

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065

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) 1/RA/A-II/2016-17

ख अपील आदेश संख्या Order-In-Appeal No. AHM-SVTAX-000-APP-0188-16-17

दिनांक Date : 23.12.2016 जारी करने की तारीख Date of Issue

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-213/DRM/2015-16 Date : 31.12.2015

Issued by Asst Commr Div-II STC Abad, Service Tax, Ahmedabad

घ प्रतिवादी का नाम / Name & Address of the Respondent

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 :-

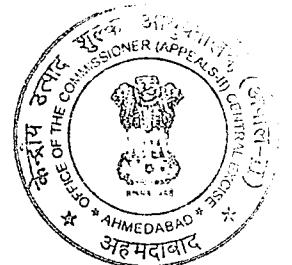
सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

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,
मेधाणी नगर, अहमदाबाद-380016
The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal
(CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound, 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। स्टे के लिए आवेदन- पत्र के साथ
रूपए 500/- 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. Application made
for grant of stay shall be accompanied by a fee of Rs.500/-.



(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 A219r 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 39 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 अर्ज़ी 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,

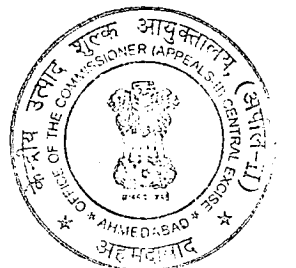
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

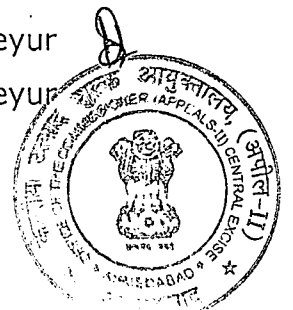
Revenue department has filed the present appeals on 05.04.2016 against the Order-in-Original number SD-02/REF-213/DRM/2015-16 dated 31.12.2015 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax, Div-II, APM Mall, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*) in respect of M/s. Origzo Technologies Pvt. Ltd., 408-409, Zodiac Square, Opp. Gurudwara, S.G.Road, Ahmedabad-54 (*hereinafter referred to as 'respondents'*);

2. Respondent has filed a refund claim under rule 5 of CCR, 2004 for refund of unutilized and accumulated CENVAT credit of Rs. 87,286/- for quarter Oct. 2014 – December 2014 vide letter dated 27.10.2015. Rs. 372/- was rejected as invoices not showing Service Tax amount and Refund of Rs. 87,454/- was sanctioned by the adjudicating authority vide impugned OIO.

3. Being aggrieved with the Refund of Rs. 12421/- out of Rs. 87,454/- vide impugned order, the revenue preferred an appeal for 12,421/- before the Commissioner (Appeals-II) wherein it is argued to reject proportional refund of Rs. 12,421/- as not filed in time limit prescribed in section 11B of CEA, 1944. Refund in respect of following invoices is not allowable as hit by limitation of time prescribed in section 11B, therefore proportional amount of refund is not allowable.

Sr. No.	Invoice No.& date	Amount received in USD	Date of payment realized
1	OZ 1039, 16.09.14	1564	07.10.14
2	OZ 1040, 03.10.14	1245.18	17.10.14
3	OZ 1042, 01.10.14	4942.50	07.10.14
4	OZ 1042A, 11.10.14	892.50	14.10.14
	TOTAL	8645	

4. Personal hearing in the case was granted on 10.12.2016. Mr. Keyur Bavishi, CA, on behalf of respondent appeared before me. Mr. Keyur Bavishi, CA stated that demand of Rs. 12421/- has been paid.



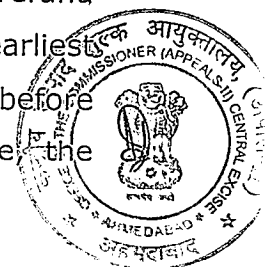
5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the revenue and oral/written submissions made by the respondents at the time of personal hearing. It is informed in hearing that respondent have paid the demand of Rs. 12421/-.

6. There is no relevant date mentioned for refund claim of the unutilized Cenvat credit in Rule 5 of the Credit Rules. There is no 'relevant date' 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)

6. Government has issued a fresh Notification No. 27/2012 – CE (N.T.) dated 18 June 2012 (the Notification) which has superseded earlier Notification in this regard i.e. Notification No. 5/2006 – CE (N.T.) dated 14 March 2006. All various tribunal judgments, as stated in above, on which revenue is relying does not pertains to 27/2012 – CE (N.T.) dated 14 March 2006. Therefore said judgments are not applicable to present claim filed under Notification No. 27/2012 – CE (N.T.).

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. Revenue relying on judgment delivered by Commissioner (Appeal-II) Ahmadabad with respect to Notification 27/2012-CE (NT) in case of M/s Madhuvan Infotech Pvt. Ltd is of no use when identical issue CESTAT has delivered the verdict in case of CCE V/s Navistar International Pvt. Ltd.

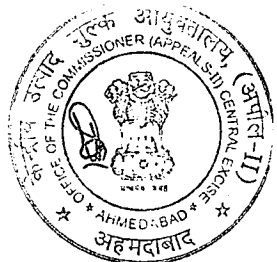
8. The last date of relevant quarter i.e Oct. 2014- December 2014 is 31.12.2014. Therefore for all the exports wherein foreign remittance is received in Oct. 2014- December 2014 "relevant date" in terms of said CESTAT judgment in the case of CCE V/s Navistar International Pvt. is 01.01.2015 and the last date to file claim would be 01.01.2016. In case of export invoice (for USD 8645), objected by revenue in appeal memo, the the foreign inward remittance has been received on 07.10.2014, 17.10.2014, 07.10.2014 and 14.10.2014. Therefore the last date of filling claim would be 01.01.2016 for all the invoices as appellant are allowed to file claim before end of quarter and only one claim is entertained for particular quarter. Claim is filed on 31.12.2015, therefore I hold that claim in respect of above said invoice is filled within time limit prescribed in 11B of CEA 1994. I hold that refund of Rs. 12421/- is admissible to the respondent.

8.1 I find that 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

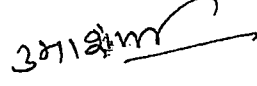
9. In view of above, I upheld the OIO and appeal filed by the respondents is rejected.

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



10. The appeals filed by the revenue stands disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED


(R.R. PATEL)

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



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.

