

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)200/A-II/2015-16 | 3269-73

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-162-16-17

दिनांक Date : 29.11.2016 जारी करने की तारीख Date of Issue 05/12/16

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-236/DRM/2015-16 Dated 29.01.2016

Issued by Asstt. Commr., STC, Div-II, Service Tax, Ahmedabad

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

M/s. Contis Technologies 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 :-

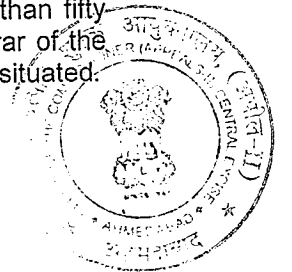
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

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 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. यथारांशोधित 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 (सीस्टैट) 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, 1994 की धारा 83 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 अर्ज़ों 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,

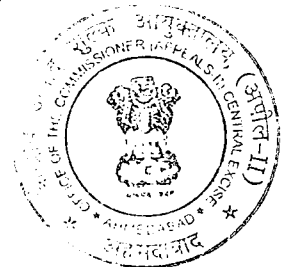
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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. This order arises out of the appeal filed by M/s Contis Technologies Pvt. Ltd., Sheraton Complex 301-302, Polytechnic Road, Ambawadi, Ahmedabad 380009 (hereinafter referred to as 'the appellant') against the Refund OIO No. SD-02/Ref-236/DRM/2015-16 dated 29.01.2016(hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Service Tax, Division II, Ahmedabad (hereinafter referred to as 'the sanctioning authority').

2. The relevant facts of the case are that the appellant had filed a refund claim of the accumulated credit of Service Tax of Rs. 61,198/- on 29.06.2015 for the period July 2014 to Sept 2014 with the Assistant Commissioner, Service Tax, Division-III, Ahmedabad. Claim filed under notification 27/2012-ST dated 18.06.2015 was transferred on 01.09.2015 to Assistant Commissioner, Service Tax, Division-II, Ahmedabad as appellant had wrongly filed to improper authority.

3. Claim of Rs. 54,348/- was rejected on brokerage service received vide invoice No. 117 dated 15.07.2014 of M/s City Estate management for locating and arranging on rental basis the premises House "H", 1st and 2nd floor, Mondeal Retail Park, Near Rajpath club, SG Highway, Ahmedabad. This new rental premises was later on incorporated as registered premises in ST-2 Certificate on 26.03.2015. Claim of Rs. 54,348/- was rejected vide impugned OIO as brokerage service received is not input service for providing out put service exported. Moreover credit is taken for service received in respect of service received for procuring premises on rent and said premises is unregistered premises i.e. premises not mentioned in ST-2 registration. For rejecting the claim the adjudicating Authority has relied upon CESTAT decision in the case of M/s Market Creators Ltd. Vs. CCE Vadodara - 2014(3)ECS (185)(Tri- Ahd)

4. Being aggrieved with the impugned order, the appellant filed an appeal wherein it is stated that-

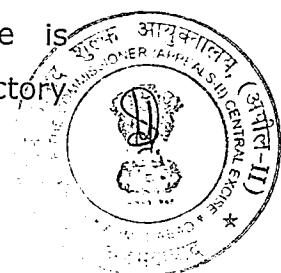
I. Brokerage service received satisfies the Rule 2(l) of Cenvat Credit Rule, 2004 as the brokerage paid was availed to set-up new office premises of the company which has subsequently utilized to export services out of India.

II. There is delay of 1 day in amendment in ST-2 certificate since change in the registered office on the record of Registrar of Companies (ROC)



as effective on 23.02.2015, the appellant amended ST-2 on 26.03.2015, with delay of merely one day. The appellant took about 6 months in changing the registered office address on records of ROC which was caused due to lack of document. Appellant shifted the operation to new premises subsequent to acquiring the same on lease, however due to lack of document amendment in ROC was delayed.

- III. New rental premises i.e. House "H", 1st and 2nd floor, Mondeal Retail Park, SG Highway, Ahmedabad was duly registered with the Service Tax Department on 26.03.2015. Brokerage has to be paid prior to execution of lease deed for the said address which is then followed by relocation to the new address. The appellant company's registered office has been changed on 23.02.2015, subsequently, the appellant company amended the registered address in the ST-2 certificate on 26.03.2015, which is well within 30 days from the date of such change in the address of the registered office.
5. Personal Hearing in the matter was held on 14.09.2016, wherein Mr. Khanjan Chhaya, CA appeared on behalf of the appellant and reiterated the contents of the appeal memorandum. Also submitted written submission, copies of ROC and ST-2 amendment certificate during the course of hearing. In written submission it is stated that-
- I. Brokerage service is squarely covered within the definition of input service.
 - II. Department has erred while relying on the decision of Market Creators as the ratio of said judgment could not be applied in instant case. In case of Market Creator, the appellant was having unregistered premises in form of input service distributor; however, the registration of such premises was not obtained as ISD. The Hon'ble CESTAT has held that no input service credit is available if the premises are not registered as ISD as it will render the provisions of registration as ISD otiose (ineffective or futile or useless).
 - III. The appellant relied upon decision of Hon'ble CESTAT, Bangalore in case of Arya Vaidhya Pharmacy (Coimbatore) Ltd Vs. CCE, Calicut-2013 (4) TMI 219 wherein it is held that CENVAT credit of construction service of factory premises is available even if the same is subsequently registered and registration number of the and old factory premises is one and same.



6. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and oral submissions made by the appellant at the time of personal hearing. I find that claim is rejected on ground that brokerage service received in acquiring new business premises is not input service for providing service in terms of rule 2(I) of CCR, 2004.

7. Post April 1, 2011, definition of the term 'Input service' given under Rule 2(I) of the Credit Rules was substituted vide Notification No. 3/2011-CE(NT) dated March 1, 2011, inter alia, deleting the phrase 'setting up' and "activities related to business" from the inclusive part of the definition. The definition of input service existing prior to April 1, 2011 as under:

"(I) "input service" means any service,-

.....and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises,"

Post facto April 1, 2011,"(I) "input service" means any service, -

.....and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises."

Hence, broadly, services relating to setting up of premises of provider of output service may not be eligible for Cenvat credit with effect from April 1, 2011. However, services relating to modernization/renovation/repairs of premises of provider of output service may continue to be eligible for Cenvat credit.

7. The scope has been narrowed in new definition w.e.f. 01.04.2011 by removing the expression "activities related to business" from the inclusive part of the definition. Credits on input services which were in the nature of business expenses are excluded. Credit of service used in the Business Activity but having absolutely no relationship with the out put service is not allowed. I find that brokerage service received by appellant in acquiring premises on rent is in nature of business activity and business expense therefore credit is not admissible.

8. Input credit of service tax can be taken only if the output is a 'service' liable to service tax or a 'goods' liable to excise duty. Since immovable property taken on lease is neither 'service' or 'goods' as referred to above,



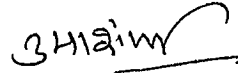
input credit of service tax paid on acquiring premises on rent cannot be taken.

Decision cited by appellant in case of Hon'ble CESTAT, Bangalore of Arya Vaidhya Pharmacy (Coimbatore) Ltd Vs. CCE, Calicut- [2013 (4) TMI 219-equivalent citation 2012 (28) S.T.R. 415 (Tri. - Bang.)] is for the credit availed during August 2007 to March 2008 hence said decision is not relevant for post 01.04.2011 period where definition of input service has changed. In said decision construction service utilized in setting up factory was allowed credit. Prior to 01.04.2011 construction service utilized in setting up factory was eligible for input credit. Moreover it is a case of credit of availment of credit of construction service, where as instant case is of service tax credit on brokerage service , therefore it is not squarely applicable to instant case.

9. I hold that service tax credit of Rs. Rs. 54,348/- of said brokerage service is not admissible and consequently the refund is not grantable.

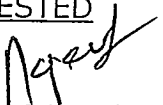
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED

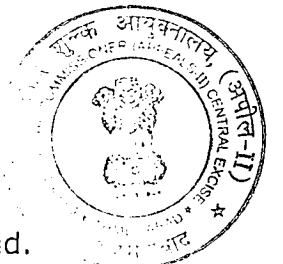

(R.R. PATEL)
SUPERINTENDENT(APPEALS-II),
CENTRAL EXCISE, AHMEDABAD.

By R.P.A.D.:

M/s Contis Technologies Pvt. Ltd.,
Sheraton Complex 301-302,
Polytechnic Road, Ambawadi,
Ahmedabad

Copy To:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad.
- 3) The Deputy Commissioner, Service Tax, Division-II, Ahmedabad.
- 5) The Assistant Commissioner (Systems), Service Tax(HQ), Ahmedabad.



- 6) The P.A. to Commissioner (Appeals-IV), Central Excise, Ahmedabad.
- 7) Guard File.

