



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 26305065-079 : टेलीफैक्स 26305136 - 079 :



स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)42/Ahd-South/2019-20 / 12857 To 12861
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-054-2019-20**
 दिनांक Date : **29-10-2019** जारी करने की तारीख Date of Issue **01/11/2019**
श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Gopi Nath**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **STC/REF/95/REVITAS/Div-III/14-15** दिनांक: **23.12.2016** ,
 issued by Assistant Commissioner, Div-III, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Revitas Technologies 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, 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 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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।

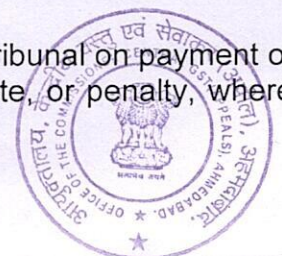
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 filed by M/s RevitasTechnologies Pvt Ltd., 51/52, Tatanium Building, Opp.Prhladnagar Garden, Corporate Road, Satellite, Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No.STC/Ref/154/Revitas/K.M.Mohadikar/AC/Div-III/16-17 dated 29.12.2016 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner of Service Tax, Division-III, Ahmedabad [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were providing services to their overseas head office under the category of 'Information Technology Software Service'. They filed refund claims of Rs.6,03,601/- in respect of unutilized Cenvat Credit of Service tax paid on inputs services availed, under Rule 5 of Cenvat Credit Rules, 2004 (CCR) read with notification No.27/2012-CE (NT) dated 18.06.2013, for the periods of October 2015 to December 2015. The adjudicating authority has rejected the said refund claim, vide impugned order on the grounds that the service rendered by them to their overseas client/head office does not qualify as 'export of service' as defined under clause (f) of Rule 6A of the Service Tax Rules, 1944 (STR).

3. Aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- Adjudicating authority has not passed speaking order and against principle of natural justice, since the impugned order is issued without giving an opportunity of personal hearing; that no show cause notice was served and did not get chance to file any written submission.
- M/s Revitas Incorporation, USA and the appellant are both separate legal entities registered under the law of respective countries and both are separate perpetual succession and legal seal and both prepare and furnish separate financial statements of the undertaking under the respective law.
- They relied upon the decision of Advance Ruling Authority in a similar issue in the case of M/s Tandus Flooring India Pvt Ltd [2014 (33) STR 33], wherein it has been held that clause (f) of Rule 6 of STR would not apply; that in case of M/s Investis Corporate Communication Pvt Ltd, the Commissioner (Appeals), Vadodara has also decided the issue in favour of assessee.

4. Hearing in the matter was held on 11.09.2019. Shri Aathish Shah, Chartered Accountant appeared for the same and reiterated the submissions of appeal memo for consideration.

5. I have carefully gone through the facts of the case on records, grounds of appeal and oral submissions made at the time of hearing. The limited point to be decided in the matter is:-



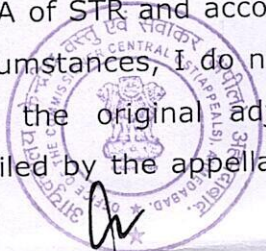
[i] rejection of refund claim without following principles of natural justice; and

[ii] whether the refund claim of Rs. 6,03,601/- is eligible or otherwise.

6. As regards [i] above, I find that the adjudicating authority has decided the case on the basis of available documents with him without granting personal hearing to the appellant which is against principles of natural justice.

7. As regards [ii] above, I find that the refund claim of Rs.6,03,601/-involved in the instant case is pertaining to the period of October 2015 to December 2015. The adjudicating authority has rejected the said refund claim, vide impugned order, on the grounds that the service rendered by the appellant to their overseas client/head office does not qualify as 'export of service' as defined under clause (f) of Rule 6A of the Service Tax Rules, 1944 (STR). On records, I find that the refund claims filed by the appellant on the said issue, pertaining to the period of [i] April 2015 to September 2015; [ii] January 2016 to September 2016, were rejected by the jurisdictional Assistant Commissioner which were appealed before Commissioner (Appeals). I find that as regards appeal filed by the appellant in respect of [i] above, the Commissioner (Appeals) has remanded the appeals (for the period of April to June 2015) to the adjudicating authority for following natural justice and rejected appeals (for the period of July to September 2015) by holding that the service rendered by the appellant does not qualifies as export of service. The said decision was challenged before the Hon'ble CESTAT and vide order dated 08.01.2018, the Hon'ble CESTAT has remanded the case to the original adjudicating authority to decide the issue afresh taking into consideration the principles of law as laid down in the issue, by referring the decision of Advance Ruling Authority and Commissioner (Appeals), Vadodara supra. As regards the periods involved in respect of [ii] above, the Commissioner (Appeals) has remanded the case to the adjudicating authority for considering the case afresh on the basis of Hon'ble Tribunal's order dated 08.01.2018.

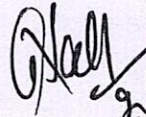
8. I find that based on the order of Commissioner (Appeals) as wells as Hon'ble CESTAT supra, the original adjudicating authority has already decided the issue i.e whether the service rendered by the appellant qualifies as export of service or otherwise, vide his Orders-in-Original dated 09.07.2018 and 11.07.2018. In the said orders, I find that the original adjudicating authority has sanctioned the refund of input service credit in question, involving the period of April 2005 to September 2015 and January 2016 to September 2016, by following the decision of Advance Ruling Authority in case of M/s Tandus Flooring India Ltd supra. The original adjudicating authority held that the service provided by the appellant qualifies as export of service under Rule 6A of STR and accordingly the appellant is eligible for refund in question. In the circumstances, I do not find any merit in the impugned order dated 29.12.2016, as the original adjudicating authority has already sanctioned the refund claims filed by the appellant, pertaining to the periods prior



and after to the periods involved in the instant case. Therefore, the instant case is also to be considered by the adjudicating authority as per OIO dated 09.07.2018 and 11.07.2018 passed in favour of the appellant.

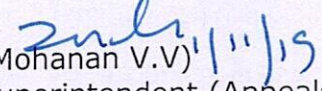
9. In view of above discussion, I set aside the impugned order and allow the appeal filed by the appellant by way of remand with a direction to the adjudicating authority to consider the refund claim afresh as discussed above, after giving opportunities of natural justice.

10. The appeal stands disposed of in above terms.


 (Gopi Nath)
 Commissioner (Appeals)
 Date : .10.2019



Attested


 (Mohanan V.V)
 Superintendent (Appeals)
 Central GST, Ahmedabad

R.P.A.D

To
 M/s RevitasTechnologies Pvt Ltd.,
 51/52, Tatanium Building,
 Opp.Prahladnagar Garden, Corporate Road, Satellite,
 Ahmedabad

Copy to:-

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone
2. The Principal Commissioner, CGST, Ahmedabad South
3. The Addl./Joint Commissioner, (Systems), CGST, Ahmedabad South
4. The Dy. / Asstt. Commissioner, CGST, Divison-VIII, Ahmedabad South.
- ✓ 5. Guard file.
6. P.A.