

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)73/A-II/2016-17 / 2810-2815  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-0142-16-17  
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-286/DRM/2015-16 Dated 18.03.2016  
Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध 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 :-

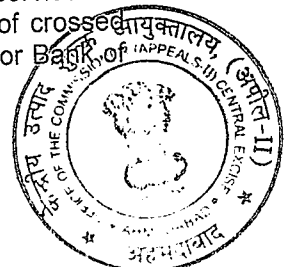
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

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 is 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 at the place where the bench of Tribunal is situated.

*A. file*



(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 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) 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, 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 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 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 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-286/DRM/2015-16 dated 18.03.2016 (*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 ₹ 13,94,930/- for period July 2015 to September 2015 under Notification No. 27/2012- CE (NT) on 29.12.2015. On the basis of turnover scrutiny relying on bank certificate given refund amount was reduced to Rs. 13,93,421/-. Export turnover on the basis of realization of Foreign remittance was found to Rs. 73074121/- instead of claimed export turnover of Rs. 85342456/-. Refund of Rs. 13,11396/- was sanctioned where as Rs. 83,534/- was rejected vide impugned OIO. Rs. 77,721/- out of Rs. 83,534/- was rejected on various issues like service is not input service and invoice in not not confirmative with Rule 4A of service tax Rule 1994 read with rule 9(2) of CCR, 2004. The adjudicating authority has-

- I. Rejected the refund of Rs. 7,910/- on invoice dated 31.07.2015 of Zero Design Pvt. Ltd. on ground E-mail correspondence without service Tax registration instead of Invoice under Rule 4A of Service Tax Rule 1994 is not proper document to allow credit.
- II. Rejected the refund of Rs. 39,151/- on invoice dated 24.08.2015 of Oriental Insurance Co. Ltd. as service is used for personal consumption of employees and thus does not eligible for input service is not covered under definition of input service given in rule 2(I) of CCR, 2004.
- III. Rejected the refund of Rs. 25,200/- on invoice dated 25.09.2015 of M/s Talentnow Solution Services Pvt. Ltd. as the invoice is issued name of IMS people instead of the appellant. Thus not eligible as per rule 9(2) of CCR, 2004.
- IV. Rejected the refund of Rs. 2,100/- and 3,360/- on invoice dated 10.08.2015 and 16.09.2015 respectively of Adorn India Corporate service Ltd. as service received is not covered under definition of input service given in rule 2(I) of CCR, 2004.



3. Being Aggrieved appellant has filed this present appeal for Rs. 77,721/-. In appeal memo it is contended service received is input service and service received is used in providing out put service therefore credit and consequently refund is admissible.

4. 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. In course of hearing Shri Bishan Shah, CA, requested for seven more days for additional submission which is submitted on 23.09.2016

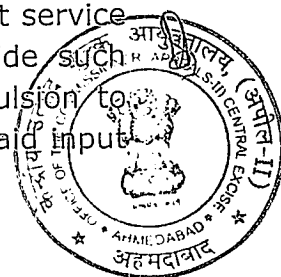
### DISCUSSION AND FINDING

5. 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 and written submission made later on vide letter dated 23.09.2016.

6. I shall first take up the admissibility of cenvat credit on service rendered by Oriental Insurance service. It is to be decided whether or not services which are used primarily for the personal use of any employee are covered under exclusion clause of "input service definition".

7. Exclusion clause was introduced in input service definition in Rule 2(I) of CCR, 2004 for the first time w.e.f., 1.4.2011 provides that certain specified services as listed in definition are excluded from the definition of 'input services' when such services are used primarily for personal use or for consumption of any employee. Hence, all such services which are used primarily for the personal use of any employee such as services in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession have also been specifically excluded from the scope of the definition of input services.

8. Appellant has provided health insurance service to their employee for which service has been taken from Oriental Insurance Service and has paid Rs. 39,151/- as service tax vide invoice dated 24.08.2015. There are some judgments where said health insurance service is considered as input service but in all these judgments it was statutory requirement to provide such services. In view of the fact that there is no any statutory compulsion to provide health service and in view of fact there is no any nexus of said input

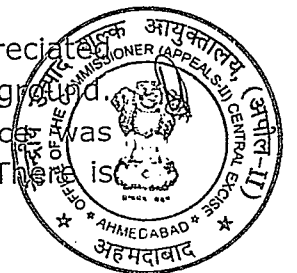


service with the out put service said service do not qualify for input service. Moreover, in view of specific exclusion clause under clause (C) of Rule 2(I) of CCR, 2004 w.e.f, 1.4.2011, no input service credit could be availed on the specified services of General Insurance service as it is meant for personal consumption of the employees. I hold that service provided by Oriental Insurance Co. Ltd for which Service tax of Rs. 39,151/- paid is not input service for appellant and consequently appellant is eligible for refund of said service.

9. Now I take the issue of admissibility of credit on invoices of Adorn India Corporation Service LLP. Appellant is sourcing and relocating contractors from different parts of the world to their client's desired location for which visa registration, change of address, extension of visa, country exit formalities of contractors is done in Foreign Regional Registration Office – (FRRO). Appellant has received service from Adorn India Corporation Service LLP to make application and formalities to FRRO for which service tax of Rs. 5460/- (2100/- + 3360/-) has been paid vide invoice dated 10.08.2015 and 16.09.2015. I find that facility of visa registration, change of address, extension of visa, country exit formalities of contractors done in Foreign Regional Registration Office are provided in course of business and it has nexus with the out put service. Absence of such facility would have effect of out put service. Therefore I hold that said service as input service and consequently refund of Rs. 5460/- is admissible to appellant.

10. Now I take the issue of admissibility of credit on invoices of Zero Design Pvt. Ltd. Appellant has taken service tax credit of Rs. 7910/- on design service provided by Zero Design Pvt. Ltd and has been denied credit under Rule 4A of Service Tax Rules, 1994 on ground that appellant has submitted E-mail correspondence and said correspondence do not contain registration No. I find that zerox copy of invoice of Zero Design Pvt. Ltd has been produced and contains details required as per said rule 4A but that do not contain registration No. Moreover credit of Rs. 25,200/- on IT service provided by Talentnow Solution Service Pvt. Ltd vide invoice No. 25.09.2015 has been denied on ground that invoice is issued on the name of IMS people instead of appellant. It is clarified by appellant that IMS stands for "Interactive manpower solution" which is abbreviated said invoice bears address that of appellant only. Adjudicating authority has held that both the invoice in respect of which credit i.e Rs. 7910/- and Rs. 25,200/- is taken are not in conformity with the provisions of Rule 9 of Central Excise Rules, 2004 and Rule 4A of Service Tax Rules, 1994. Further, Rule 9(2) of Central Excise Rules, 2004 restricts the availment of credit in such cases. Since the invoices issued did not contain required information as envisaged in Rule 4A of Service Tax Rules, 1994, credit was not admissible.

11. I find that the relevant statutory provisions have not been appreciated correctly and the credit has been denied only on technical ground. Adjudicating officer was required to consider whether the service was rendered, received by the service receiver, service tax paid or not. There is



no doubt that in this case all the requirements are fulfilled. Even in the show cause notice there is no mention that service tax was not paid or service was not received. Further, the appellant has also produced the copies of Invoices covering service tax payment.

12. Rule (2) of Rule 9 of Cenvat Credit Rules, 2004 is reproduced as below-

"(2) No CENVAT credit under sub-rule(1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:

**Provided** that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax Registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit; "

13. I find that adjudicating authority has not come to conclusion that services covered by the said document have not been received and not accounted for in the books of the account of the Appellant. In absence of such conclusion I hold that credit and consequently refund of Rs. 7910/- and Rs. 25,200/- is admissible to the appellant.

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

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

*उमाशंकर*

(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.

