

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)0140/A-II/2016-17 / 4740-44
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-191-16-17
दिनांक Date : 23.12.2016 जारी करने की तारीख Date of Issue 02/02/17

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

C. file

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-31/DRM/2016-17 Dated 06.05.2016 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 :-

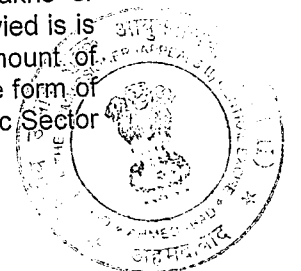
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल 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 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.



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(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. यथारंशोद्धित 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, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 13 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) सेनचैट जमा की ली गई गलत राशि
- (iii) सेनचैट 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,

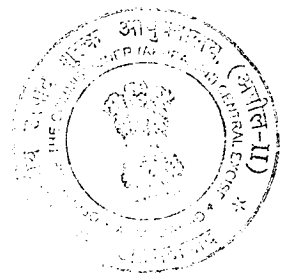
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



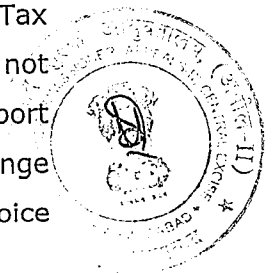
ORDER IN APPEAL

M/s. Dubond Infotech Services LLP, C-3, 1006, Anushruti Tower, S.G. Highway, Thaltej, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number SD-02/Ref/233/DRM/2015-16 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

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 appellants had filed a refund claim for ₹ 23,190/- for the period quarter end June 2015 on 28.09.2015 with Service Tax Division-II, Ahmedabad in terms of Notification number 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 calculation of export turnover is not done as per the Notification number 27/2012-CE(NT), dated 18.06.2012 and the amount mentioned in Form A by the appellants as export turnover is different from that of the ST-3 returns and bank statement submitted by the appellants. Moreover, the adjudicating authority found that the appellants had not submitted statement of bank for the evidence of the payment of the input invoices and the invoices submitted by them were neither original nor self certified. On further verification, it was also revealed that as per ST-3 returns and Form A submitted by the appellants, the balance of Cenvat credit available on the day of filing the refund claim was nil. Thus, the adjudicating authority, rejected the entire claim, vide the impugned order, on the above mentioned grounds.

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 and Rule 6A of the Service Tax Rules, 1994. Regarding the issue of the calculation of export turnover is not done as per the Notification, they stated that difference in the value of export turnover as per bank statement is due to difference in the rate of exchange on the date of invoice and the date of receipt of payment and the invoice

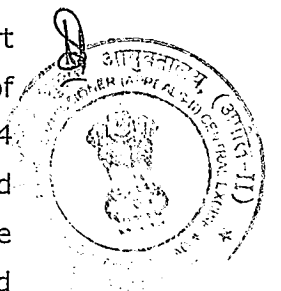


amount was same. Further, they have submitted the calculation of total value of export turnover service. Regarding non-submission of bank statement and original or self certified invoices, they claimed that no such demand was made to them by the adjudicating authority. Regarding nil Cenvat credit, they claimed that they had debited the amount claimed as refund from their Cenvat credit account as per Rule 5 of Cenvat Credit Rules, 2004. The adjudicating authority has alleged that the appellants were not eligible to claim the refund as they had debited the Cenvat credit amount monthly instead of at the time of making the claim. They stated that it was a clerical error on their part for which refund should have not been rejected.

5. Personal hearing in the matter was granted and held on 21.12.2016. Smt. Ruhi Jhota, Advocate and Shri Gunjan Shah, Chartered Accountant, appeared before me and reiterated the contents of appeal memo.

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 calculation of export turnover is not done as per the Notification, I believe their argument that the difference in the value of export turnover as per bank statement is due to difference in the rate of exchange on the date of invoice and the date of receipt of payment and the invoice amount was same. This is a very common factor and the adjudicating authority should have verified the fact at the time of adjudication. I also find that they have submitted the calculation as per proper formula. The adjudicating authority has not stated in the impugned order as to how the calculation is not proper. Regarding the issue of non-submission of statement of bank account and original or self certified invoices, the appellants stated that they were not told to produce these documents. However, they had produced the same before me which need to be verified by the adjudicating authority. Therefore, I tend to remand back the case to the adjudicating authority to decide the case afresh in light of the clarification submitted by the appellants. The appellants are directed to submit all the necessary documents before the adjudicating authority and extend all cooperation in processing the refund claim.

7. Further, the adjudicating authority has also rejected the claim on the ground that as per the ST-3 returns and Form A, the balance of Cenvat credit available on the day of filing the case was nil. In this regard, as per Notification number 27/2012-CE(NT) dated 18.06.2015, the value of export services shall be determined in accordance with clause (D) of sub-rule (1) of Rule 5 of Cenvat Credit Rules, 2004. Rule 5 of Cenvat Credit Rules, 2004 provides that accumulated credit of inputs and input services which are used for providing output services or output goods, can be refunded to the exporter subject to stipulated conditions. However, Rule 5 was amended and



the erstwhile Rule 5 has been replaced with a new rule with effect from 01.04.2012. Pertinently, the new rule does not require establishment of a nexus between the input credit and service exported.

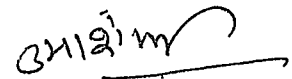
According to the new Rule 5, "A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of Service Tax, shall be allowed refund of Cenvat credit as determined.....".

Thus, the new rule has omitted the statement "Where any input or input service is used in the manufacture of final product". For the grant of refund, the appellants only need copy of FIRC's issued by Bank in support of the export realization and a certificate from Chartered Accountant. Therefore, during the course of fresh verification, the adjudicating authority may call for and verify the above documents, if needed. I further agree to the argument of the appellants that showing nil credit in the respective ST-3 returns is a clerical lapse on their part and accordingly, I condone the same.

8. In light of the above discussion, I remand back the matter to the adjudicating authority to decide the case afresh in light of my above directions. 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 has been remanded back.

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

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

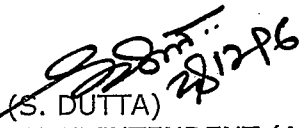


(उमा शंकर)

आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(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.

