

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)050/A-II/2016-17/4717-22
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-214-16-17
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)

Gr. file

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

Arising out of Order-in-Original No SD-02/36/AC/2015-16 Dated 30.03.2016 Issued
by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Veeda Clinical Research 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 :-

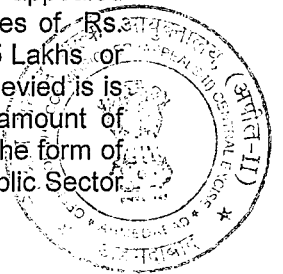
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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



(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 (सीस्टेट) 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 43 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) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट 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 अर्ज़ी एवं अपील को लागू नहीं होंगे।

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 Central 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.

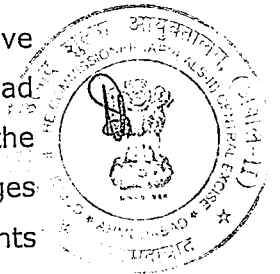


ORDER-IN-APPEAL

M/s. Veeda Clinical Research Pvt Ltd, Shivalik Plaza-A, IIM Road, Ambavadi, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against the Order-in-Original number SD-02/36/AC/2015-16 dated 30.03.2016 (*hereinafter referred to as 'the impugned order'*) passed by the Assistant Commissioner, Service Tax, Div-II, Ahmedabad (*hereinafter referred to as 'the adjudicating authority'*).

2. The facts of the case are that the appellants are engaged in providing Technical Inspection and Certification Agency Service, management or Business Consultant Service, Manpower Supply Agency Service, Online Information and Data Base Access Service and/or Retrieval Service through Computer Network, Scientific and Technical Consultancy Services, Event Management Service, Maintenance & Repair Service etc. and were registered with Service Tax Department having Service Tax Registration number AACCC3633QST001. During the course of audit, it was noticed that the appellants had wrongly availed CENVAT credit on telecommunication service as input service amounting to ₹77,538/- for the period from 2010-11 to 2013-14. It was noticed that the appellants had given sim cards to their employees in the name of the company and were bearing only a certain portion of telephone charges, which was already fixed for each employee. In case of excess usage, the appellants were deducting such excess amount from the salary of the respective employee. It was further noticed that the appellants had availed 100% Cenvat credit on each bill. Thus, it was alleged that the appellants were not eligible for the Service Tax credit of the amount which was deducted (recovered) from the salary of the employees. Accordingly, a show cause notice dated 08.10.2015 was issued to them which was decided against the appellants vide the impugned order issued by the adjudicating authority and disallowed the excess Cenvat credit availed by the appellants. He also ordered for recovery of interest under Section 75 of the Finance Act, 1994 and imposed equivalent penalty under Section 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that they had taken group telephone service for the employees for their work in the name of the company. The appellants had fixed maximum usage charges for each employee on the basis of their category. Initially, the appellants had been bearing the whole cost of the telephone usage charges and after that, if any employee had used telephone in excess of the fixed allotted

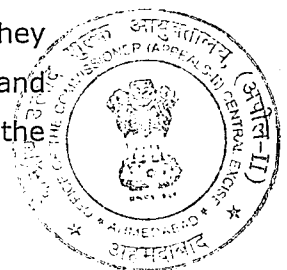


charges, then the excess usage charge amount would be recovered from the employee. However, as Service Tax is borne by the appellants therefore, the appellants had rightly availed the credit of the same. In support of their claim, they quoted the relevant portions of the draft Circular number 354/127/2012-TRU dated 27.07.2012.

4. Personal hearing in the matter was granted and held on 06.01.2016. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellants for hearing and submitted synopsis of the case and also reiterated the contents of appeal memorandum.

5. I have carefully gone through the impugned order, appeal memorandum and written as well as oral submission made at the time of personal hearing. Now I will examine the issue on the basis of available documents and contention of the appellants submitted before me.

6. At the onset, I find that the appellants had given sim cards to their employees in the name of the company and were bearing only a certain portion of telephone charges, which was already fixed for each employee. In case of excess usage, the appellants were deducting such excess amount from the salary of the respective employee. It was further noticed that the appellants had availed 100% Cenvat credit on each bill. Thus, from the above, I understand that, the appellants have fixed maximum telephone charges for the employees on the basis of their responsibility, mode of work and amount of work. Beyond the allowed charges, the excess amount is deducted on the belief that the work done is of pure personal in nature. That is the reason why the employees have agreed to get the excess amount deducted from their salary. In support of their claim, the appellants have cited some portions of the draft Circular number 354/127/2012-TRU dated 27.07.2012. The government had issued the said draft circular with intention to seek views on various cases of supply of manpower. It had also covered the taxability of services by directors who are on board of company, treatment of supplies, reimbursements by employer to employees and ex-employees. In paragraph 14 of the said draft circular, comments, views and suggestions were called for from the chambers, trade, industry and field formations. The circular was never issued finally thereafter. Thus, by quoting the said draft circular, which has never seen the day light, the appellants, it seems, either tried to confuse the department or they themselves are confused lots. In fact, according to their own confession in the appeal memo, they were bearing the whole cost of the telephone usage charge beforehand and then later on recovering the excess amount from the salary of the

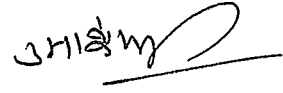


respective employees thereby passing the burden of the tax to the employees. Thus, once the burden is shifted on the shoulders of the employees, according to the principles of unjust enrichment, the appellants are not eligible for any benefit related to the excess amount so deducted.

7. As per the above discussion, I understand that the adjudicating authority has rightly disallowed the Cenvat credit availed by the appellants along with imposition of appropriate interest and penalty. Therefore, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.

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)

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD

To,

M/s Veeda Clinical Research Pvt Ltd,
2nd Floor, Shivalik Plaza-A, IIM Road, Ambavadi,
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 Dy./Asst. Commissioner, Service Tax, Division-III, Ahmedabad.
- 5) The Asst. Commissioner (System), Service Tax Hq, Ahmedabad.
- 6) Guard File.
- 7) P. A. File.

