

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)028/A-II/2016-17/V2(ST)27/A-II/16-17/4735-39

ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-189-190-16-17

दिनांक Date : 22.12.2016 जारी करने की तारीख Date of Issue 02/02/17

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-02/Ref-234/DRM/2015-16 Dated 29.01.2016 & SD-02/Ref-233/DRM/2015-16 Dated 29.01.2016 Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Dubond Infotech Services LLP 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 :-

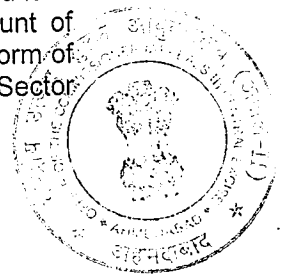
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल कम्पाउण्ड, 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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 accompany ed 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 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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 रूपए 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,

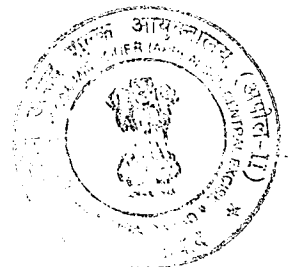
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



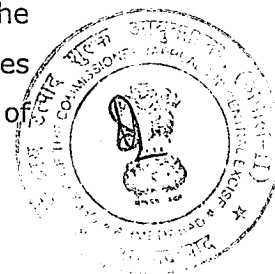
ORDER IN APPEAL

M/s. Dubond Infotech Services LLP, C-3, 1006, Anushruti Tower, S.G. Highway, Thaltej, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeals against the following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

Sr. No.	OIO No.	OIO date	Amount of refund claimed (₹)	Date of filing the refund claim	Refund for the month
1	SD-02/Ref/233/DRM/2015-16	29.01.2016	68,099	28.09.15	Dec. 2014
2	SD-02/Ref/234/DRM/2015-16	29.01.2016	79,199	28.09.15	March 2015

2. The facts of the case, in brief, are that the Appellants are engaged in the business of providing taxable services covered under the definition of "Information Technology Software Service" and "Online Information and Database Access service and/ or Retrieval Service Through Computer Network", for which they are holding Service Tax registration number AAKFD2857JSD001. The appellant had filed refund claims for ₹68,099/- and ₹79,199/- on 28.09.2015 with Service Tax Division-II, Ahmedabad in terms of Notification No. 27/2012-CE(NT), dated 18.06.2012 in respect of Service Tax paid on input(s) services used in output service exported without payment of Service Tax.

3. During scrutiny of the claim, the adjudicating authority had found that the classification of the services exported by the appellants does not fall under the purview of the export of services in terms of Rule 6A of Service Tax Rules, 1994. The adjudicating authority fixed three dates of personal hearing viz. 28.12.2015, 29.12.2015 and 31.12.2015 but the appellants did not appear for the personal hearing. The adjudicating authority offered a final date of personal hearing to the appellants on 28.01.2016 but again no one appeared before the adjudicating authority on the allotted date for personal hearing and thus, the adjudicating authority decided the case *ex-parte*. The adjudicating authority, rejected both the claims, vide the impugned order, on the ground that the classification of the services exported by the appellants does not fall under the purview of the export of services in terms of Rule 6A of Service Tax Rules, 1994.

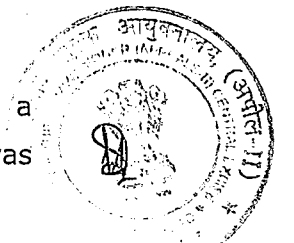


4. Being aggrieved with the impugned order the appellant has preferred the present appeal. The appellants have submitted that the adjudicating authority has erred by misunderstanding the provisions of the Notification number 27/2012-CE(NT) dated 18.06.2012, Rule 6A of the Service Tax Rules, 1994 and the Place of Provisions of Service Rules, 2012. They further stated that the show cause notice issued to them was dated 15.12.2015 and was received by them on 22.12.2015. The said show cause notice mentioned the date of filing a submission in the said matter upto 28.12.2015. The period of six days was very short period to file a defense reply in the matter concerned. Thereafter, the appellants did not receive any letter of personal hearing from the adjudicating authority. They directly received the impugned orders on 28.09.2015. The cases were decided *ex-parte* in gross violation of natural justice.

5. Personal hearing in the matter was granted and held on 21.12.2016. Smt. Ruhí Jhota, Advocate and Shri Gunjan Shah, Chartered Accountant, appeared before me and reiterated the contents of appeal memo. Further, they pleaded that the adjudicating authority has violated the principles of natural justice. They stated that they had received the notices of personal hearing from the adjudicating authority after the due dates.

6. 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 hearing. Regarding the issue that the appellants were not given any opportunity to present their case personally as per the principle of natural justice; I consider that the adjudication proceedings shall be conducted by observing principles of natural justice. The principles of natural justice must be followed by the authorities at all levels in all proceedings under the Act or Rules and the order passed in violation of the principles of natural justice is liable to be set aside by Appellate Authority. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. Natural justice has certain cardinal principles, which must be followed in every proceeding. Judicial and quasi-judicial authorities should exercise their powers fairly, reasonably and impartially in a just manner and they should not decide a matter on the basis of an enquiry unknown to the party, but should decide on the basis of material and evidence on record. Their decisions should not be biased arbitrary or based on mere conjectures and surmises. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard.

7. In the present case, the adjudicating authority has initially issued a single correspondence allotting three dates and after that one more date was



given to them. I find that the adjudicating authority has decided the case without granting the Applicant an effective hearing in breach of principle of natural justice. The Tribunal, East Zonal Bench, Kolkata in the case of Meenakshi Associates (supra) at para 6 held as under:-

"6. We do not appreciate such approach of the Original Authority to issue one hearing notice for three dates, which is not in accordance with principal of natural justice. The essence of justice requires that a person who is to decide must give the parties a fair hearing before him enabling them to state their case and view. Fairness is a flexible, pragmatic and relative concept and not a rigid, ritualistic or sophisticated abstraction. In this case, the appellants have not given proper opportunity of hearing to defend the case. Accordingly, we set aside the impugned order and the matter is remanded to the Commissioner to decide afresh after granting proper opportunity of hearing. In this context, we direct the appellant to appear before the Commissioner of Central Excise on 16-2-2009 at 11.00 A.M., who will fix the date of hearing and to decide the matter expeditiously. The appeal is allowed by way of remand."

Further, in the case of M/s Venkateshwara Power Project Ltd. vs the CCE, Belgaum, the Tribunal South Zonal Bench, Bangalore proclaimed that;

"After hearing both sides, I find that the appellants were not heard personally since appellant sought adjournments and the hearing was fixed on three occasions and on the last date also they did not appear. The first three hearings were fixed on 21.2.2011, 25.2.2011 and 31.3.2011. It appears that all the three dates were given in a single letter, which according to the precedent Tribunal decisions is not the correct procedure to be followed.Under these circumstances, there is a clear violation of principles of natural justice by the original adjudicating authority in this case. Therefore without going in to the merits of the case or expressing any opinion, I consider that the matter should go back to the original authority for fresh consideration of all the issues and after giving a copy of the verification report to the appellant. Needless to say that the appellant should be given a reasonable opportunity to present their case."

8. In light of the above discussion, I remand back the matter to the adjudicating authority to decide the case afresh following the principle of natural justice. The appellants are also directed to remain present during the course of personal hearing and provide all sort of assistance to the adjudicating authority by providing all required documents during the proceeding for which the case is remanded back.



9. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर
(उमा शंकर)

आयुक्त (अपील्स - II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

स. दुता
27/2/16
(S. DUTTA)
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,

M/s. Dubond Infotech Services LLP,
C-3, 1006, Anushruti Tower,
S.G. Highway, Thaltej,
Ahmedabad- 380 054

Copy to:

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

