. However, on perusal of the impugned order, I find that the adjudicating authority has rejected the claim on the following contentions:

- [a] the appellant has not submitted any documentary evidence regarding the booking of residential unit as well as cancellation of the said unit in the name of customer in question.
- [b] on verification of bank statement of the appellant, it was noticed that the appellant have collected the amount of service tax separately from the customer in question amount to Rs.1,11,000/-; that they are not established how they are eligible for the said refund claim as they have booked in their running residential scheme from the customer and they collected the service tax from the customer on the consideration received and deposited to the government account.
- [c] the logic of return of amount of service tax collected, which already deposited in the government account is not convincing.
- [d] the service tax has been deposited vide challan No.50679 dated 17.04.2017 for Rs.1,23,505/- and on verification, it was found that the service tax paid under the category of Work Contract Services, whereas in present issue, they have provided service of Construction of Residential complex which is contradictory.
- [e] the appellant has declared booking of residential unit in the scheme Radiance Residency, whereas in the work sheet provided it is mentioned the booking of scheme of Radhe Acre in the name of Mrs. P A Parikh;

8. I find that it is a fact on records that the appellant had received consideration of Rs.18,50,000/- from their customer Mrs. P A Parikh towards booking of residential unit in Radiance Residency and service tax liability of Rs.1,11,000/- on account of said booking. It is also a fact on records that the said customer has cancelled their booking on 04.10.2017. This facts has not denied by the adjudicating authority, on the contrary, he has admitted this facts in para 10 of the impugned order. In the circumstances, the contention of the adjudicating authority that the appellant has not furnished documentary evidences regarding booking and cancellation of unit does not have any merit and looking into the above facts and



circumstances, the appellant is eligible for refund of service tax, if they paid to the Government account and returned to the customer due to cancellation of booking.

9. Now, the question arises whether the appellant had paid to the service tax liability into the Government account and whether they returned the same the customer viz. Mrs P.A.Parikh or not.

10. As regards return of the service tax collected by the appellant, I find that in para 10 of impugned order, the adjudicating authority has stated that as per bank account statement, the appellant had received/collected booking amount of Rs.18,50,000/- plus service tax amount of Rs.1,11,000/- and they also returned both the amount to Mrs P.A.Parikh and debit entry of the said amount is reflected in the appellant's bank account. In the circumstances, I do not find any dispute in this regard.

11. As regards payment of service tax amounting to Rs.1,11,000/- deposited to the Government Account, I find that in para 11 of the impugned order, the adjudicating authority has noted various contradiction in [i] depositing amount vide challan No.50679 dated 17.04.2017; [ii] residential unit mentioned in respect of Mrs P.A.Parikh in the booking scheme; and [iii] statement of customer wise and scheme wise collection of period on which service tax paid and subsequently declared in their ST-3 return does not match. The appellant is eligible for refund in question only if they deposited the service tax into the government account. Since the contradiction mentioned by the adjudicating authority find merit consideration and the appellant has not submitted any counter submission, to the benefit of doubt regarding deposit of service tax liability, I again remand this case with a direction to the appellant to furnish their clarification in this regard within one month of receipt of this order.

10. In view of above discussion, I set aside the impugned order and remand the case for fresh adjudication. The appeal stand disposed of in above terms.

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : .06.2019

Attested

Mohanan V.V.
(Mohanan V.V)
Superintendent (Appeals),
CGST, Ahmedabad.

BY R.P.A.D

To,
M/s Radhe Developers India Limited,
1st floor, Chimanbhai Chambers,
Opp. National Chambers, Ashram Road, Ahmedabad



Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Principal Commissioner, Central Tax, Ahmedabad South.
3. The Asstt. Commissioner, (Systems), CGST, Hq., Ahmedabad South
4. The Assistant Commissioner, Division VI, Ahmedabad South.
- ✓ 5. Guard file.



