

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)055/A-II/2016-17 / 4723-28
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-212-16-17
दिनांक Date : 25.01.2017 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)

A. file

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

Arising out of Order-in-Original No STC/Ref/175/HCV/OW/Div-III/15-16 Dated 29.02.2016 Issued
by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Orange worldwide 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 :-

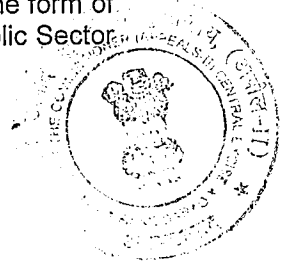
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू 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 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 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. 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 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 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,

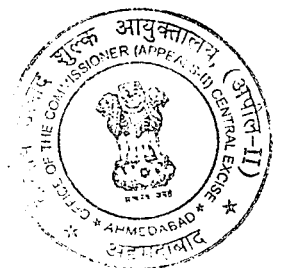
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

M/s. Orange Worldwide Pvt. Ltd., C-307, Shivalik Corporate Park, 32 feet Ring Road, B/h IOC Petrol Pump, Satellite, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against the Order-in-Original number STC/Ref/175/HCV/OW/Div-III/15-16 dated 29.02.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax Div-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

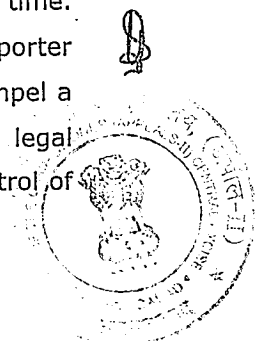
2. The facts of the case, in brief, are that the appellants, as merchant exporter, engaged in export of parboiled rice, have filed refund claim of ₹ 2,10,162/- under Notification number 41/2012- ST dated 29.06.2012 for refund of service tax paid on services used for export. During scrutiny of the claim, along with other discrepancies, the adjudicating authority had found that the appellants had failed to submit BRC against certain shipping bill and accordingly partially rejected an amount of ₹ 89,691/- (₹ 87,570/- + ₹ 1,681/- + ₹ 440/-) and allowed an amount of ₹ 1,20,471/- vide the above mentioned impugned order.

3. Being aggrieved with the impugned order, the appellants have preferred the present appeal. Out of the total rejected amount of ₹ 89,691/-, they filed the appeal against the rejection of ₹ 87,570/-. The appellants have submitted that the adjudicating authority has rejected the claim on the ground of non-submission of BRCs along with the claims. However, the appellants had claimed that they requested the concerned State bank of India branch for issuance of BRC. The relationship manager of the bank informed the appellants that due to some technical error they were unable to generate e-BRC from DGFT website. The said bank official issued a certificate as proof of realization of export proceeds. The appellants have submitted self attested copy of the said certificate along with the appeal. Thus, they claimed that the amount of ₹ 87,570/- was wrongly rejected by the adjudicating authority and the same should be sanctioned to them along with interest for delayed payment.

4. Personal hearing in the case was granted on 21.12.2016 and Shri Bishañ Shah, Chartered Accountant, appeared before me and reiterated the grounds of appeal

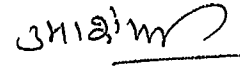
5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing.

6. I find that the claim has been rejected by the adjudicating authority for non-submission of BRC. The appellants argued that they had submitted certificate received from the concerned bank before the adjudicating authority pertaining to the export remittances in relation to the refund claims. However, I find no mention of submission of the said certificate in the impugned order. The bank certificate, showing export invoice number and receipt USD amount, is sufficient evidence to establish that remittance is received. Procuring BRC from banks takes considerable time and it is not in hands to submit in time. Circumstances are beyond the control of exporter and one should not compel the exporter to do which is not in his hand. It is well settled principle of law that law does not compel a man to do which he cannot possibly do and the said principle is well expressed in legal maxim "*lex non cogit ad impossibilia*". The unforeseen circumstances beyond the control of



the appellants. Moreover there is no condition mentioned in the Notification number 41/2012- ST dated 29.06.2012 that sales proceeds should have been received before granting rebate. Paragraph 4 of the said notification is only recovery provision which required to be resorted in case goods are not exported for recovery of rebate granted. Moreover, in the judgment of *Apotex Research Pvt. Ltd. & Ors. (2014-TIOL-1836-CESTAT-BANG)*, it has been pronounced that the exporter has to establish that consideration in foreign currency has been received in respect of invoices raised by him. The CBEC has further clarified the issue vide Circular number 112/06/2009-ST dated 12.03.2009 in terms of refund of Service Tax paid on specified services used for export of goods. On the issue of bank certificates, the Board has clarified that in such cases where the certificates are issued on consolidated basis, the exporter should submit self-certified statement along with the FIRC or other bank certificates showing the details of export in respect of which the FIRC pertains. Refunds should be allowed on such certified statements. It seems that the adjudicating authority has not verified the bank certificate submitted by the appellants. In view of the discussion held above, the case needs to be remanded back to the adjudicating authority for verification of the said certificate. The adjudicating authority should also check the applicability of the said certificate in the refund claim. He must record the reasons very clearly as to why the certificate should be/ not to be considered in the process of sanction of the amount of ₹ 87,570/-. The appellants are also directed to provide all possible assistance to the adjudicating authority in relation to the above mentioned claim.

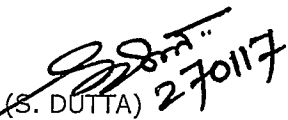
7. The appeals are disposed off in terms of the discussion held above.
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeals filed by the appellant stand disposed off in above terms.


(उमा शंकर)

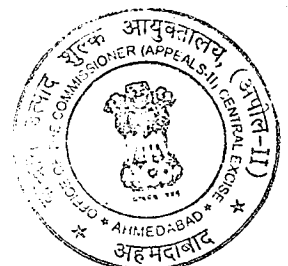
आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA) 27/01/17

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



To,

M/s. Orange Worldwide Pvt. Ltd.,
C-307, Shivalik Corporate Park, 32 feet Ring Road,
B/h IOC Petrol Pump, Satellite,
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 Asst. Commissioner, Service Tax Div-III, APM mall, Satellite, Ahmedabad.
- 5) The Asst. Commissioner(System), C.Ex. Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.



