

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) 10/RA/A-II/2015-16 & / 2145 to 2149

ख अपील आदेश संख्या Order-In-Appeal No. AHM-SVTAX-000-APP-006-18-167

दिनांक Date : 13.04.2016 जारी करने की तारीख Date of Issue 26/04/16

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-58/NT/2015-16 Date : 17.06.2015

Issued by Asstt. Commr., Div-II, Service Tax, Ahmedabad

घ प्रतिवादी का नाम / Name & Address of the Respondent

M/s. Bleach Chem Exim (I) Pvt Ltd,
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, मेधाणी 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 रूपे 5 लाख या उससे कम है वहाँ रूपे 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 5 लाख या 50 लाख तक हो तो रूपे 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 50 लाख या उससे ज्यादा है वहाँ रूपे 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 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 स्थान प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होगा 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 (सीस्टेट) 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-रशि 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 the Order-in-Original (*hereinafter referred to as 'impugned order'*) number SD-02/REF-58/NT/2015-16 dated 17.06.2015 passed in the matter of refund claim filed by M/s. Bleach Chem Exim (India) Pvt. Ltd., 7th Floor, Shivalik, Nr. Panchawati Cross Road, Ambawadi, Ahmedabad (*hereinafter referred to as 'respondents'*);

2. The facts of the case, in brief, are that the respondents are holding Service Tax Registration and had filed a refund claim amounting to ₹77,599/- on 22.05.2015 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 in case of Shipping Bill No. 3406725, the difference between the amount of rebate under the procedures specified in paragraph 2 and paragraph 3 was less than twenty percent. Therefore, it was concluded that the amount of ₹4,042/- was not liable for refund under paragraph 3 of the Notification No. 41/2012-ST dated 29.06.2012. Thus, the adjudicating authority, vide above mentioned impugned order, sanctioned the refund of ₹73,557/- and rejected the amount of ₹4,042/- out of the total refund claim amount of ₹77,599/-.

4. The impugned orders were reviewed by the Commissioner of Service Tax, Ahmedabad and issued review order No. 06/2015-16 dated 14.09.2015 for filing appeal under section 84(1) of the Finance Act, 1994 on the ground that the impugned order was not legal and proper. On going through the refund claim, several discrepancies were noticed. In the case of Shipping Bill No. 4624002 dated 26.08.2014, the respondents have claimed the Service Tax paid on an invoice raised by M/s. Globizz Logistics (Invoice No. 127/2014-15 dated 22.08.2014) wherein the STC is not mentioned. Also on the same invoice Service Tax amount is mentioned in USD, but from the payment particulars it was seen that the payment was made in Indian Rupees. In the Shipping Bill No. 4174457 dated 31.07.2014 and supporting commercial invoice and Bill of Lading, the goods exported was Hydrochloric Acid. But as per the invoice number B00875 dated 28.08.2014 raised by M/s. Velji Dosa & Sons Pvt. Ltd., the goods shipped was Ethyl Acetate. In the case of Shipping Bill No. 4369210 dated 12.08.2014, it was seen that payment particulars of invoice number BOSE091663 dated 27.08.2014 raised by M/s. Hellmann Worlwide Logistics was not traceable from the claim file. In light of the above mentioned discrepancies mentioned in the review order, the appellant filed the present appeal to pass an order for recovery of erroneously granted refund amount along with interest.



5. Personal hearing in the matter was granted and held on 05.04.2016. Shri Virendra P. Shah, authorized person of the respondents, appeared before me and submitted that he does not have the case papers. No document has been submitted by the respondents to counter the allegations made by the appellant.

6. I have carefully gone through the facts of the case on records and grounds of appeal in the Appeal Memorandum.

7. In absence of any written or oral representation made by the respondents, I have no other option but to agree to the contention put forth by the appellant in the appeal memorandum. As the respondents have not put forth any submission to counter the claims of the appellant, I believe that they have accepted the inaccuracy found in their invoices, Shipping Bills and other related documents. 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.

8. In view of the facts and discussions hereinabove, the appeal filed by the Department is allowed and I order to recover ₹11,442/- (₹10,086/-+₹278/-+₹1,078/-) along with interest from the respondents which has been wrongly sanctioned to them.

Uma Shanker
(UMA SHANKER)

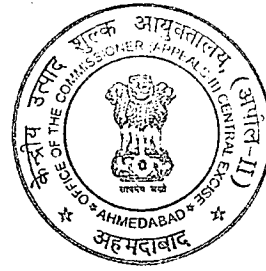
COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

S. Butta
(S. BUTTA) 18/04/16

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

To,
M/s. Bleach Chem Exim (India) Pvt. Ltd.,
7th Floor, Shivalik,
Nr. Panchawati Cross Road, Ambawadi,
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.

