रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065

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)134 /A-II/2015-16 / 2066 to 2071

ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-0108 -16-17

दिनाँक Date : 29.09.2016 जारी करने की तारीख Date of Issue 05/10/16

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 _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original No SD-02/REF-148/DRM/2015-16 Dated 14.10.2015

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

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

M/s. Durham Spintex &Holdings 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, New Mental Hospital Compound, Meghani Nagar,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 विरूद्ध 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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 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.

OFFICE OF THE COMMISSIONER (APPEALS-I) * AHMEDABAD * अहमदाबाद

(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,, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA)(उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A2l9k केन्द्रीय 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. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तो 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 चर्चित 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 (सीस्तेत) 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 रुपए 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 अर्ज़ी एवं अपील को लागू नहीं होगे।

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.

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) CENTRAL EXCISE OFFICE OF THE COMMISSIONER (APPEALS-I) AHMEDABAD अहमदाबाद

ORDER IN APPEAL

M/s. Durhan spintex & Holding (P) Ltd., 105/ Chinubhai Centers, 1st floor, Nehru Bridge corner, Ashram Road, Ahmedabad *(hereinafter referred to as 'appellants')* have filed the present appeals on 22.01.2016 against the Order-in-Original number SD-02/Ref-148/DRM/2015-16 dated 14.10.2015 *(hereinafter referred to as 'impugned orders')* passed by the Asst. Commissioner, Service Tax, Div-II, APM Mall, Ahmedabad *(hereinafter referred to as 'adjudicating authority')*;

2. The facts of the case, in brief, are holding Service Tax registration number AAACD-3934-H ST001 and had filed refund claim of Rs. 40723/- on 03.12.2009 in terms of notification No. 41/2007-ST dated 06.10.2007 on account of services received and utilized for export of goods/services for quarter ending June 2009. Vide OIO SD-02/Refund-12/2010 dated 30.04.2010 refund claim to the extent 40,445/- was rejected and sanctioned the amount Rs. 278/- On being appealing to Commissioner Appeal , impugned OIO was partially modified and sanctioned claim of Rs. 976/- vide OIA 429/2010 (STC)/MM/Commr (A)/Ahd dated 18.11.2010. Appellant filed appeal in CESTATE who vide order No. A/10429/WZB/AHD/2013 dated 22.03.2013 remanded the case back as under-

> *"In Appellant's own case this bench, vide final order dated 03.08.2012 as reported at 2012 (28) STR 366(Tri- Ahmd) in an identical issue, for the earlier period had reminded the matter back to adjudicating authority to reconsider the issue afresh. I find in this case also, the same order would be applicable and direction given would be applicable and the direction given in final order dated 03.08.2012 should be followed by the adjudicating authority while re-adjudicating the issue afresh."*
>
> *"Accordingly , the impugned order is set-aside , matter is remanded back to the adjudicating authority to hear and dispose the appeal as per final order dated 03.08.2012."*

3. After affording personal hearing in the case and after considering the evidences produced before adjudicating authority , impugned OIO was issued whereby Rs. 18,731/- was sanctioned and Rs. 21,015/- was rejected. Being aggrieved appellant had filed this present appeal. The main contention of appellant is that the lower authority has not disputed the service tax payment and utilization of such services on export of goods hence, the refund claim towards the service tax paid on the specified services could not be denied as appellant have fulfilled the substantial conditions of the notification. Appellant relied upon the following decisions-

(i) Suksha International Vs UOI.... [1998(39)ELT503(SC)]

(ii) UOI Vs. A. V. Narasumhalu.....[1983(13)ELT1534(SC)]

(iii) Formika India Vs. CCE.....[1995(77)ELT 500(SC)]

4. Personal hearing in the case was granted on 02.08. 2016. Shri D. K. Singh, Advocate and Shri J. K. Bhatt, Advocate, on behalf of appellant appeared before me and stated that original order No. SD-02/Ref-148/DRM/15-16 dated 14.10.2015 was cancelled by adjudicating authority but it was not informed to appellant. It was stated that after cancelling the order No. SD-02/Ref-148/DRM/15-16 dated 14.10.2015 adjudicating authority has issued new OIO No. SD-02/Ref-165/DRM/15-16 dated 06.11.2015. Appellant had stated that adjudicating had issued another fresh OIO no. SD-02/Ref-165/DRM/15-16 dated 06.11.2015 on same remand proceedings and appellant had also filed appeal on 18.03.2016.

DISCUSSION AND FINDING

5. 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 appellants at the time of personal hearing.

6 Deputy Commissioner, Service Tax, Div-II, Vide letter F. No. SD-02/Ref-Misc/15-16 dated 01.08.2016 has informed that record of order No. SD-02/Ref-148/DRM/15-16 dated 14.10.2015 is not available with them but OIO of identical No. but of different date 20.10.2015 is issued in name of M/s Torrent Pharmaceuticals Ltd. Deputy Commissioner , Service Tax, Div-II is not owning up impugned OIO where as appellant has produced copy of impugned OIO attested by Shree, V.P. Makwana, Superintendent, Div-I, Central Excise, Ahmedabad-I. Letter was also written to The Principal Commissioner, Service Tax, in this regards but no reply has been received so far.

7. In above situation I am saddled with two different OIO dated 14.10.2015 and 06.11.2015 in wake of remand proceeding of CESTATE order no. A/10429/WZB/AHD/2013 dated 22.03.2013. Appellant have submitted that OIO dated 14.10.2015 is cancelled and appeal is filed against new OIO dated 06.11.2015. I find that clear facts are not coming out as to whether impugned OIO was issued or not.

8. In view of above, appeal filed by the appellants is remanded back to original issuing authority to take the proper action.

(UMA SHANKER)
COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

(R.R. PATEL)
SUPERINTENDENT (APPEAL-II),

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS-I) CENTRAL EXCISE AHMEDABAD अहमदाबाद

To,

M/s. Durhan spintex & Holding (P) Ltd.,
105/ Chinubhai Centers, 1st floor,
Nehru Bridge corner, Ashram Road,
Ahmedabad

Copy to:

1) The Chief Commissioner, Central Excise, Ahmedabad.
2) The Commissioner, service tax, Ahmedabad
3) The Additional Commissioner, C.Ex, Ahmedabad
4) The Dy./Asst. Commissioner, Service tax, Div-II, APM Mall, Ahmedabad.
5) The Asst. Commissioner(System), Service tax. Hq, Ahmedabad.
6) Guard File.

P.A. File.