

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)198/A-II/2015-16

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-207-16-17

दिनांक Date : 20.01.2017 जारी करने की तारीख Date of Issue 13/02/17

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 AHM-SVTAX-000-JC-020-15-16 Dated 28.01.2016

Issued by Assistant Commissioner, Div-V, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

M/s. Bank of India 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:-

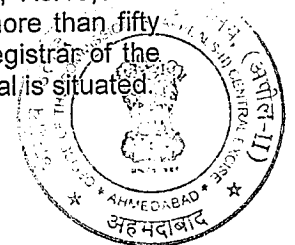
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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, 1984 की धारा 34फ 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 हैं -

- (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 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,

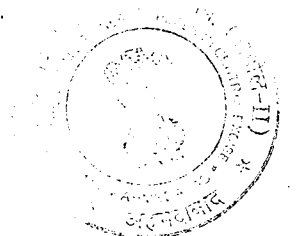
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

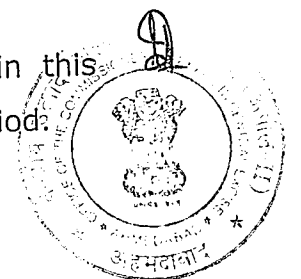
M/s. Bank of India, Corporate Branch, 2nd floor, BOI Building, Bhadra, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number AHM-SVTAX-000-JC-020-15-16 dated 28.01.2016 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Service Tax HQ, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*). Impugned OIO proceedings in respect of SCN dated 08.09.2009 for wrongly availed credit of Rs. 26,38,486/- [part A-2,039 + part B-1,15,511+ part C-3,00,000+ part D-16,81,545 + part E-5,39,388 mentioned in para 3 of OIO At sr. No. 1,2,3,4 and 5 of table respectively], are denovo proceedings arising from CESTAT Ahmedabad`s order No. A/1051/WZB/AHD/2012 & S/1363/WZB/AHD/2012 dated 27.10.2012.

2. Part A- Rs. 2,039/- and part B- Rs. 1,15,511/- was paid by appellant. Adjudicating Authority vide impugned OIO disallowed the credit of Rs. 15,56,731/- [out of 26,38,486/- under section 73(1) of FA 94 read with rule 14 of CCR, 2004 and ordered to recover along with interest under Section 75 and also imposed penalty of Rs. 5000/-under Section 77(2). Penalty of Rs. 15,56,731/- under section 78 of FA, 1994 read with rule 15(3) of CCR, 2004 for suppression of facts was imposed on appellant. Summary of disallowed cenvat credit for part C to E is as below-

3. Part- C- disallowed Rs. 3,00,000/- out of total Rs. 3,00,000/- (Para 16,16.1 and 16.2 of OIO)

Issue is of wrong availment of service tax credit of Rs. 3,00,000/- in March-2006 which was paid by Bank`s Mumbai HO under reverse charge during 2002-2005 in respect of services received from foreign service providers. Said credit is transferred by HO Mumbai to appellant at Ahmedabad vide debit note No. 2665/29.03.2006. HO Mumbai did not have ISD registration. Provision of distribution of credit was introduced w.e.f. 10.09.2004 and registration of ISD was prescribed from 16.06.2005. Therefore credit of Rs. 1,82,380/- (out of 3,00,000/-) was disallowed on following three (a,b and c) grounds and entire credit of Rs. 3,00,000/- for following ground-c

- a. Credit pertains to period prior to 10.09.2004 i.e. date from which provision of distribution of credit was introduced.
- b. Cenvat credit rules did not provide for transition provision in this regards so as to provide allow the credit distribution for past period.



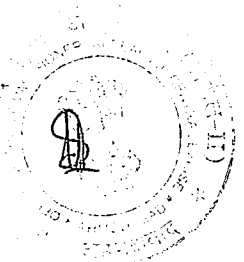
c. Mumbai HO did not have ISD registration when debit note No. 2665/29.03.2006 was issued.

4. TABLE-A

Part- D- disallowed Rs. 9,49,554/- out of total Rs. 16,81,548/- (Para 17 and sub-para of 17 of OIO)

Sr.	Disallowed credit	Credit transferred by	Credit transfer period	Remarks
1	3,366/-	BOI Zonal Ahmedabad branch	Not ascertainable	Inter-office memo dt. 19.5.05 produced without supporting Bills of service provider. BOI Zonal Ahmedabad took ISD registration on 18.08.2005. credit transfer prior to taking ISD registration by zonal Ahmedabad.
2	53,301/-	Do , Debit order no. 75610/ 30.06.05	May- Jun-05	Credit transferred prior to registration. BOI Zonal Ahmedabad took ISD registration on 18.08.2005
3	67,071/-	Do, Debit order no. 75610/ 30.07.05	Jun- July-05	Credit transferred prior to registration.. BOI Zonal Ahmedabad took ISD registration on 18.08.2005
4	4,44,917/-	BOI HO Mumbai	May- june -05	Inter-office memo dt. 01.07.05 produced without supporting Bills of service provider. Credit transferred without ISD registration.
5	3,80,889/-	Documents NOT produced before adjudicating authority		
	9,49,554/-	TOTAL CREDIT REJECTED		

For sr. no. 1 to 4 above credit transferred (a) on inter-office memo not supported by document of tax payment. Inter office memo is not valid document in terms of rule 4A of Service tax rules, 1994 (b) in all cases credit pertains to period between 10.09.2004 to 16.06.2005 i.e period

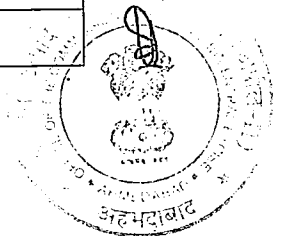


between credit transfer was included in credit rules (10.09.2004) and provision of ISD registration was promulgated.

5. TABLE-B

Part- E- disallowed Rs. 3,07,177/- out of total Rs. 5,39,388/- (Para 18 and sub-para of 18 of OIO)

Sr.	Disallowed credit	Credit transferred by	Credit transfer period	Remarks
1	96,367/-	BOI Ahmedabad main branch- debit note 67890/ 14.3.2005	Nov-04, dec-04, feb-05	Entire period pertains to period after 10.09.04 but Bills of ST Rs. 96,367/- service provider not available. Also there is no proof of BOI Ahmedabad main branch ISD registration.
2	92,291/-	BOI Ahmedabad main branch- debit note 75622/ 30.08.2005	Aug-05	Entire period pertains to period after 10.09.04. There is no proof of BOI Ahmedabad main branch ISD registration.
3	90,879/-	BOI Ahmedabad Zonal office- debit note 67891/ 30.03.2005	Nov-04, dec-04, march-05	Bills of ST Rs. 90,879/- service provider not available. BOI Ahmedabad zonal ISD registration is of 18.08.2005
4	18,651/-	BOI Ahmedabad recovery branch debit order No. 75622/ 27.02.06	Period not ascertainable	Bills of service provider not available with debit order. Period of credit distribution not ascertainable
5	8,989/-	Documents NOT produced before adjudicating authority		
	3,07,177/-	TOTAL CREDIT REJECTED		



6. Being aggrieved with the impugned order, the appellants preferred an appeal on 29.03.2016 before the Commissioner (Appeals-II) wherein it is contended that there is nothing in central Excise rule and Credit rule that prevents ISD from taking credit without registration, as long as there is no dispute with regards to entitlement of credit.

7. Personal hearing in the case was granted on 20.12.2016. Shri Nagesh Belsare, CA, and Shri Manoj Shah, Manager of appellant appeared before me. Shri Milan Gandhi, CA reiterated the grounds of appeal. They submitted summary of para 17.1 and para 18 of OIO. He explained the bills /invoices and various advices which has been objected in OIO. For para No. 17 and 18 it is stated that actual vouchers and documents of service pertains to Zonal office and not BOI, Bhadra. ISD of ZO obtained.

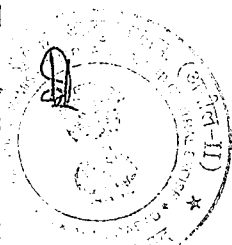
DISUSSION AND FINDINGS

8. 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.

9. Question to be decided is to Whether the CENVAT credits so distributed to the Bank at Bhadra, Ahmedabad and by the corporate office of the BANK under cover of transfer challans without ISD registration were admissible to the recipient Bank.

10. Prior to 10.09.2004 it was not permissible to distribute CENVAT credit to other branches or offices registered of same service provider. Sine there was no provision in rules and act to transfer credit at another registered premises of same person prior to 10.09.2004 all such credit transferred is without authority. Different premises of same service provider were required to obtain individual separate registration for each premises and credit was accounted premises wise.

11. Provisions to distribute credit to other registered premises of same service provider came on 10.09.2004 in Cenvat Credit Rule, 2004. Notification No. 27/2005-S.T. dated 07.06.2005 w.e.f 16.06.2005 has identified an 'input service distributor as a special category of person' and notified the Service Tax (Registration of Special Category of Persons) Rules, 2005. After the introduction of these rules, an Input Service Distributor is statutorily required to obtain a registration in terms of rule 4 of the Service Tax Rules, 1994. The ISD has to mention the locations to which the credit

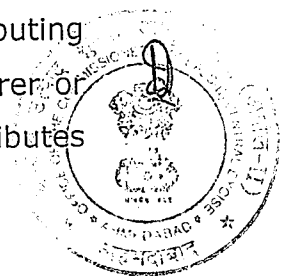


has to be distributed. There was no specific provision to take ISD registration for the purpose of distributing CENVAT credit for the period between 10.09.2014 to 16.06.2005 to its own manufacturing unit or output service providing unit. For this period may be is credit is correctly allowed wherever documents are produced by adjudicating authority. My view is supported by judgment in the case of Hindustan Coca Cola Beverage V.CCE [2011] 32STT 266 ELT 347 [CESTAT] wherein HO distributed the credit even without registration.

12. Now I discuss issue regarding transferred of credit of Rs. 3,00,000/- in respect of input service received and transferred prior to 10.09.2004 by BOI Mumbai vide debit note No. 2665/29.03.2006. This credit has been transferred through debit voucher. I hold that credit of Rs. 1,82,380/- (part-c) is of period prior to 10.09.2004 therefore it is correctly denied as said transfer provision is only prospective in nature. Moreover whole credit including above 1,82,380/- has been transferred by HO Mumbai's debit note No. 2665/29.03.2006 without taking ISD registration prescribed w.e.f. 16.06.2005 vide Notification No. Notification No. 27/2005-S.T. dated 07.06.2005 w.e.f 16.06.2005. I hold that credit of Rs. 3,00,000/- is correctly denied by adjudicating authority and consequently proportional penalty imposed is up-held.

13. Regarding denial of credit of credit shown in TABLE-A and TABLE-B I find that credit is mainly denied because documents were not produced. Appellant have produced documents therefore case needs to be remanded back for scrutiny of document in light of findings herein below. TABLE-A and TABLE-B credit is of period after 10.09.004. For period after 10.09.2004 and prior to 16.06.2005 credit transfer is allowed without registration for the reason discussed above.

14. For period after 16.06.2005 ISD registration is compulsory as it is promulgated by notifications. Notification is issued under Act therefore it is statutory provisions which need to be compiled. As per Rule 2(m) of Cenvat Credit Rules, 2004, 'Input Service Distributor' means an office of the manufacturer or producer of final products or provider of output service, which receives invoices [under Rule 4A(1) of the Service Tax Rules, 1994] issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice [under Rule 4A(2) of the Service Tax Rules, 1994], bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be. The ISD receives and distributes



service tax credit. To pas the credit ISD has to obtain registration and comply rule 4A of Service Tax Rule, 1994 and file half yearly return with jurisdictional Superintendent under rule 9(10) of CCR, 2004. Rule 7 of Cenvat Credit Rules, 2004 provides for the Manner of distribution of credit by Input service distributor.

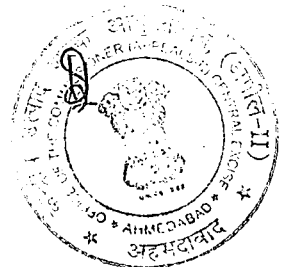
15. It is to be noted that CENVAT credit cannot be distributed without obtaining registration as an Input Service Distributor. Recently, in Hanuman Chromocoates Ltd. vs. Commissioner of C. Ex., Bhopal [2013 (31) S.T.R. 721 (Tri. - Del.)] it was observed that framing of the rule relating to registration of input service distributor registration is to safeguard public interest. The safeguard measure provided by Rule 3 of Service Tax (Registration of Special Category of Persons) Rules, 2005 are to protect the interest of Revenue and by registration the Revenue gets a proper opportunity to know who shall be beneficiary to get the benefit of input service distributor.

16. In Market Creators Ltd v. CCE & ST, Vadodara (2014 (7) TMI 704 - CESTAT AHMEDABAD), where Service Tax was not paid by rented premises as Head Office for all the branches and Service Tax registration is also not taken by assessee of such premises and issued credit taking document, it was held that assessee could not take credit of documents issued by a premises, which was not registered as an input service distributor under the Service Tax provisions. I hold that for period after 16.06.2005 credit transferred without registration is not allowable.


17. In the interest of justice documents produced before me needs to be considered for credit if otherwise it is admissible in view of my discussion and findings above. Case needs to remanded back to original adjudicating authority for limited purpose of document verification and re-calculating the proportional penalties. Appellant shall produce the document before adjudicating authority and shall be given chance to represent their case in personal hearing.

18. In view of above, appeal filed by the appellants is not allowed for part- C. Appeal is remanded back to original adjudicating authority for part D and Part-E.

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



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


(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED



(R.R. PATEL)

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

To,

M/s. Bank of India,

Corporate Branch, 2nd floor,

BOI Building, Bhadra,

Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad-
- 3) The Additional Commissioner, Service Tax, Ahmedabad
- 4) The Joint Commissioner, Service Tax hq, Ahmedabad.
- 5) The Asst. Commissioner(System), C.Ex. Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.



