

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क  
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,  
आंबावाडी, अहमदाबाद— 380015.

क फाइल संख्या : File No : V2(ST) 12/RA/A-II/2015-16 & <sup>2130</sup> 12  
V2(ST) 13/RA/A-II/2015-16 <sup>2134</sup>

ख अपील आदेश संख्या Order-In-Appeal No. AHM-SVTAX-000-APP-004 to 5-15-16  
दिनांक Date : 13.04.2016 जारी करने की तारीख Date of Issue 20/04/16.

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं  
\_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No. SD-02/Ref-83/DRM/15-16 Date : 21.07.2015

SD-02/Ref-84/DRM/15-16 Date : 21.07.2015 Issued by Asstt. Commr., Div-II,

Service Tax, Ahmedabad

ध प्रतिवादी का नाम / Name & Address of the Respondent

M/s. Dharamnandan Export,  
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 :-

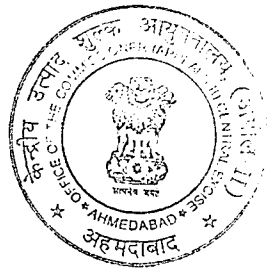
सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

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 मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal  
(CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound,  
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 रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 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 accompanied 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.

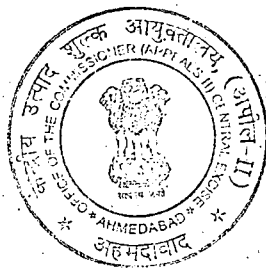
(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केंद्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केंद्रीय 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. / Assit. 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 रू 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 वर्णित 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 (सीस्टैट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय (संख्या-२) अधिनियम २०१४ (२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 है-

- (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 अर्जी एवं अपील को लागू नहीं होंगे।

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.

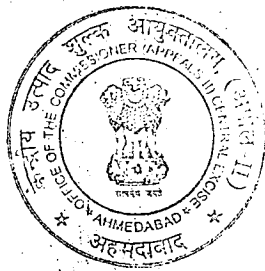
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 ::**

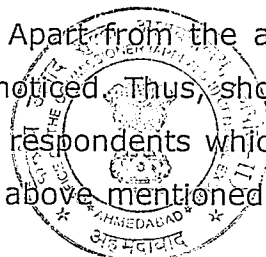
The Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'appellant'*) has filed the present appeal against following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed in the matter of refund claim filed by M/s. Dharmanandan Exports Pvt. Ltd., FF/12, Sanidhya Building, Opp. UCO Bhawan, Ashram Road, Ahmedabad (*hereinafter referred to as 'respondents'*);

Sr. No.	OIO No.	OIO date	Amount of refund claimed (₹)	Date of filing the refund claim	Rev. Order No.
1	SD-02/Ref-83/DRM/2015-16	15.07.15	82,495	30.03.15	11/2015-16
2	SD-02/Ref-84/DRM/2015-16	15.07.15	1,42,759	03.03.15	12/2015-16

2. The facts of the case, in brief, are that the respondents are holding Service Tax Registration and had filed refund claims amounting to ₹82,495/- and ₹1,42,759/- on 30.03.2015 and 03.03.2015 respectively under Notification No. 41/2012-ST dated 29.06.2012 in respect of Service Tax paid on the specified services used for export of goods.

3. During scrutiny of the above claims, it was noticed that the price consideration between buyer and the respondent was on FOB basis. In case of export transaction where FOB price is the consideration, the goods are to be delivered on the vessel which means the place of delivery is the port of shipment. Therefore, the services availed up to the point would become services availed up to the place of removal and not services availed beyond the place of removal hence, the refund claim appeared to had failed to fulfill

the basic spirit of the Notification No. 41/2012-ST dated 29.06.2012 and Circular No. 999-2015CX. Apart from the above deficiency, some other discrepancies were also noticed. Thus, show cause notices dated 25.05.2015 were issued to the respondents which were adjudicated by the adjudicating authority vide above mentioned impugned orders. The



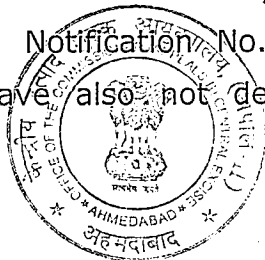
adjudicating authority, vide the above impugned orders sanctioned the above claims.

4. The impugned orders were reviewed by the Commissioner of Service Tax, Ahmedabad and issued review orders No. 11/2015-16 and 12/2015-16 respectively both dated 06.10.2015 for filing appeal under section 84(1) of the Finance Act, 1994 on the ground that the impugned orders were not legal and proper and the refunds were sanctioned erroneously. In the impugned order number SD-02/Ref-83/DRM/2015-16 dated 15.07.2015, an amount of ₹44,746/- has been sanctioned erroneously and in the impugned order number SD-02/Ref-84/DRM/2015-16 dated 15.07.2015, an amount of ₹18,404/- has been sanctioned erroneously out of total refund amount of ₹82,495/- and ₹1,42,759/- respectively. In light of the above mentioned review orders, the appellant filed the present appeal to pass an order for recovery of erroneously granted refund amount along with interest.

5. Personal hearing in both the matters was granted and held on 22.03.2016. Shri R. R. Dave, Consultant, appeared before me and submits that due to erroneous calculation the gaffe has occurred and he requested to remand the case back for fresh adjudication.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the respondents at the time of personal hearing.

7. I agree to the contention put forth by the appellant in the appeal memorandum that there has been an error in sanctioning the refund claims under Notification No. 41/2012-ST dated 29.06.2012. In clause © of para 1 of the said notification, it is very clearly mentioned that "(c) *the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 **is less than twenty per cent of the rebate** available under the procedure specified in paragraph 2*". The respondents have never contested against the views of the appellant. On the contrary, they have agreed to the fact that due to some mistake while calculating the amount of refund which is less than twenty percent as prescribed in clause © of para 1 of the Notification No. 41/2012-ST dated 29.06.2012. The respondents have also not defended another issue raised by the



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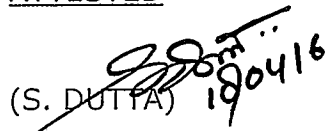
appellant in the Review Order No. 11/2015-16 i.e. they have, instead of claiming ₹80,165/-, claimed ₹82,495/- which is excess by ₹2,330/-. Thus, I find that the respondents have agreed to the fact that due to calculation error excess amount has been paid to them as refund which needs to be recovered with interest. I believe that it is the responsibility of the refund sanctioning authority to verify and check the refund claims properly so as to avoid flawed payment and unnecessary litigations which could have been avoided.

10. In view of the facts and discussions hereinabove, the appeal filed by the Department is allowed and I order to recover ₹63,150/- (₹44,746 + ₹18,404/-) along with interest from the respondents which has been wrongly sanctioned to them.

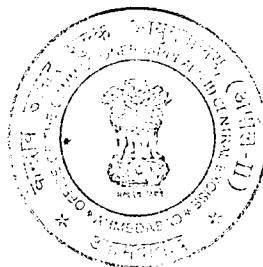
  
(UMA SHANKER)

COMMISSIONER (APPEAL-II)  
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

  
(S. DUTTA) 190416

SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.



To,  
M/s. Dharmanandan Exports Pvt. Ltd.,  
FF/12, Sanidhya Building,  
Opp. UCO Bhawan, Ashram Road,  
Ahmedabad

**Copy to:**

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Deputy/Assistant Commissioner, Service Tax, Division-II, A'bad.
4. The Assistant Commissioner, System-Ahmedabad
5. Guard File.
6. P.A. File.