

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)0152/A-II/2016-17 164/2016  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-187-16-17  
दिनांक Date : 22.12.2016 जारी करने की तारीख Date of Issue 13/1/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

G. H. K.

ग \_\_\_\_\_ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं  
\_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No SD-02/Ref-89/DRM/2016-17 Dated 30.06.2016

Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. Origzo 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, मेघानी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTÁT) 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.



(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 (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 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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 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 बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जा एवं अपील को लागू नहीं होगा।

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

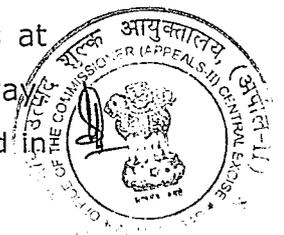
M/s. Origzo Technologies Pvt. Ltd., 408-409, Zodiac Square, Opp. Gurudwara, S.G.Road, Ahmedabad- 54 (*hereinafter referred to as 'Appellant'*); has filed the present appeals on 22.09.2016 against the Order-in-Original number SD-02/REF-89/DRM/2016-17 dated 30.06.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax, Div-II, APM Mall, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*)

2. Appellant has filed a refund claim under rule 5 of CCR, 2004 for refund of unutilized and accumulated CENVAT credit of Rs. 1,28,368/- for quarter April 15 to June 15 on 11.04.2016. Whole claim was rejected by the adjudicating authority vide impugned OIO on ground that-

- I. In respect of four invoices, the payment of export proceeds of Rs. 10,46,576 [out export turnover of Rs. 32,62,855/- shown in claim] has been received on or before 10.04.2015. Claim in respect of said four invoices has been filed much after period of one year from the date of receipt of export proceeds, therefore proportional claim of Rs. 41,174/- is hit by limitation of time as per provisions of Notification 27/2012-CE (NT) amended by Notification 14/2016 - CE(NT) dated 01.03.2016.
- II. Registration is at single premises i.e Devshrushti, Bodakdev, Ahmedabad. Input service was taken at premises other than registered premises, moreover invoices are issued in the name of said unregistered premises i.e. 408-409, Zodiac Square, Opp. Gurudwara, S.G.Road, Ahmedabad- 54. Hon'ble CESTAT, Ahmedabad in their decision 2014(3) ECS (185) (Tri. Ahd) in case of M/s Market Creators V/s CCE & ST, Vadodara has held that appellant was not eligible for Cenvat credit of Service Tax Paid on input services used at unregistered premises.
- III. Appellant has not debited the amount of claim from their cenvat A/c before filing the claim required as per para 2H of said notification.

3. Being aggrieved with the impugned OIO appellant has filed the present appeal on 30.09.2016 wherein it is contended that-

- I. Appellant has changed the premises from "Devshrushti 1A, 302, Simandhar Tower Road, Bodakdev, Ahmedabad" to new premises at 408-409, 4<sup>th</sup> floor, Zodiac Square, Opposite Gurudwara, SG Highway, Ahmedabad, however same was erroneously pending to be updated in



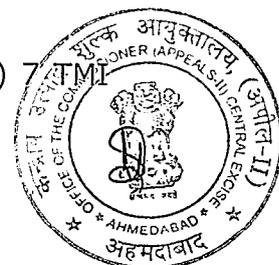
Service Tax department registration. This is a technical lapse hence refund can not be denied.

4. Personal hearing in the case was granted on 10.12.2016. Mr. Keyur Bavishi, CA, on behalf of Appellant appeared before me and reiterated the ground of appeal. He submitted Copy of Hon'ble Gujarat High Court order in case of Dahison Ltd. [(2016) 66 taxman.com 31 (Gujarat)] and copy of ledger A/c CENVAT RECEIVABLE for period 01.04.2015 to 12.10.2016 wherein Rs. 1,28,369/- is shown toward debit side vide entry dated 29.10.2015.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the revenue and oral/written submissions made by the Appellant at the time of personal hearing.

6. Claim in respect of four invoices has been filed much after period of one year from the date of receipt of export proceeds, therefore proportional claim of Rs. 41,174/- is denied in impugned OIO as it is hit by limitation of time. In this regards I find that there is no relevant date mentioned for refund claim of the unutilized Cenvat credit in Rule 5 of the Credit Rules prior amendment in Notification 27/2012-CE (NT) by Notification 14/2016 – CE(NT) dated 01.03.2016 w.e.f 01.04.2016. Prior to 01.04.2016 no 'relevant date' was defined or prescribed in 11B for refund claim of the unutilized credit for export of services. However from various CESTATE ruling it is now settled that date of receipt of foreign exchange should be the relevant date i.e. date from which one year period is to be calculated for refund period. Following CESTAT judgment cited by revenue are of Notification 5/2006- CE (NT).

- (i) CCE, Pune-I v/s. Eaton Industries (P) Ltd.(2011) 30 STT 420.
- (ii) Apotex Research Pvt. Ltd. v/s CC, Banglore-Cus, 2015(3) TMI 346-CESTAT-Banglore.
- (iii) Hyundai Motor India Engineering Pvt. Ltd. v/s Commissioner of Central Excise, Customs and Service Tax Hyderabad-I 2014(&) TMI 329-CESTAT-Banglore.
- (iv) M/s. Bechtel India Pvt. Ltd., Pune-I v/s CCE Delhi(2013) 7 TMI 437(Tri-Del)



7. Para 2(a) of Notification 27/2012-CE (NT) mandates to file only one claim for quarter, therefore for export turnover of services of a relevant quarter the refund can not be filed in between of relevant quarter. Exporter can file claim earliest only at the end of quarter. Moreover appellant is not allowed to file refund before quarter is completed as per para 2(a) of notification, and in that case, the relevant date for computing 1 year for the purpose of Section 11B shall be from end of quarter. Therefore I hold that end of quarter is relevant date (i.e date from which one year period is reckoned) to file the claim. My view is supported by CESTAT judgment delivered with respect to Notification 27/2012-CE (NT) in the case of CCE V/s Navistar International Pvt. Ltd.-(2016)-TIOL-1055-CESTAT-MUM where in it is held that an exporter can file refund claim within one year from the last date of relevant quarter. Relevant date of the all four invoice is not actual receipt of export proceeds but the end of quarter i.e 01.07.2015. I find that refund Rs. 41,174/- is admissible in respect all the four invoices as claim is filed within one year from the end of quarter.

7.1 Notification 27/2012-CE (NT) has been amended by Notification 14/2016 – CE(NT) dated 01.03.2016 w.e.f 01.04.2016. Vide said prospective amendment relevant date, for 11B purposes, for export of service is fixed as date of receipt of export proceeds. Present case is for period prior to 01.04.2016, therefore said amendment is not applicable to instance case. Appellant has not filed any ground of appeal for this issue; therefore I conclude that appellant has accepted the OIO for this refusal of claim and consequently they are not eligible for refund on this issue.

8. Regarding denial of whole refund on ground that invoices are issued on unregistered premises at 408-409, Zodiac Square, Opp. Gurudwara, S.G.Road, Ahmedabad- 54, it is contended that it is procedural lapse and refund is to be allowed on such invoices. In support of their contention appellant has cited the judgment of Hon'ble Gujarat High Court order in case of Dahison Ltd. (supra) wherein it is held that requirement of registration was procedural and curable. I find that Ratio of this judgment is applicable to instance case also. Input services in respect of which CENVAT credit is rejected on ground that the address mentioned on voices is not covered



under registration certificate. There is no requirement in rule that registration to be taken for availing credit. As per rule 4(7) CCR credit is allowed on invoices received. Said service is utilized for export therefore credit is admissible. In case of JP Morgan Input services in respect of which CENVAT credit is rejected on ground that the address mentioned on voices is not covered under registration certificate. There is no requirement in rule that registration to be taken for availing credit. As per rule 4(7) CCR credit is allowed on invoices received. Said service is utilized for export therefore credit is admissible. Appellant being 100 % exporter of service and not rendering service in domestic market, is not required to take registration as only person liable to pay service tax is required to take registration as per section 67 and 68 of FA 1994. In case of JP Morgan Private Ltd. it is held that no restriction exists in availing credit before grant of registration. My view is supported by ratio of judgment in case of Imagination Technologies India Pvt. Ltd [2011-TIOL-719-CESTAT-MUM)] wherein it is held that nowhere it is mentioned in the law that the credit is not available prior to registration.

9. Only objection is that said premises is not registered and appellant has not debited as required under para 2H of said notification, the refund amount from CENVAT A/c maintained. I find the appellant has produced CENVAT ledger from which it is evident that said amount is debited. Adjudicating authority has never disputed the receipt and usages of services in export of goods, therefore substantial benefit can not be denied. My view is supported by following judgments-

- I. Wipro Limited Vs. Union of India [2013] 32 Taxmann.com 113 (Delhi High Court)
- II. Kothari Infotech Ltd V/S Commissioner of Central Excise, Surat - [2013] 38 taxmann.com 298 (Ahmadabad - CESTAT)
- III. Mannubhai & Co. Vs. Commissioner of Service Tax (2011)(21)STR(65)- CESTAT (Ahmadabad)
- IV. M/S Mangalore Fertilizers & Chemicals Vs Deputy Commissioner 1991 (55) ELT 437

10. In denying the refund adjudicating authority has relied upon CESTAT decision in case of M/s Market Creators (supra). Said CESTAT decision is not said applicable the instance case due to following difference.

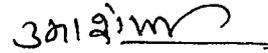


	M/s Market Creators	Present case
What is the issue	Service provider cannot take credit of the document issued <b>BY</b> a premises not registered as an Input Service Distributor under the service tax provisions	Service provider cannot take credit of the document issued <b>ON</b> a premises not registered as out put service provider.
Whether unregistered premises is used for providing out put service	NO	YES
Whether unregistered premises is acting as ISD	YES	NO

11. In view of above, I appeal filed by the Appellant is allowed.

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

12. The appeals filed by the appellant stands disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED

  
(R.R. PATEL)

SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.



0/C

To,

M/s. Origzo Technologies Pvt. Ltd.,  
408-409, Zodiac Square,  
Opp. Gurudwara,  
S.G.Road,  
Ahmedabad- 54

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, service tax, Ahmedabad
- 3) The Additional Commissioner, Service Tax, Ahmedabad
- 4) The Dy./Asst. Commissioner, Service tax, Div-II, APM Mall, Ahmedabad.
- 5) The Asst. Commissioner(System), Service tax. Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.

