

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)033 & 034/A-II/2016-17 / 4745-49  
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-195-196-16-17  
दिनांक Date : 23.12.2016 जारी करने की तारीख Date of Issue 02/02/17

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

Passed by Shri Uma Shanker Commissioner (Appeals-II)

*G. file*

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

Arising out of Order-in-Original No STC/Ref/110/HCV/Rajmeen/Div-III/15-16 Dated 25.01.2016 &  
STC/Ref/110/HCV/Rajmeen/Div-III/15-16 Dated 25.01.2016 Issued

by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. Rajmeen Photo Gallery 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 :-

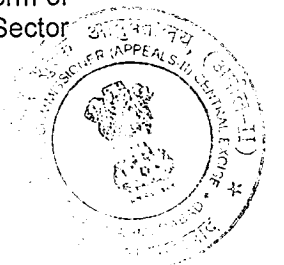
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल 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 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 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. यथारंशोधित 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, 1994 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) 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 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 बशर्ते 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. Rajmeen Photo Gallery Pvt. Ltd., 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Floor, Rajmeen House; Opp. Jaydeep Tower, Nr. Shreyas Crossing, Vasna, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed by the Deputy Commissioner, Service Tax, Division-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

Sr. No.	OIO No.	OIO date	Amount of refund claimed (₹)	Date of filing the refund claim	Period involved
1	STC/Ref/110/HCV/Rajmeen/Div-III/2015-16	25.01.2016	66,964	28.10.14	Jan'14 to March'14
2	STC/Ref/111/HCV/Rajmeen/Div-III/2015-16	25.01.2016	71,820	28.10.14	Oct'13 to Dec'13

2. The facts of the case, in brief, are that the appellants are registered with the Service Tax department under the category of "Design service other than interior decoration and fashion designing" with Service Tax registration number AACCR9658NSD001 and had filed refund claims of ₹66,964/- and ₹71,820/- on 28.10.2014 respectively under Notification number 27/2012-CE(NT) dated 18.06.2015.

3. During scrutiny of the above claims, the adjudicating authority had found that during the aforementioned period, the appellants had availed Cenvat credit amounting to nil. 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. Thus, the adjudicating authority concluded that no Cenvat credit had been availed by the appellants during the period in question for which the refund claims were filed and accordingly, vide the impugned orders, rejected the refund claims in full.

4. Being aggrieved with the impugned order the appellants have preferred the present appeals. The appellants stated that the adjudicating authority rejected the refunds only because the former had not claimed the Cenvat credit in the respective ST-3 returns. They argued that they were 100% exporter and there was no domestic sale in the said period. Therefore, they would not be using any Cenvat credit in any year. The issue taken by the



adjudicating authority is only a procedural lapse on the part of the appellants and they had not committed any statutory default. The disclosure of Cenvat credit in ST-3 return is a procedural issue and the same does not change the substance and the fact that the said services were consumed and input Service Tax was paid on the services utilized for export of services.

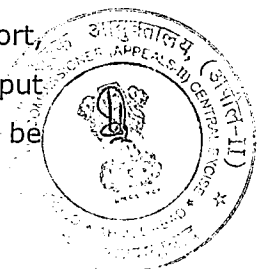
5. Personal hearing in the matter was granted and held on 06.12.2016. Shri Kenan Satyaawdi, CA appeared before me and reiterated the contents of appeal memo.

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. At the very onset, I find that in the impugned order number STC/Ref/111/HCV/Rajmeen/Div-III/2015-16, the adjudicating authority, at the initial stage, has rejected an amount of ₹ 1,037/- where the concerned invoice appeared to be in the nature of personal consumption. The appellants, in their appeal memo, have not opposed the view of the adjudicating authority. Therefore, I presume that the appellants have accepted the view of the adjudicating authority in this regard and accordingly I do not intend to interfere the decision of the adjudicating authority regarding the rejection of ₹ 1,037/-. Now, I will take up the main issue i.e., rejection of the refund claims (except ₹ 1,037/-) on the ground that the Cenvat credit was not disclosed in the concerned ST-3 returns. Before I discuss the issue at length, I would like to display below the contents of Rule 5 of Cenvat Credit Rules, 2004;

*"Rule 5: Refund of CENVAT credit:-  
Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,  
i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or  
ii) service tax on output service,*

*and where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification".*

Thus, it is quite clear now that where the final product is cleared for export, a manufacturer or provider of output service is allowed to utilize the input Cenvat credit and in case of unutilized balance credit, same would be



refunded back. But the above 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. It seems that the appellants have submitted the above two certificates and the adjudicating authority is satisfied as he has, in the impugned order has not submitted any remark negating the two. In fact, the adjudicating authority has confirmed that the domestic turnover of the appellants, during the period in question, was nil and the value of the total turnover was the same as the export turnover. I further agree to the argument of the appellants that showing nil credit in the respective ST-3 returns is a procedural lapse on their part and accordingly, I condone the same.

7. In view of above, I set aside the impugned orders (except the amount of ₹ 1,037/- as mentioned in the impugned order number STC/Ref/111/HCV/Rajmeen/Div-III/2015-16 dated 25.01.2016) with consequential relief to the appellants.

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

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

*उमा शंकर*

(उमा शंकर)

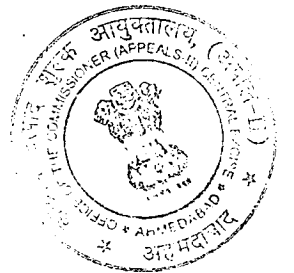
आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

*S. Dutta*  
28/12/16  
(S. DUTTA)

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



To,  
M/s. Rajmeen Photo Gallery Pvt. Ltd.,  
3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Floor, Rajmeen House,  
Opp. Jaydeep Tower, Nr. Shreyas Crossing, Vasna,  
Ahmedabad - 380 007

**Copy to:**

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

