

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)159 /A-II/2015-16/2767-2772/40
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-0139-16-17
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 AHM-SVTAX-000-ADC-010-15-16 Dated 22.12.2015

Issued by Addl Commr STC HQ Abad, Service Tax, Ahmedabad

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

M/s. Anil Limited 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, 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 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.

G. 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 A216k 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, 1984 की धारा 13 के अंतर्गत सेवाकर को भी लागू की गई है. द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्त 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 बशर्त 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 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,

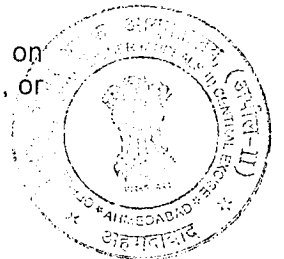
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

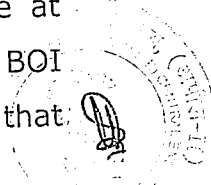
4(1) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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

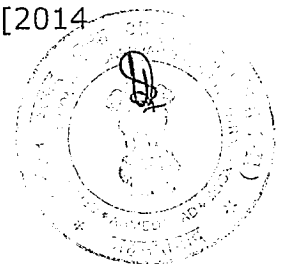
1. M/s Anil Limited, P.O. Box No. 10009, Anil Road , Bapunagar, Ahmedabad-380 025 (*hereinafter referred to as 'appellant'*) holding service tax registration No. AABCA 3154H ST001 has filled this appeal against Order-In-Original No. AHM-SVTAX-000-ADC-010-15-16 dated 22.12.2015 (*hereinafter referred to as "impugned order"*) passed by the Addl. Commissioner, Service Tax, Ahmedabad (*hereinafter referred to as "Adjudicating Authority"*). Appellant
2. Appellant has received Banking and Financial services [Section 65(105)(zsm)] provided by banks/institutions/companies and Legal Consultancy service [Section 65(105)(zzzm)] by professionals based out side India. These service provider has not permanent establishment in India therefore under Reverse Charge mechanism basis under the provisions of Rule 3 of the Place of Provisions of Service Rules 2012 (POPSR-2012) and rule 2(1)(d)(i0 (G) of service tax rules, 2012(w.e.f. 01.07.2012) read with Section 66C of the Finance Act, 1994 (w.e.f. 01.07.2012). Appellant has not paid service Tax Of Rs. 12,68,547/- on above both services.
3. Vide impugned OIO of Rs. 11, 86,887/- on Banking service and Rs. 81,660/- was confirmed under section 73(1) and ordered to impose Interest under Section 75. Penalty of Rs. 10,000/-, Rs.10,000/- and Rs. 12,68,547/- was imposed under section 77(a), 77(2) and 78 of Finance Act, 1994.
4. Being aggrieved with the impugned order, the appellants preferred an appeal on 23.02.2016 before the Commissioner (Appeals-II). In ground of appeal appellant has contended that-
 - I. Appellant has paid Rs. 1,02,63,321/- as service charges to Foreign service Branch of Bank of India (BOI) located in USA for foreign currency term loan Of USD 1,00,00,000. BOI has its Head Office at Bandra Kurla Complex, Mumbai as such business establishment of BOI is in taxable territory. The show cause notice was issued on ground that:



service providers are located out side India and are having no office in India, therefore, appellant being service recipient are liable to pay service tax. BOI has service tax registration in India, therefore service tax liabilities lies upon BOI.

- II. Adjudicating has confirmed duty on ground that as per rule 3 of POSPR, 2012, the place of provision of service shall be the location of the recipient of the service and as per explanation 3(b) of Section 65B(44) an establishment in non-taxable territory and any of his other establishment in non-taxable territory shall be treated as establishment of distinct persons. Appellant is not agreeing to this stand taken by adjudicating authority.
- III. Appellant made an application for External Commercial Borrowing (ECB) to BOI, Ahmedabad who in turn forwarded it to BOI,USA. As such it can not be said that service was provided by BOI, USA. BOI, USA has provided service to BOI, Ahmedabad. BOI, Ahmedbad has provided service to the appellant. Therefore liability of service tax under reverse charge is on BOI, Ahmedabad.
- IV. Appellant did not pay service tax under bonfied belief that service was provided by BOI, Ahmedbad to appellant. There was no intension to suppress the facts or mis-declaration with intend to evade the tax. Therefore penalty under section 78 is not imposable.

5. Hearing in the matter was granted and held on 17.08.2016 which was attended by Shri P.G. Maheta, Advocate on behalf of the appellant who reiterated the ground of appeal. He stated that duty and penalty paid before SCN, therefore penalty should not be imposed. He submitted the judgment in case of Gujarat Borosil Ltd. Vs Commissioner of Central Excise, Surat [2014



(36) S.T.R. 808.(Tri. Ahmedabad)]

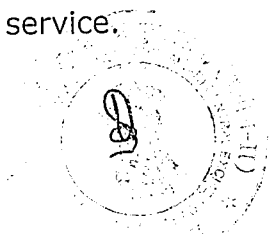
Discussion and finding

6. I have carefully gone through the facts of the case, impugned order, the grounds of appeals, and the submissions made during the personal hearing and written submission made by appellant.

7. I find that appellant has not made any argument with respect to legal and professional service received. I hold that appellant is contesting only for the duty, interest and penalty imposed under Banking and financial service. On going through the impugned order, I find that the Adjudicating Authority has confirmed Service Tax on Banking service on ground that appellant has received service directly from BOI, USA. Question to be decided is whether appellant has received service from BOI, USA or BOI, Ahmedabad.

8. Service provided by any person located in a non-taxable territory and received by any person located in the taxable territory is taxable under reverse charge mechanism. Further, Explanation 3 to section 65B(44) says "an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons". Therefore BOI, USA and BOI, Ahmadabad are to be treated two different entity for service tax purpose.

9. In absence of privity of contract between appellant and Foreign Bank, BOI,USA and thus Exporter is not availing the services of Foreign Bank and the services of Foreign Bank are actually hired by bank in India and thus, Exporter is not required to pay service tax under reverse charge mechanism. It is needless to say that BOI, Ahmedabad is recipient of foreign service.

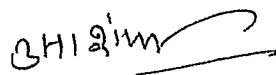


Appellant has received service from BOI, Ahmedabad only. Therefore, I hold that, appellant are not required to pay service tax on service rendered by BOI, USA to BOI, Ahmedabad. Consequently proportional penalty for Banking service under section 78 is not imposable.

10. In light of the above discussion, I set aside the impugned OIO as far it relates to Banking service.

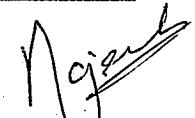
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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.

By R.P.A.D.

To,
M/s Anil Limited,
P.O. Box No. 10009,
Anil Road , Bapunagar,
Ahmedabad-380 025

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Additional Commissioner, Service Tax, Ahmedabad.
4. The Assistant Commissioner, Service Tax, Division -V, Ahmedabad.
5. The Assistant Commissioner (Systems), Service Tax (HQ), Ahmedabad.
6. PA to Commissioner (Appeals-II), Central Excise, Ahmedabad.
7. Guard File.

