

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

क फाइल संख्या : File No : V2(ST)04/A-II/2016-17/4551-56
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-180-16-17
दिनांक Date : 20.12.2016 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)

C. file

ग _____ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं _____

दिनांक : _____ से सृजित

Arising out of Order-in-Original No AHM-SVTax-000-JC-032-15-16 Dated 04.03.2016

Issued by Joint Commissioner STC, Service Tax, Ahmedabad

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

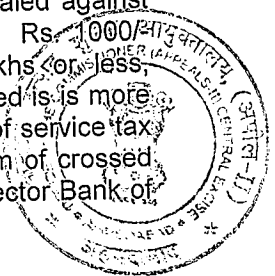
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल 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 is less than 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.



(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 39फ 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, 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 अर्जों 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,

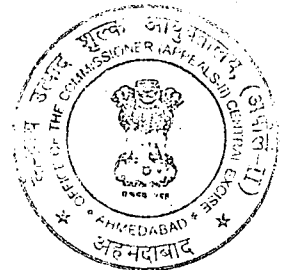
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

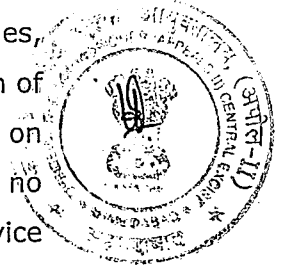


ORDER

M/s. Intas Pharmaceutical Ltd., 423/P/A-GIDC, Sarkhej-Bavla Highway, Moraiya, Dst-Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original No. AHM-SVTAX-000-IC-032-2015-16 dated 04.03.2016 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Service Tax, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case are that during the course of audit at the premises of the appellants, certain discrepancies were noticed and accordingly a show cause notice dated 25.09.2014 was issued to them. The adjudicating authority, vide the impugned order, dropped all the allegations except one issue pertaining to wrong availment of CENVAT credit, amounting to ₹3,25,071/-, on rent paid for unregistered premises by the appellants. The adjudicating authority confirmed the demand of ₹3,25,071/- towards wrong availment of CENVAT credit under Rule 14 of CENVAT Credit Rules, 2004 read with Section 73 of the Finance Act, 1994. He also ordered to recover interest under Section 75 of the Finance Act, 1994 and imposed penalty under Rule 15(3) CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that the impugned order is a non speaking one and needs to be set aside as it has failed to show as to how the credit on input service was deniable to them under the provisions of Cenvat Credit Rules, 2004. The adjudicating authority has not shown which provision has been violated by the appellants while availing the CENVAT credit on input service under Cenvat Credit Rules, 2004. The appellants submitted that the allegation made by the department is vague and beyond comprehension. The department has not challenged the availment of input service credit under the scope of definition of input service under Rule 2(1) of the Cenvat Credit Rules, 2004. The department has not pointed out the violation of any provision of Cenvat Credit Rules, 2004 for CENVAT credit availed by the appellants on Service Tax paid on rent amount. They further argued that there is no provision to prohibit them from availing the input service credit on Service Tax paid on rent for the office premises which is not registered and mentioned in ST-1 form. The rent provided to the service provider was for



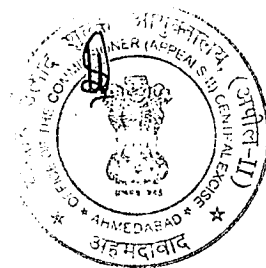
the functioning of office for marketing and administrative work which is in relation to provision of output service.

4. Personal hearing in the matter was granted and held on 04.11.2016. Smt. Madhu Jain, Advocate, appeared on behalf of the appellants for hearing and reiterated the contents of appeal memorandum. She further submitted additional citation of Toll (I) Logistics Pvt. Ltd. [(41) S.T.R. 80 (Tri.- Mumbai)].

5. I have carefully gone through the impugned order, appeal memorandum and written as well as oral submission made at the time of personal hearing.

6. The issue relates to the disallowance of the cenvat credit amounting to ₹3,25,071/-. The adjudicating authority has denied the cenvat credit availed by the appellants, on the basis of documents pertaining to the rent paid for an office premises which was not registered under Service Tax. The appellants have defended that stating that input service credit on rent paid for the office is admissible under the provisions of Cenvat Credit Rules, 2004. The adjudicating authority, vide the impugned order, stated that the appellants cannot avail the benefit of the CENVAT credit as the premises was not a declared one. However, I find that non-inclusion of the said premises in the registration certificate amounts to a minor technical hitch at the part of the appellants and they should not be penalized for this. In support of my view, I would like to quote the judgment of Hon'ble CESTAT, South Zonal Bench, Chennai in the case of M/s. Shukra Beedies (P) Ltd. vs CCE, Tirunelveli where the CESTAT has stated that just because their head office is not registered as Input Service Distributor (ISD), denial of credit is not justified.

*"6. So far as claim of CENVAT credit prior to 1.4.2008 is concerned, law has permitted grant of CENVAT credit in respect of service tax paid to avail GTA services. There shall be no dispute on this count. However, whether status of ISD registration is sine qua non is the question. **When the credit claimed on the services availed was not disputed nor even service tax paid is in dispute, so also the genuinity of the parties is not disbelieved, denial of CENVAT credit of the service tax suffered by the head office of the appellant shall be detrimental to the interest of justice.***



There is also no finding that service tax paid by the head office was not connected to the business of the appellant or was irrelevant.

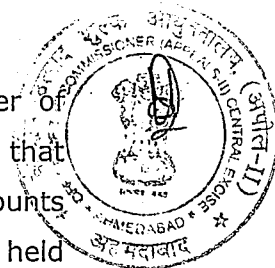
7. Registration is a regulatory measure to bring the assessee to the fold of the law. Even if unregistered, the liability under law remains unchanged. Therefore, denial of the distribution of CENVAT credit during unregistered period shall be anomaly to law when tax liability incurred is ordered to be paid. Accordingly, in so far as distribution of service tax credit prior to 1.4.2008 is concerned, the appellant is entitled to the CENVAT credit thereof."

The Hon'ble High Court of Karnataka in the case of M/s. mPortal India Wireless Solutions P. Ltd. Vs. C.S.T., Bangalore [2012 (27) S.T.R. 134 (Kar.)], has held that the Credit Rules does not mandate registration with Department for availing Cenvat credit and denial of benefit on the ground non-existent in law is unjustified.

In the case of Manipal Advertising Services Pvt. Ltd. Vs. C.C.E., Mangalore [2010 (19) S.T.R. 506 (Tri. - Bang.)], the Hon'ble CESTAT, Bangalore held that if a person is discharging Service tax liability from his registered premises, the benefit of Cenvat credit on the Service tax paid by the service providers cannot be denied to the assessee only on the ground that the said invoices are in the name of branch offices.

In the case of M/s. Allspheres Entertainment Pvt. Ltd. Vs. CCE, Meerut, Hon'ble CESTAT, Delhi held that in the absence of any such dispute regarding availment of Impugned Services and their utilization for payment of Service tax or proper accounting of the same, the denial of Cenvat Credit of Service tax paid on Impugned Services by Nainital office of the Appellant on the sole ground that the invoices issued are in the name of the Appellant's unregistered Delhi office is unjustified since the head office which is registered with the Department has discharged the Service tax liability of Delhi office.

In the case of M/s. Mahindra and Mahindra Ltd. Vs. Commissioner of Central Excise, Mumbai the Hon'ble CESTAT, Mumbai after observing that the branch offices have no separate accounting system and their accounts form part of the Head Office accounts, which is registered as an ISD, held that the Appellant had rightly availed Cenvat credit in respect of the



services received at the branch office/regional office and consequently, their distribution in the manufacturing unit is also proper.

In light of the above judgments, I disagree with the views of the adjudicating authority and view that the denial of credit is not justified.

7. As per the above discussion, I reject the impugned order and allow the appeal filed by the appellants. Thus the appeal filed by the appellants is disposed off in above terms.

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

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

S. DUTTA
(S. DUTTA) 22/2/16

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD

To,

M/s. Intas Pharmaceutical Ltd.,
423/P/A-GIDC, Sarkhej-Bavla Highway,
Moraiya- 382210

Copy to:

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

