

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)189/A-II/2015-16/4539-44

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-179-16-17

दिनांक Date : 30.11.2016 जारी करने की तारीख Date of Issue 23/01/17

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-04/46/AK/2015-16 Dated 15.032016

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 हास्पिटल कम्पाउण्ड, मेघाणी 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 रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 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



(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 भेजी 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 25) 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, 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 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 अंर्जा 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,

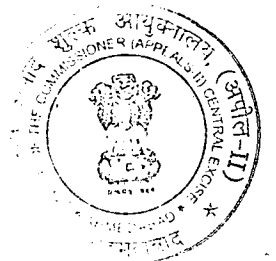
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



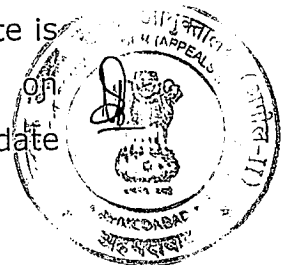
ORDER IN APPEAL

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-46/AK/2015-16 dated 15.03.2016 (*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. 9,44,506/- dated 13.08.2015 on 17.08.2015. Appellant had entered in agreement for providing services to M/s Arti Drugs Ltd of Scientific and Technical consultancy. Invoices No. 3319000638/- and No. 3319000639/- both dated 14.02.2014 were issued and service tax Rs. 12,68,108/- there of was paid to Government. Later on contract being cancelled appellant issued credit note dated 31.10.2014 to M/s Arti Drugs Ltd. and service tax amount was taken re-credit (adjusted) as per rule 6(3) of CCR, 2004. Some re-credit was adjusted in subsequent period liability. Meanwhile as per Hon'ble High'court, Mumbai order dated 28.11.2014 appellant Company merged with other company. Transferee Company was not having domestic clearance so said credit of Rs. 9, 44,506/- was not utilized. Therefore refund claim was filed for the same.

3. Vide impugned OIO refund has been rejected on following grounds.

- I. Appellant has already provided the service to M/s Art Drugs. Service provided was not approved therefore contract was terminated. Invoices was not re-negotiated but were cancelled. There is no provision available in the rule 6(3) of STR for taking credit on account of rejection or termination of service already provided. When re-credit of tax paid is not available under rule 6(3) of CCR, 2004, the question of allowing refund for the same does not arise.
- II. Rule 6(3) of CCR, 2004 is for adjustment of service tax already paid and service not provided. Said rule does not provide for refund of service tax in cash in such cases.
- III. Date of payment of service tax vides challan No. 013335 is 04.03.2014 and refund is filled on 17.08.2015. Refund falls under clause (f) to the explanation (B) of section 11B of CEA, 1944 therefore relevant date is date of payment of duty. Refund was required to be filed on 03.03.2015. Refund is filled beyond one year from relevant date therefore the claim was rejected.

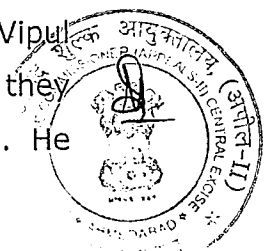


- IV. Re-credit of Rs. 11,96,942/- is taken on account of M/s Arti Drug and utilization there of is Rs. 3,23,602/- , therefore refund amount can be worked out as Rs. 8,73,340/- instead of Rs. 9,44,506/-. Difference amount of Rs. 71,166/- is not grantable.
- V. Appellant has provided the consolidated challan No. 1335 dated 04.03.2014 for service tax payment amount of Rs. 13,60,884/- but has not provided the details showing that the service tax involved in invoices under refund, are the part of the said challan. It can not be established that service tax under referred invoices has been paid. Therefore refund is not allowed.

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. Service tax of cancelled bill is Rs. 12,68,108/- and service tax utilized for subsequent tax payable and shown in ST-3 return is Rs. 3,23,602/-, therefore balance unutilized claim of refund is Rs. 9,44,506/-. We have not shown Rs. 9,44,506/- refundable in ST-3 return as an advance. It is procedural mistake. Excess tax paid needs to be refunded.
- II. Appellant has got transferred the business, so as per rule 6(3) of CCR, 2004 appellant has rightly avail excess payment of service tax credit as per CCR-2004. Appellant has rightly set off excess paid by the transferor company against the liabilities of transferor for the service tax and no short payment of service tax as allegation in the SCN. (taken from para 3.1.2 of appeal memo)
- III. Appellant has deposited excess tax in PLA, which has been sought for refund. Limitation of time is not applicable on such refund claim.
- IV. Excess amount of service tax can not be transferred to transferee company moreover said excess paid can not be adjusted against the service tax liability as the appellant company is merged with another company. Therefore refund is claimed.

4. Personal hearing in the case was granted on 14.09.2016 and Shri Vipul Khandhar, CA, on behalf of appellant appeared before me. Shri Vipul Khandhar reiterated the grounds of appeal and also stated that what they paid was deposit and not duty therefore limitation is not applicable. He submitted contract, invoices and supporting case laws.



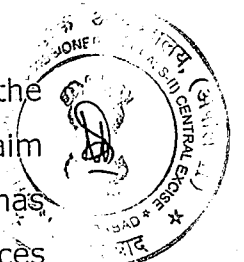
## DISCUSSION AND FINDINGS

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. One of main ground of rejection of claim is that When re-credit of tax paid is not available under rule 6(3) of CCR, 2004, the question of allowing refund for the same does not arise. It is concluded by adjudication authority that Invoices was not re-negotiated but were cancelled and there is no provision available in the rule 6(3) of STR for taking re-credit on account of rejection or termination of service already provided. Issue of credit note to M/s Arti Drugs is sufficient evidence to prove that invoice was re-negotiated or cancelled. From agreement it is inferred that job allotted was to develop drug and to carry out various test on it. Some how drug was not developed up to expectation was the agreement was terminated. I find that appellant has produced the technical project report and contract agreement made between appellant and Dr. Reddys Laboratories Ltd.(project work order no-2 dated 17.12.2014). Appellant has not produced contract agreement made between appellant and M/s Arti Drugs. No evidence produced to substantiate that contract has been terminated i.e. contract termination deed, letter etc. and to substantiate that service has not been rendered. Case needs be remanded back to adjudicating authority for verification

7. Regarding limitation issue I find that under clause (f) to the explanation (B) of section 11B of CEA, 1944, the relevant date is the date of payment of duty. I find that claim was required to be filled on 03.03.2015 but has been filed on 17.08.2015 i.e delay of nearly 5 months. I find that claim has been filled after one year of payment of tax. Time limit prescribed in statue has to be adhered to for claiming refund under section 11B and time limit is to calculated considering the Honrable high court amalgamation judgment.

8. Moreover refund is to be granted subject to satisfaction of the Jurisdictional Asst. Commissioner by way of production of supporting claim documents and work sheet to substantiate payment of tax. Appellant has not provided the details showing that the service tax involved in invoices under refund, are the part of the challan No. 013335 is 04.03.2014 vide which tax is paid. Adjudicating authority has rejected claim on ground that it can not be established that service tax under referred invoices has been



paid. I find that in appeal memo also appellant has not produced any evidence of payment of service tax for said Invoices No. 3319000638/- and No. 3319000639/- both dated 14.02.2014 issued to M/s Arti Drugs. Moreover how refund amount is arrived at is worked out in appeal memo but I am not able understand how it is arrived at. For this reason also case needs to be remanded back to original adjudicating authority for verification of duty payment and working out refund amount. Appellant shall furnish all the documents and calculation as demanded by adjudicating authority.

9. In view of above, I allow the appeal filed by the appel by way of remand back to original authority who shall afresh order after allotting reasonable opportunity to appellant to represent their case.

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 (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, ST, HQ, 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.



