

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)112/A-II/2016-17** / 2755-2760
ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-SVTAX-000-APP-0129-16-17**
दिनांक Date : **21.10.2016** 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-01/Ref/03/AC/Oxane/2016-17 Dated **19.05.2016**

Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Oxane Partners India 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.

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(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 (सीस्तेत) 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, 1984 की धारा 43 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 अर्ज़ों एवं अपील को लागू नहीं होगा।

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

M/s. Oxane Partners India Pvt. Ltd., 6/ Rekha Park Society, Vijaynagar Char Rasta, Naranpura Ahmedabad- 380 013 (*hereinafter referred to as 'appellants'*) have filed the present appeals on 07.07.2016 against the Order-in-Original number SD-01/Refund/03/AC/Oxane/16-17 dated 20.05.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax, , Div-I, APM mall, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants were engaged in providing taxable service and holding Centralized Service Tax registration number AACCO 0124E SD002 dated 04.12.2015. For 20 invoices received at Delhi Branch office, appellant have filed refund claim for period 4/2015 to 06/2015 of accumulated credit of Rs. 1,64,072/- on 02.03.2016 under notification No. 27/2012-CE (NT) dated 18.06.2016 for rebate of service tax paid on taxable service covered under export invoices. Appellant was earlier registered with service tax Commissionerate Delhi- IV having registration No. AACCO 0124E SD001 dated 06.08.2015 which was cancelled after taking above centralized registration at Ahmedabad office.

3. Show cause notice dated 28.04.2016 was issued to appellant. It was proposed to reject the claim on following grounds.

- I. Appellant is having service registration at Delhi-Gurgoan and all invoices pertain to Delhi offices. In absence of evidence that said Delhi-Gurgoan office registration is cancelled, Ahmadabad service tax office can not sanction refund, even though centralized registration is taken.
- II. All 20 invoices produced were showing three different address which is not the address shown in Delhi-Gurgoan service tax registration certificate No. No. AACCO 0124E SD001.
- III. Three invoice of M/s ENUKE SOFTWARE Pvt. Ltd did bear the name of appellant but did not show the detail address as "Gurgoan ,Haryana". Said invoices failed to comply with the condition of Rule 4A (1) (ii) of service tax Rule , 1994 which stipulate that invoice should have complete address.
- IV. Appellant has made payment less than the bill amount in three invoice of Mr. Samir Sethi for renting service. Refund should be reduced to that extent as billing was cum-duty.
- V. FIRC produced by the appellant were issued on consolidated basis and not invoice wise. Though the invoice wise reconciliation produced by the appellant before adjudicating authority has reconciled 78,737 GBP. As per the copy of collection register submitted from april-15 to june-15 it worked out to be 1,05,000 GBP. Appellant could neither been able to reconcile the difference of 26,263 GBP nor could produce register of running account as

envisaged under board circular. Therefore export turnout could not be worked out as per formula given in rule 5(1)(D) of CCR 2004.

- VI. Refund claim filed by the claimant in respect of invoice No. GGN-ENUK 0151 dated 15.11.2014 issued by M/s Enuke Software Pvt. Ltd. is time barred, therefore refund of Rs. 51041/- is not admissible.

4. SCN dated 28.04.2016 issued was adjudicated by impugned OIO vide which refund was rejected on grounds proposed in show cause notice. Being aggrieved with the impugned order, the appellants preferred an appeal before the Commissioner (Appeals-II) wherein it is argued by appellant that discrepancy of office address of all 20 invoices is due to fact that all three addresses are of their branch offices of Delhi-Gurgoan. Regarding three invoice of M/s ENUKE SOFTWARE Pvt. Ltd did bear the name of appellant but did not show the detail address as "Gurgoan ,Haryana" it is stated that service are received and accounted for in their ledger. Regarding BRC calculation of 78,737 GBP was submitted. Regarding time barred refund claim filed in respect of invoice No. GGN-ENUK 0151 dated 15.11.2014 issued by M/s Enuke Software Pvt. Ltd. it is stated that they have taken credit only after payment of bill to service provider and they have filed claim within one year of taking credit.

5. Personal hearing in the case was granted on 17.08.2016. Shri Chintan Shah Chartered accountant appeared before me and reiterated the grounds of appeal. They submitted summary of points.

DISCUSSION AND FINDINGS

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 appellants at the time of personal hearing. whole refund rejected two main grounds as under-

- I. Rs. 51,041/- is rejected on time bar matter & on reasons stated in below ground No. II
- II. Rs. 1,13,031/- is rejected on technical grounds like address difference, BRC not tallying, payment made less then invoice, export realization not workable etc. as stated in above para 3 (I) to 3(v).

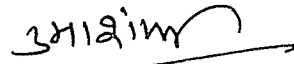
7. I find that adjudicating authority has taken invoice date as relevant date, which is evidently beyond one, for rejecting claim. Relevant date for refund in such case is to be taken as date of let export. I find that refund pertains to export made during period 4/2015 to 06/2015 and refund application is made on 02.03.2016 which is within prescribed time limit under section 11B of CEA 1944. I hold that refund of Rs. Rs. 51,041/- is within in time period.

8. Regarding address difference of invoices I find that all invoices are accounted for in their ledger which is evident that those services have been received by appellant. Regarding payment made less than bill amount I find that adjudicating has not substantiated that service provider has deposited less service tax to exchequer.

9. Regarding appellant's inability to reconcile the difference of 26,263 GBP (1,05,000 GBP - 78,737 GBP), I find that BRC produced is enough to prove that all the exports shown in relevant period of claim is exported. Regarding adjudicating authority unable to work out as to whether export is of 78,737 GBP or 1,05,000 GBP and resultantly unable to work out refund of accumulated credit, I find that refund will be the same amount irrespective of export turnover as appellant is 100% exporter of service and there is no domestic sale of service. I hold that all services of 20 invoices are used up in export of service therefore whole claim amount of Rs. 1,64,072/- is admissible irrespective of fact that export realization is of 78,737 GBP or 1,05,000 GBP. In view of above, appeal filed by the appellants is allowed.

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


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



(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED


(R.R. PATEL)

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

To,

M/s. Oxane Partners India Pvt. Ltd.,

6/ Rekha Park Society,

Vijaynagar Char Rasta,

Naranpura, Ahmedabad- 380 013

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-I, APM Mall, Ahmedabad.
- 5) The Asst. Commissioner(System), Service tax. Hq, Ahmedabad.
- 6) Guard File.
- 7) 7) P.A. File.

