

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)098/A-II/2016-17/ 3246-50
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-173-16-17
दिनांक Date : 30.11.2016 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-289/DRM/2015-16 Dated 21.03.2016

Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Contis Technologiespvt 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 :-

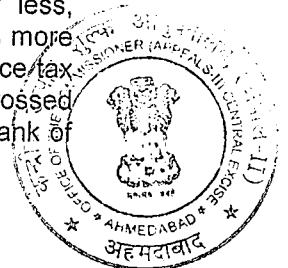
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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, 1994 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 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,

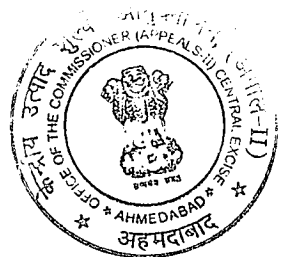
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



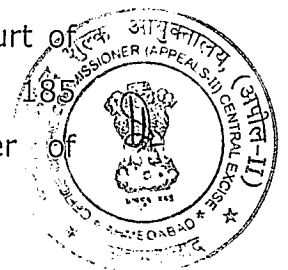
ORDER IN APPEAL

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-289/DRM/2015-16 dated 21.03.2016(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. 1,05,947/- on 08.12.2015 for the period Oct 2014 to Dec 2014 with the Assistant Commissioner, Service Tax, Division-II, Ahmedabad under notification 27/2012-ST dated 18.06.2015. Export proceeds was received in Bank A/c but BRC was not issued by Bank so appellant had submitted FIRC in claim papers. There was contravention of condition stated at para 3(d) of said notification as BRC was not submitted along with the claim and even during the PH. Claim was rejected vide impugned OIO holding claim time barred as per Section 11B (5) (e) as claim was filed after one year of receipt of export proceeds and for want of BRC (contravention of para 3(d) of Notification 27/2012 CE (NT). OIO was received on 25.04.2016 by the appellant and claim is filed on 20.06.2016.

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

I. They are exporting 100% service and have filed refund of accumulated input credit in terms of Notification 5/2006-CE (NT) dated 14.03.2006 issued under Rule 5 CCR, 2004. Time limit prescribed u/s 11B does not apply to credit accumulated due to export and claimed as refund under Rule 5. Section 11B is applicable for refund of duty paid. In support of their contention appellant has cited judgment in case of Swagat synthetics Ltd. Vs. CCE [2007 (220) ELT 949 (Tri. Ahd.)]. Said judgment is upheld by Hon'ble High Court of Gujarat 2008 (232) E.L.T. 413 (Guj.). They also relied upon judgment of Hon'ble High Court of Madras in case of CE Vs. GTN Engineering -[2012 (281) E.L.T. (Mad.)]and Judgment of Contor Appeals Vs. Commissioner Customs, Bangalore



II. Adjudicating authority has erred in law while rejecting the refund claim on non-submission of BRC. It is pertinent to note that FIRC, which certify inward remittance, and CA certificate, which is very basis for issuance of BRC by bank has been duly submitted to the department but still they failed to give credit to the same material or allow condemnation for submission of BRC.

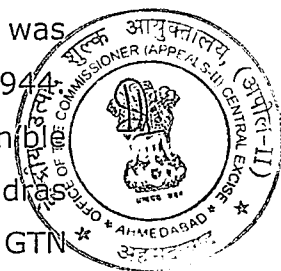
III. Refund for the period 01/01/2014 to 31/12/2014 was filed on 08/12/2015, thereby delay of 3 months from the expiry period as defined under section 11B of CEA, 1944.

4. 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 during the course of hearing wherein it is stated that-

"The appellant applied for issuance of BRC on 10/08/2015 followed by reminder notice on 08/10/2015, follow up calls and e-mail communication. Eventually, The Bank issued BRC on 18/04/2016, about 8 months from the application which prevented the applicant from furnishing BRC to original authority while applying for refund claim in pursuance of Notification NO. 05/2006- CE (NT) dated 14/03/2016. However the appellant furnished certificate from chartered accountant and the statutory auditors of the appellant certifying the realization of export proceeds instead as the situation was beyond control of applicant."

5. 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 (a) limitation ground and on (b) non- submission of BRC ground.

6. First I take up the limitation ground. Appellant has relied upon various judgments to prove his point that Section 11B of CEA, 1944 is not applicable for refund of accumulated credit under notification 27/2012-CE (NT). I find that judgment in case of Swagat synthetics Ltd. Vs. CCE Surat [2007 (220) ELT 949 (Tri. Ahd.)] is delivered for the deemed credit accumulated due to export is refundable in terms of Notification No. 29/96-C.E. Said judgment is upheld by Hon'ble High Court of Gujarat 2008 (232) E.L.T. 413 (Guj.). It was a case relating to Sub-Rule (13) of Rule 57F of Central Excise Rules, 1944. Said judgment case of Swagat synthetics Ltd. though upheld by Hon'ble High Court of Gujarat has been reversed by Hon'ble High Court of Madras vide decision reported at 2012 (281) E.L.T. 185 (Mad.) in case of GTN



Engineering Ltd. delivered in case of refund of accumulated credit in terms of Notification 5/2006- CE (NT).

7. In the case of GTN Engineering Ltd. (supra), the Tribunal [2010 (259) ELT 625 (Trib. – Chennai)] had decided that the time-limit prescribed under Section 11B will not apply for granting refund under Rule 5 of Cenvat Credit Rules, 2004. Revenue had appealed against the said decision before the Hon'ble High Court of Madras and the Hon'ble High Court of Madras vide decision reported at 2012 (281) E.L.T. 185 (Mad.) set aside the order of the Tribunal and held that the time-limit as provided in Section 11B will apply.

8. I find that Judgment of Contor Appeals Vs. Commissioner of Customs, Bangalore are regarding refund accumulated CENVAT credit at the time of de-bonding for 100% EOU. I find that said judgments are not squarely applicable to present refund case as refund is filed under Notification 27/2012- CE (NT).

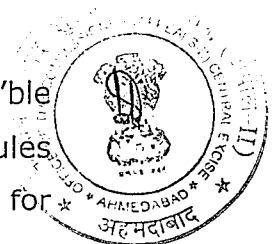
9. Appellant in appeal memo has stated that refund is filed under Notification No. 5/2006-CE (N.T.) dated 14 March 2006. Notification No. 5/2006-CE (N.T.) is superseded by new Notification No. 27/2012 CE-(NT) from 18.06.2012 hence present claim is governed under Notification No. 27/2012 CE-(NT).

10. Para 3(b) of Notification 27/2012 CE (NT) itself states that time-limit as provided in Section 11B will apply for claiming refund and documents specified has to be submitted. Said para 3(b) is as below-

"The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944)."

11. In view of my above findings I conclude that Section 11B of CEA , 1944 is applicable for granting under refund of accumulated credit under notification 27/2012- CE (NT). I find that appellant has not filed claim within one year of realization of export proceeds and Appellant has also confessed in appeal memo itself that that there is delay of 3 months in filing refund claim.

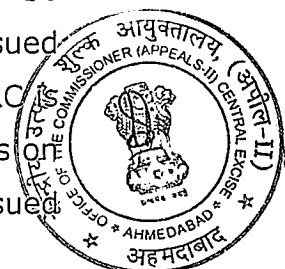
12. In Bechtel India Pvt. Ltd. V. Commissioner of Service Tax , the Hon'ble Delhi CESTAT while applying the provision of erstwhile export of service rules had held that export of services is completed only when all conditions for



export of service in terms of the Export Rules are fulfilled. Accordingly, relevant date for the calculation of limitation period in case of export of service was held to be the date of receipt of payment in foreign convertible exchange. Similar view was held by the Hon'ble Mumbai CESTAT in case of CCEversus Eaton Industries P. Ltd. [2010 (12) TMI 71 - CESTAT, MUMBAI] and Clearpoint Learning Systems (I) P. Ltd. versus CCE [2015 (6) TMI 749 - CESTAT MUMBAI].

13. Time limit given in statute is requires to be followed strictly to avail the benefits. Once a period of limitation was prescribed in the refund notification for submitting the refund application that would necessarily govern. My view is supported by judgment of The Apex Court in the case of [ACC Vs. Anam Electrical Mfg. Co. [1997] 90 E.L.T. 260 (SC)] wherein it has been clarified that any appellate court, civil court, high court cannot extend the period of limitation and such a direction will be illegal. Likewise in the case of [Brite Neon Signs V. Commissioner of Central Excise, New Delhi [2002] 149 E.L.T. 330 (Tribunal Delhi)] It has been observed that Tribunal has no discretion under Section 11B to condone the delay involved in the filing of the refund claim. I am in complete agreement with adjudicating authority rejecting the claim on limitation ground. I hold that refund is not grantable on limitation ground.

14. Now I take up the second ground i.e. non-submission of BRC. Point to be decided is whether or not refund is grantable on FIRC instead of BRC. In the new era of Service Tax effective from 1st July, 2012, a new Rule 6A is incorporated in Service Tax Rules, 1994 (Noti. 36/2012-ST) for governing the provisions of export of services. It is evident from the provisions of Rule 6A of Service Tax Rules that service can be considered as export of service when the amount is received in foreign convertible currency. FIRC is issued against any receipt of amount from foreign countries by a bank to their customers. It can be an advance payment against export proceeds, ocean or air freight, or remuneration or wages under consultancy charges or for any other reasons. FIRC can be obtained whenever you receive an advance amount against exports or services therefore it is not proper document to claim refund under notification 27/2012- CE (NT). There is requirement under para 3(d) of Notification 27/2012- CE (NT) that BRC is to be submitted along with claim. BRC means Bank Realization Certificate issued by bank to their customers against any specific documents. Normally BRC issued by a bank to their customers who have been in to export business each shipment of export proceeds. Bank Realization Certificate BRC is issued

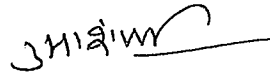


by the respective bank who received foreign amount for exporters. After receiving the amount under each shipment, the exporter approaches their bank and submits the proof of exports and FIRC details (Foreign Inward Remittance Certificate) to obtain a BRC under each shipment.

15. In view of above discussion I conclude that without submitting BRC it can not be proved that remittance is of export of service. Appellant has produced the zerox copies of BRC downloaded from DGFT web-cite. BRC is issued by the respective bank who received foreign amount for exporters. In absence of valid BRC issued by bank I am unable to extend the benefit of refund. I hold that refund is not grantable for non-submission of valid BRC. Appeal is rejected on limitation ground and on ground of non-submission of BRC.

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

16. 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.



