रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, आंबावाडी, अहमदाबाद– 380015.

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क फाइल संख्या : File No : **V2(ST)178-179 /A-II/2015-16** / 3095 to 99

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-SVTAX-000-APP-0147-148 -16-17**

दिनाँक Date : **21.11.2016** जारी करने की तारीख Date of Issue 24/11/16

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 _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original No SD-02/REF-198/DRM/2015-16 Dated 28.12.2015 & SD-02/REF-199/DRM/2015-16 Dated 28.12.2015 **Issued by Asstt. Commr., STC, Div-II,** Service Tax, Ahmedabad

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

M/s. Zaptech Solution, Prop. Mr Hemant Kumar 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 :-

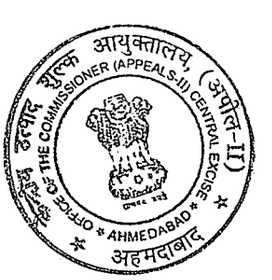
वित्तीय अधिनियम,1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:–
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी 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 विरूद्ध 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 वहां 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 वहां 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. 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 शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 रुपए 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 बशर्ते 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 होगे।

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 की 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. Zaptech Solution, 14, Sigma-I Corporate, B/h. Rajpath Club, Bodakdev, Ahmedabad *(hereinafter referred to as the 'appellants')* have filed the present appeals against the following Orders-in-Original *(hereinafter referred to as 'impugned orders')* passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad *(hereinafter referred to as 'adjudicating authority')*;

Sr. No.	OIO No.	OIO date	Amount of refund claim (₹)	Amount sanctioned (₹)	Reasons for rejection of the claims
1	SD/Ref-198/DRM/2015-16	28.12.2015	1,05,771	0	Non submission of BRC
2	SD/Ref-199/DRM/2015-16	28.12.2015	1,00,644	0	Non submission of BRC

2. The facts of the case, in brief, are that the appellants had filed refund claims amounting to ₹1,05,771/- and ₹1,00,644/- for the periods July 2014 to September 2014 and October 2014 to December 2014 respectively under Notification number 27/2012-CE(NT), dated 18.06.2012 in respect of Service Tax paid on input(s) services (specified services) used in output services/goods exported without payment of Service Tax.

3. During scrutiny of the claim, the adjudicating authority had found that the appellants had failed to submit BRCs in any of the export invoices as per the conditions laid down in paragraph 3(d) of the notification and accordingly rejected the refund claims of ₹1,05,771/- and ₹1,00,644/- vide the above mentioned impugned orders.

4. Being aggrieved with the impugned order the appellants have preferred the present appeals. The appellants have submitted that the adjudicating authority has rejected the claims on the ground of non-submission of BRCs along with the claims. However, the adjudicating authority has conveniently ignored the 'Foreign Inward Remittance Certificates' *(hereinafter referred to as 'FIRC')* submitted by the appellants. The adjudicating authority has also ignored the CA certificate regarding export proceeds and its realization in foreign currency. Thus, they claimed that the refunds submitted by them were wrongly rejected and same should be sanctioned to them and requested to set aside the impugned orders.

5. Personal hearing in the matter was granted and held on 19.10.2016. Shri Chintan Shah and Shri Sandip Gupta, both Chartered Accountants, appeared before me on behalf of the appellants and reiterated the contents of appeal memo and requested to allow the refund claim.

6. 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. I find that both the claims were rejected by the

adjudicating authority for non-submission of BRCs. The appellants argued that they had submitted FIRCs before the adjudicating authority pertaining to the export remittances in relation to the refund claims. However, I find no mention of submission of FIRCs in the impugned orders. The Notification number 27/2012-CE(NT), dated 18.06.2012 has mentioned that BRC should be produced as a proof of realization of export proceeds. However, in the judgment of *Apotex Research Pvt Ltd & Ors. (2014-TIOL-1836-CESTAT-BANG)*, it has been pronounced that the exporter has to establish that consideration in foreign currency has been received in respect of invoices raised by him. The CBEC has further clarified the issue vide Circular number 112/06/2009-ST dated 12.03.2009 in terms of refund of Service Tax paid on specified services used for export of goods. On the issue of FIRC, the Board has clarified that in such cases where FIRCs are issued on consolidated basis, the exporter should submit self-certified statement along with the FIRC showing the details of export in respect of which the FIRC pertains. Refunds should be allowed on such certified statements. However, exporters should maintain a register showing running account which should be reconciled between the export and the remittance periodically. It seems that the adjudicating authority has not verified the FIRCs submitted by the appellants. In view of the discussion held above, the cases need to be remanded back to the adjudicating authority for verification of the FIRCs. The adjudicating authority should also check the applicability of the said FIRCs in the refund claims. He must record the reasons very clearly as to why the FIRCs should/ not be considered in the process of sanction of the said claims. The appellants are also directed to provide all possible assistance to the adjudicating authority in relation to the above mentioned claims.

7. The appeals are disposed off in terms of the discussion held above.

8. अपीलकर्ता द्वारा दर्ज की गई अपीलो 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) 22/11/16
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,
M/s. Zaptech Solution,
14, Sigma-I Corporate,
B/h. Rajpath Club, Bodakdev,
Ahmedabad

Copy to:

1) The Chief Commissioner, Central Excise, Ahmedabad.
2) The Commissioner, Service Tax, Ahmedabad.
3) The Dy./Asstt. Commissioner, Service Tax, Division-II, Ahmedabad.
4) The Asstt. Commissioner(System), Service Tax Hq, Ahmedabad.
5) Guard File.
6) P. A. File.