

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)183 /A-II/2015-16/2773-2777 141  
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-0140-16-17  
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 STC/Ref/170/HCV/Navdeep/Div-III/15-16 Dated 02.03.2016

Issued by Assistant Commissioner, Div-III, Service Tax, Ahmedabad

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

M/s. Navdeep Trradex 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 :-

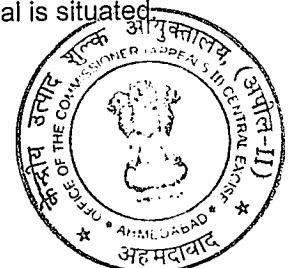
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

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.

A. J.



(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, 1994 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 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,

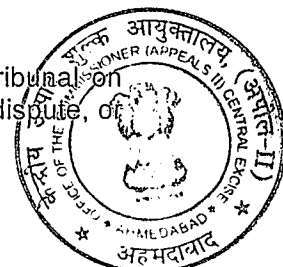
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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, of penalty, where penalty alone is in dispute.



**:: ORDER-IN- APPEAL ::**

M/s. Navdeep Tradex, Bungalow number 35, Someshwara, Part-2, Opp. Star Bazaar, Satellite, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original No. STC/Ref/170/HCV/Navdeep/Div-III/15-16 dated 029.03.2016 (*hereinafter referred to as 'impugned order'*) by the Deputy Commissioner, Service Tax, Div-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants are registered as a non-assessee with the Service Tax Department and hold registration number CDEPS0393SE001. The appellants are a merchant exporter registered with 'FIEO' and hold membership number AHD/135/2013-14. They hold valid Export-Import Code number 0809009633. They are engaged in the export of Fly Ash and have been availing benefit of exemption by way of refund of Service Tax paid by them for services received and used for export of goods by virtue of issuance of Notification number 41/2012-ST dated 29.06.2012. They had filed a refund claim of ₹11,42,889/- under Notification No. 41/2012-ST dated 29.06.2012 in respect of Service Tax paid for export of goods for the period from January 2015 to September 2015. The said refund claim was sent for Pre-Audit clearance where the officials raised query pertaining to improper invoice of M/s. Globizz Translogistics Pvt. Ltd. in terms of Rule 4A of the Service tax Rules, 1994. The invoices of M/s. Globizz Translogistics Pvt. Ltd. were not showing the Service Tax Registration number. The adjudicating authority clarified the Pre-Audit that M/s. Globizz Translogistics Pvt. Ltd. are duly registered with the department however, the Pre-Audit, vide letter dated 25.02.2016, stuck to their observation. Accordingly, the adjudicating authority rejected an amount of ₹1,17,586/- and sanctioned the remaining amount of ₹10,25,303/-.

3. Being aggrieved with the impugned order, the appellants preferred the present appeal. They stated that the non mentioning of registration number in the invoices is a procedural lapse. The appellants had availed the input service from M/s. Globizz Translogistics Pvt. Ltd. and the same was also utilized for export of service. There was also nexus of the input service availed and utilized for the export of service and without availing such input service the appellants could not conduct the export of the service.

4. Personal hearing in the case was granted on 14.09.2016 wherein Shri Vipul khandhar, Chartered Accountant, on behalf of the said appellants, appeared before me and reiterated the contention of their submission. He submitted photocopy of the registration certificate (Form ST-2) of M/s. Globizz Translogistics Pvt. Ltd. in support of his claim.



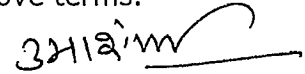
5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. Now, let me examine the reasons of rejection and the defense reply given by the appellants.

6. I find that the adjudicating authority has rejected the claim on the ground that the invoice issued was not in accordance of Rule 4A of the Service tax Rules, 1994 and not a valid document under CENVAT Credit Rules, 2004. The adjudicating authority, in the impugned order, has accepted the fact that he has verified and found that the input service provider is a genuinely registered entity having Service Tax registration number AACG5835RSD001. The said service provider did forget to mention the Service Tax Registration number on the invoice raised to the appellants. The adjudicating authority has also quoted the guidelines prescribed in the TRU Circular number 120/1/2010-ST dated 19.01.2010 where certain guidelines are provided for taking liberal views in case of incomplete invoice. In my view, Rule 4A prescribes that taxable services shall be provided and input credit shall be distributed only on the basis of a bill, invoice or challan. The invoice should disclose the required information about service provided or agreed to be provided, service provider and receiver of service and details of Service tax paid. If the above can be determined all other lacunae may be treated as procedural and can be ignored. The adjudicating authority was very much confirmed about the genuineness of the service provider but he had to reject the amount of ₹1,17,586/- as directed by the Pre-Audit. I find that the observation of Pre-Audit does not hold any valid ground in front of the guidelines prescribed in the Circular number 120/1/2010-TRU dated 19.01.2010.

7. In view of above, I set aside the impugned order to the rejection part of the refund only and allow the appeal filed by the appellants.

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

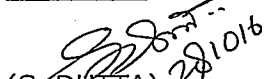
8. The appeals filed by the appellant stand disposed off in above terms.

  
(उमा शंकर)

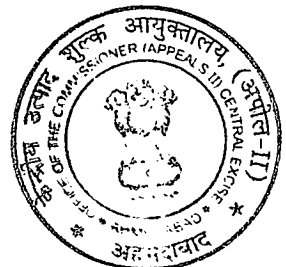
आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

  
(S. DUTTA) 28/10/16

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



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

To,  
M/s. Navdeep Tradex,  
Bungalow number 35,  
Someshwara, Part-2, Opp. Star Bazaar,  
Satellite, Ahmedabad.

**Copy To:-**

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Deputy/Assistant Commissioner, Service Tax, Div-III, A/bad.
4. The Assistant Commissioner, System-Ahmedabad
5. Guard File.
6. P.A. File.



