

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)187 /A-II/2015-16 | 2669-2674  
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-0143 -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-04/31/AK/2015-16 Dated 29.01.2016

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

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

M/s. Piramal Enterprise 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 :-

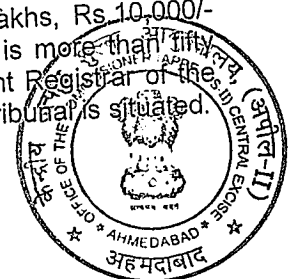
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल  
हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद—380016

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 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 (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 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, 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 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,

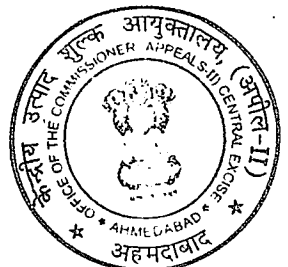
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

M/s. Piramal Enterprises Pvt. Ltd., Plot No. 19, SEZ- PHARMEZ , Sarkhej- Bavala Highway 8A, Village Matoda, Taluka- Sanand, Dist- Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeals on 28.03.2016 against the Order-in-Original number SD-04/REF-31/AK/2015-16 dated 29.01.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax, Div-IV, APM Mall, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. Appellant has filed refund claim of Rs. 3,02,945/- under notification No. 12/2013-ST dated 01.07.2013. Appellant has shared specified services received by them between authorized operation in SEZ and DTA and hence claim was restricted in terms of para 3(iii)(b)(ii). Moreover appellant has not maintained proper account of receipt and use of common services and claim was hit by unjust enrichment under section 11B of CEA, 1944. Further appellant could not quantify the exact service used in authorized operation and in domestic operation before adjudicating authority therefore claim was rejected by adjudicating authority. However point of unjust enrichment was not accepted by adjudicating authority.

3. Being aggrieved with the impugned order, the appellants preferred an appeal on 28.03.2016 before the then Commissioner (Appeals-II) wherein it is argued by appellant that-

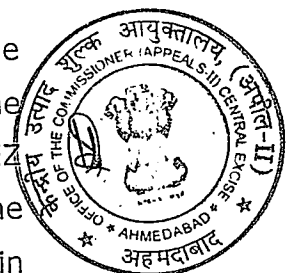
- I. Para 3(iii)(b)(ii) of 12/2013-ST dated 01.07.2013 is applicable only if the appellant have any DTA unit and common taxable service are being received and utilized by both SEZ and DTA unit.
- II. Service tax paid on specified services that are common to the authorized operation in SEZ and in operation in DTA unit is distributed among SEZ and DTA unit as per manner prescribed under rule 7 of CCR. For distribution turnover of SEZ of authorized operation during relevant period is taken. In present case there is no DTA unit hence rule 7 of CCR will not apply.
- III. LOP , DTA clearance from SEZ is also a part of SEZ operation as per section 2C read with sub-section 9 of section 15 and section 4(2) all of SEZ Act, 2005 and condition(v) of para 2 of LOP/LOA dated 23.05.2008.
- IV. DTA operation from SEZ unit allowed under LOA and appellant having DTA unit , the service tax paid on services received and utilized in DTA can be allowed as refund.



4. Personal hearing in the case was granted on 17.09.2016 and Shri Vipul Khandhar, CA, on behalf of appellant appeared before me. Shri Vipul Khandhar reiterated the grounds of appeal and also stated that adjudicating authority has allowed the refund for period October 2014- March-2015 and has denied for earlier period April 2014- September 2014.
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.
6. Notification 12/2013-ST dated 01.07.2013 replaces the earlier notification of 40/2012-ST. This notification is issued to claim service tax exemption on services received by a unit located in SEZ or developer of SEZ and used for authorized operations. In case the services are wholly used for the purpose of authorised operations, SEZ unit or Developer may claim *ab-initio* exemption from payment of service tax. In case the services are not wholly used for the purpose of authorised operations, exemption from service tax would continue to be available by way of refund of service tax paid on specified services. In case of common services wherein such services have been used both for SEZ and DTA units, service tax is allowed to be distributed to such SEZ unit under Input Service Distributor Invoice to claim refund. Such service distributed should be in the approved list of services of SEZ unit.
7. For following (i) and (ii) types common services (utilized in DTA and SEZ ) Condition No. 3(III)(a) of notification No. 12/2003-ST is applicable.

- (i) the specified services that are not exclusively used for authorised operation, or
- (ii) the specified services on which *ab-initio* exemption is admissible but not claimed, shall be allowed subject to the following procedure and conditions, namely:-

Condition No. 3(III)(a) is that services should be distributed amongst the SEZ Unit and the DTA unit (s) in the manner as prescribed in rule 7 of the Central Credit Rules. For the purpose of distribution, the turnover of the SEZ Unit shall be taken as the turnover of authorised operation during the relevant period. I find that rule 7 of CCR is for distributing services utilized in different units of service receiver and for said purpose said receiver is



required to take service tax registration of ISD. ISD is required file service tax return. Appellant has neither produced and evidence of such ISD registration and evidencing the distribution services as per rule 7 between DTA unit and SEZ unit. This notification does not cover the cases where there is no own DTA unit of SEZ unit holder and where part service is diverted to other DTA unit.

7.1 Further condition No. 3(III) (b) is that the SEZ Unit shall be entitled to refund of the service tax paid on the amount distributed to it in terms of Condition No. 3(III)(a). Also A proper account has not been maintained for receipt and use of services for which exemption/refund is claimed in terms of condition 3 (iv) of notification No. 12/2013.

7.2 I find that appellant has not produced any evidence to establish that service in respect of which refund is claimed is used only for furtherance of authorised operations in the SEZ as required under explanation added after clause (e) of the notification 12/2013-ST. Even if the appellant work out the exact quantum of services utilized in authorized operation of SEZ then also refund is not grantable as he has not dealt the common services as per rule 7 of CCR. There is no provisions in notification to bifurcate the input service tax of common service between DTA unit and SEZ unit on turnover proportion. I find that refund is not admissible for non compliance for Condition No. 3(III)(a) read with Condition No. 3(III)(b) and condition 3 (iv) read with clause (e) of para 3 said notification No. 12/2013.

8. Appellant has produced previous Refund OIO dated 31.03.2016 and 09.06.2016. Appellant contention that refund was allowed for previous period does not hold good for present case as it is stated that for that proper accounting of receipt and utilisation of services was maintained. Further it is stated that conditions of notifications were satisfied.

9. Moreover in said previous OIO adjudicating authority has taken DTA sales as authorized operation of SEZ which is not correct in view of explanation added vide Notification No. 7/2014-ST dated 11.07.2014 after clause (e) of para 3 of the notification No. 12/2013 as "A service shall be treated as used exclusively for the authorised operations if the service is received by the SEZ Unit or the Developer under an invoice in the name of such Unit or the Developer and the service is used only for furtherance of authorised operations in the SEZ."

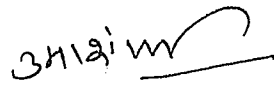


10. Further appellant contention that DTA operation from SEZ unit allowed under LOA therefore refund of tax paid on services utilized in DTA operation is to be allowed is not tenable as no where in act or rule it stated that input credit/exemption/refund is allowable for services utilized in such DTA operation. DTA operation may or may not be allowed as per SEZ Act/rules. I find that refund is allowed as per clause 3(e) of notification No. 12/2013 which specifically restrict exemption/refund only for service used for furtherance of authorised operations in the SEZ. In the said explanation of clause 3(e) of said refund notification 12/2003-ST, the words "for the purpose of this notification.....operation in SEZ." are used which means that refund is allowed only for authorized operation **in SEZ only**. DTA operation may be well within ambit of authorized operation as per SEZ Act/rule but services utilized in such DTA operation are not eligible for exemption/refund as per said refund notification 12/2003-ST. In view of above I conclude that refund of services used in DTA allowed in previous OIO is in contravention of said clause 3(e) and therefore appellant relying on previous OIO is of no use to them.

11. In view of above, I upheld the OIO and appeal filed by the appellants is rejected.

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

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

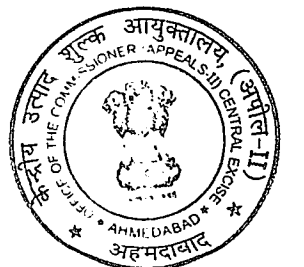
  
(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED

  
(R.R. PATEL)

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



To,

M/s. Piramal Enterprises Pvt. Ltd.,  
Plot No. 19, SEZ- PHARMEZ ,  
Sarkhej- Bavala Highway 8A,  
Village Matoda, Taluka- Sanand,  
Dist- Ahmedabad

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

