

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)30/A-II/2016-17 / 2694-2698  
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-0128-16-17  
दिनांक Date : 27.10.2016 जारी करने की तारीख Date of Issue 08/11/16

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-238/DRM/2015-16 Dated 29.01.2016  
Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. Adani Bunkering 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 :-

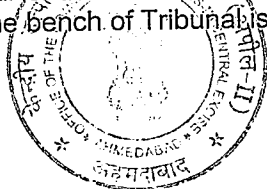
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 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.



*A. Jile*

(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 A219K 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 शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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 हैं -

- (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,

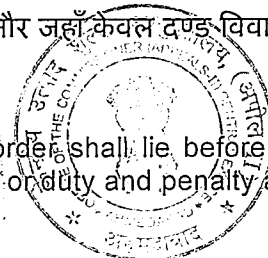
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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**

This order arises on account of an appeal filed by M/s. Adani Bunkering Pvt. Ltd. (previously known as M/s. Chemoil Adani Pvt. Ltd.), Adani House, Near Mithakhali Six Roads, Navrangpura, Ahmedabad (hereinafter referred to as "the appellants"), against Order-in-Original number SD-02/Ref-238/DRM/2015-16 dated 29.01.2016 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, Division-II, Service Tax, Ahmedabad (hereinafter referred to as the "Adjudicating Authority").

2. The facts of the case, in brief, are that the appellants are registered with service tax department having registration number AADCC3765GST001. The appellants had originally filed a refund claim of ₹ 21,79,325/- on 27.11.2009 in terms of Notification No. 09/2009-ST dated 03.03.2009 as amended by the Notification number 15/2009-ST dated 20.05.2009.

3. The adjudicating authority after scrutiny of the claim, vide Order-in-Original number SD-02/Ref-81/2011-12 dated 13.02.2012, rejected the entire amount of ₹ 21,79,325/-. The appellants subsequently filed an appeal before the then Commissioner (Appeals-IV). The then Commissioner (Appeals-IV), vide Order-in-Appeal number 218/2013(STC)/SKS/Commr.(A)/Ahd. dated 15.10.2013, remanded back the case to the adjudicating authority to decide it afresh. The adjudicating authority, vide the impugned order, sanctioned an amount of ₹ 16,64,602/- and rejected an amount of ₹ 5,14,723/-.

4. Being aggrieved with the impugned order of rejecting the refund amount of ₹ 5,14,723/-, the appellants filed the present appeal. The appellants have submitted that the adjudicating authority was not correct in rejecting the amount of ₹ 5,14,723/- as they have submitted all required documents to show that their claim is well covered by the period of notification. Thus, they requested to allow the refund amount of ₹ 5,14,723/- with consequential relief.

5. Personal hearing in the case was granted on 04.07.2016 wherein Shri Rahul Patel, Chartered Accountant, on behalf of the appellants appeared before me and reiterated the contents of appeal memorandum. He also tabled additional submission before me.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants at the time of personal hearing. Now, let me examine the reasons of rejection and the defense reply given by the appellants.

7. To start with, I find that the adjudicating authority has rejected the refund amount of ₹ 5,14,723/- citing reasons which are mentioned below;

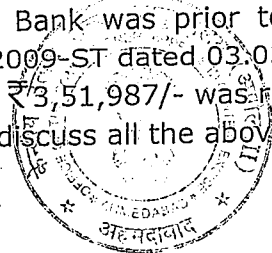
(a) ₹ 12,310/- was rejected on the ground that the appellants have failed to submit invoices pertaining to the service received.

(b) ₹ 3,186/- was rejected on the ground that the appellants have made advance payment to the service provider and hence, payment made could not be correlated with the invoice submitted.

(c) ₹ 1,47,240/- was rejected on the ground that the LC issued by M/s. Axis Bank was prior to the introduction of the Notification number 09/2009-ST dated 03.03.2009.

(d) ₹ 3,51,987/- was rejected on the ground of improper invoices.

Now I will discuss all the above issues point wise in detail.



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**8.1.** I will now take up the first issue which is rejection of ₹12,310/- on the ground the appellants have failed to submit invoices pertaining to the service received. In this regard, the adjudicating authority claimed that the appellants did not submit invoices number W03090100 dated 21.03.2009 amounting to ₹ 2,110/-, G3090122 dated 21.03.2009 amounting to ₹ 2,110/-, G3090123 dated 21.03.2009 amounting to ₹ 1,266/- and M03090251 amounting to ₹6,824/-. The appellants have submitted the said invoices before me and I have verified those invoices and found them to be correct. In view of the above, I allow the appeal of ₹12,310/- filed by the appellants.

**8.2.** The second issue pertains to the rejection of ₹3,186/- on the ground the appellants have made advance payment to the service provider and hence, payment made could not be correlated with the invoice submitted. In this regard, the appellants have submitted before me that they had paid M/s. Mundra International Container Terminal Pvt. Ltd. (MICT) an amount of ₹ 2,00,000/- in advance and the same amount was getting deducted /adjusted as and when the appellants were supposed to pay wharfage/pumping and pigging charges to M/s. MICT. This sort of term of payment is practiced by many service providers and is considered quite legal as per mutually agreed terms. The appellants have submitted a ledger before me to correlate the advance payment along with the invoices issued and I have found them acceptable as per my satisfaction. However, the actual amount, on verification, was found to be ₹2,975/- instead of ₹3,186/-. Thus, I allow the appeal for refund of ₹2,975/- to the appellants.

**8.3.** Regarding the third issue where the adjudicating authority has rejected the claim of ₹1,47,240/- on the ground that the LC issued by M/s. Axis Bank was prior to the introduction of the Notification number 09/2009-ST dated 03.03.2009, the appellants have pleaded that the Letter of Credit is a continuous service remaining valid for a period from 30 days to 365 days or even more. Thus, even a part of the period falling after the issuance of the notification is quite legal and eligible for the refund claim. I find logic in the argument of the appellants. The invoices were raised well after the introduction of the notification and accordingly payment was also released by the appellants. In view of the above, I find that the services received by the appellants are specified services and are in relation to the authorized operation. Therefore, I allow the appeal for refund of ₹1,47,240/-.

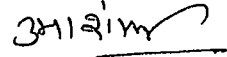
**8.4.** Regarding the final issue where the adjudicating authority has rejected the amount of ₹ 3,51,987/- on the ground of improper invoice, the appellants argued that it was a typographical error made by the staff of the appellants who prepared the summary sheet and numbered the invoice as 262. In fact, the appellants are not sure as to whether the said invoice actually bears the number 262 or not. In this case, the appellants before applying for the refund should have verified properly, in case of doubt, from the issuer of the said invoice i.e. M/s. K. N. K. Management, Mundra. Instead of that, the appellants have accused the adjudicating authority of rejecting the claim without application of mind. The appellants have submitted photocopy of the invoice without header. I do not think that M/s. K. N. K. Management would have issued such a half cooked invoice to the appellants or the appellants could have actually accepted such invoice from M/s. K. N. K. Management. The appellants could have approached M/s. K. N. K. Management for a proper invoice before claiming the refund but they did not do so. Further, even before filing the appeal before me, they could have

collected the correct invoice from M/s. K. N. K. Management. But here also they submitted this half cooked-half baked invoice before me and claiming that the staff of the appellants has given the number 262 to the invoice which is legally and ethically wrong. Therefore, I conclude that the adjudicating authority has rightly rejected the claim of ₹ 3,51,987/- and accordingly I disallow the appeal of ₹ 3,51,987/-.

9. The appeal is hereby disposed off in terms of the discussion held above.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

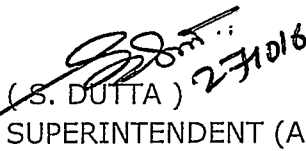
10. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

**ATTESTED**

  
(S. DUTTA) 27/10/16  
SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.

**BY R.P.A.D.**

To, M/s. Adani Bunkering Pvt. Ltd.,  
Adani House,  
Near Mithakhali Six Roads,  
Navrangpura,  
Ahmedabad-380 009

**Copy To:-**

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



