

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)56/A-II/2016-17 / 2727-2732
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-0133-16-17
दिनांक Date : 28.10.2016 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-250/DRM/2015-16 Dated 24.02.2016

Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Interactive Manpower Solution 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 मैनटल हास्पिटल कम्पाउण्ड, मेघाणी 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ 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 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.

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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 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 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 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 Interactive Manpower Solution, 301, President Plaza, Near Thaltej cross Road, S.G. Highway, Ahmedabad- 380 054 (*hereinafter referred to as 'appellants'*) holding service tax registration No. AABCI 4910K ST001, have filed the present appeals against the Order-in-Original number SD-02/REF-250/DRM/2015-16 dated 24.02.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax, Div-II, APM Mall, Ahmadabad (*hereinafter referred to as 'adjudicating authority'*);

2. Briefly stated facts of the case are that appellant had filed a refund claim of accumulated credit of ₹7,42,361/- for period July 2014 to September 2014 under Notification No. 27/2012- CE (NT) on 09.07.2015. On the basis of CA certificate given refund amount was reduced to Rs. 7,23,460/- on the basis of export turnover found to Rs. 4,84,60,962/- instead of claimed export turnover of Rs. 5,00,78,423/-. Refund of Rs. 6,23,726/- was sanctioned where as Rs. 1,18,635/- was rejected vide impugned OIO. Rs. 99,734 out of Rs. 1,18,635/- was rejected on due to time bar matter. Being Aggrieved appellant has filed this present appeal for Rs. 1,00,288/-. In appeal memo it is contended as below-

- I. Claim is filed for service exported for the quarter July to September 2014. Export turnover of services is worked out as per clause (D) of Rule 5(1) of CCR, 2004.
- II. Adjudicating authority instead of considering export turnover of services defined under clause (D) of Rule 5(1) of CCR, 2004, has taken total export during the quarter July to September 2014. Therefore, the claim submitted by claimant is correct.
- III. Adjudicating Authority rejected the claim of Rs. 99,734/- on ground of time bar. The details of invoices which are covered under time bar is not given in OIO.
- IV. Receipt of payment in convertible foreign currency is an essential criterion for considering export of services during the relevant quarter. The entire quarter has to be essentially considered together.
- V. Relevant date for purpose of rule 5 of CCR, 2004 is last date of relevant quarter. Therefore, an exporter can file refund claim within one year from the last date of relevant quarter. Appellant cited the judgment in case of CCE V/s Navistar International Pvt. Ltd.-(2016)-TIOL-1055-CESTAT-MUM.

19

VI. Judgments of CESTAT which are relied upon to reject the claim are for the period prior to April 2012 , where as the present claim is for period July to September 2014. (a) CCE Pune-I Vs Eaton Industries (P) Ltd.- (2011) 30 STT 420 (b) Apotex Research Pvt. Ltd Vs CC, Banglore-CUS, 2015(3) tmi 346- CESTAT- Banglore (c) Hyundai Motor India Engineering Pvt. Ltd. CCE, Hyderabad-I 2014 & TMI 329-CESTAT Bangalore (d) M/s Benchtel India Pvt. Ltd, Pune-I Vs CCE, Delhi (2013) 7 TMI 437 (Tri-Delhi)

3. Personal hearing in the case was granted on 14.09.2016 wherein Shri Bishan Shah, CA on behalf of the said appellant, appeared before me and reiterated the contention of their submission. It was contended by CA that instead of export turnover, those export whose payment has been realized should be considered. He pointed out definition of export. In course of hearing Shri Bishan Shah, CA, requested for seven more days for additional submission which is so far not submitted.

DISCUSSION AND FINDING

4. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the respondent and oral submission made at the time of personal hearing. The adjudicating authority has-

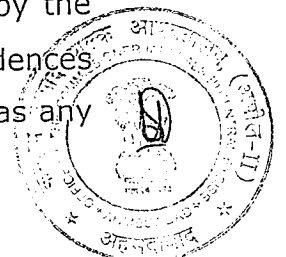
- I. Reduced the export turnover from Rs. 5,00,78,423/- to Rs. 4,84,60,962/- on the basis of CA certificate , therefore claim has been reduced from Rs. 7,42,361/- to Rs. 7,23,460/-.
- II. Rejected the refund of Rs. 1,00,288/- out of which Rs. 99,734/- is rejected on ground of time bar. The details of invoices which are covered under time bar is not given in OIO.
- III. Not given any given any reasoning as to why and how said invoices are time barred and what was the relevant date for each invoices for filing claim.
- IV. Not given any conclusion whether or not said invoices (on which Rs. 99,734/- is rejected) are eligible to be included in export turnover as per clause (D) of Rule 5(1) of CCR, 2004.
- V. Not clearly concluded regarding which export should be included in relevant quarter i.e export effected (invoices issued) or export whose

payment has been received in a particular quarter or the export effected and whose payment is also received in particular quarter.

- VI. Has not stated whether claim submitted is for export effected (invoices issued) or export whose payment has been received in a particular quarter.
- VII. Not concluded which date should be considered the relevant date i.e. date on which export is effected (invoice issued) or date of realization of export effected or the last date of quarter.
- VIII. Not clearly come out with reasoning as to why following judgments are squarely applicable in present case . (a) CCE Pune-I Vs Eaton Industries (P) Ltd.-(2011) 30 STT 420 (b) Apotex Research Pvt. Ltd Vs CC, Bangalore-CUS, 2015(3) tmi 346- CESTAT- Bangalore (c) Hyundai Motor India Engineering Pvt. Ltd. CCE, Hydrabad-I 2014 & TMI 329-CESTAT Bangalore (d) M/s Benchtel India Pvt. Ltd, Pune-I Vs CCE, Delhi (2013) 7 TMI 437 (Tri- Delhi).
- IX. Not clearly come out as to why above four judgments which pertains to claim prior to April 2012 i.e. for period prior to refund notification 27/2012-CE (NT), are applicable in present claim of period July 2014 to September 2014.

5. Conclusion consisting of 8 paragraphs at page 7 of impugned OIO and thereafter order is given totally contradictory. In para 8 of conclusion it is stated that claimant is admissible for refund of Rs. 7,42,361/- where as in order portion refund is granted is Rs. 6,23,726/-. No specific reasoning is given for rejecting claim moreover impugned order is not crisp and clear. The adjudicating authority is required to decide each and every issue in the same way and gives it finding on each issue along with reasons of arriving at a particular decision. In other words, it must be a speaking order. My observation cited above at para 4 is required to be answered in fresh OIO. In this regard, supreme court direction in the case of Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Drafting of Adjudication Order: Some Basics Prepared by NACEN, RTI, Kanpur Page 6 Khan{Citation:- 2011 (273) ELT 345 (SC)} must be kept in mind .

6. In view of facts and discussion herein above, the Adjudicating Authority is directed to decide the case afresh, as far as rejection of claim amount of Rs. 1,18,635/- is concerned , for which case is remanded back to the Adjudicating Authority, after due compliance of the principles of natural justice and after proper appreciation of the evidences that may be put forth by the appellant before him. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of their contention as well as any



other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority. These findings of mine are supported by the decision/order dated 03.04.2014 of the Hon'ble High Court, Gujarat in the Tax appeal No.276//2014 in the case of Commissioner, Service Tax, Ahmedabad V/s Associated Hotels Ltd. and also by the decision of the Hon'ble CESTAT, WZB Mumbai in case of Commissioner of Central Excise, Pune-I Vs. Sai Advantium Ltd and reported in 2012 (27) STR 46 (Tri. - Mumbai).

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

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED

R.R. Patel
(R.R. PATEL)

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

To

M/s Interactive Manpower Solution,
301, President Plaza,
Near Thaltej cross Road,
S.G. Highway,
Ahmedabad- 380 054

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax., Ahmedabad-II.
- 3) The Additional Commissioner, C.Ex, Ahmedabad-II
- 4) The Asst. Commissioner, Service Tax, Div-II, APM Mall, Ahmedabad.
- 5) The Asst. Commissioner (System), Service Tax, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.

