

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सेन्ट्रल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद— 380015.

क फाइल संख्या : File No : V2(ST)040/A-II/2016-17 / 227-229
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-219-16-17
दिनांक Date : 25.01.2017 जारी करने की तारीख Date of Issue 14/02/17

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

Passed by Shri Uma Shanker Commissioner (Appeals-II)

C. Jir

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

Arising out of Order-in-Original No STC/Ref/155/HCV/Mednautix/Div-III/15-16 Dated 24.02.2016 Issued
by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Mednautix Outsourcing 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 :-

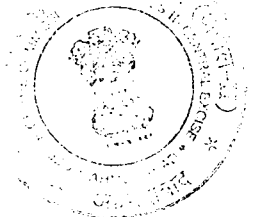
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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, 1994 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 73 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) सेनयैट जमा की ली गई गलत राशि
- (iii) सेनयैट 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 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 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. Mednautax Outsourcing Pvt. Ltd, Pinnacle Business Park 301/302, Corporate Road, Nr. Auda Garden, Prahlad Nagar Garden, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number STC/Ref/155/HCV/Div-III/15-16 dated 24.02.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax Div-III, APM Mall, Satellite, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants were engaged in providing service in nature of Software Development Service, Information Technology and IT information Technology based service, BPO service etc to their overseas client. According to them it was export of service in terms of rule 6A of Service tax Rules, 1994, hence file refund claim on 22.09.2015 for period Oct-2014 to December-2014, of Rs. 2,77,660/- of accumulated credit under Notification 27/2012- CE (NT) dated 18.06.2012 read with rule 5 of CCR, 2004. Adjudicating authority rejected the whole claim on concluding that service was not exported as appellant was registered for 'online information and database access or retrieval service' (OIDAR service in short) and has provided OIDAR service to overseas client for which 'place of provision of service' is location of service provider i.e. Taxable territory, in terms of rule 9 of Place of provisions of service rules, 2012 and therefore it is not export of service.

3. Being aggrieved with the impugned order, the appellants preferred an appeal on 26.04.2016 before the Commissioner (Appeals-II) wherein it is contended that

- I. the said refund was in respect of the service tax paid on input services which was used in relation to providing the output service in nature of Software Development Service, Information Technology and IT Information Technology based services, etc. to their overseas clients, which qualify as Export of services, as per Rule 6A of the service Tax Rules, 1994.
- II. Flow chart submitted shows that service rendered is not online database access and/or retrieval service.



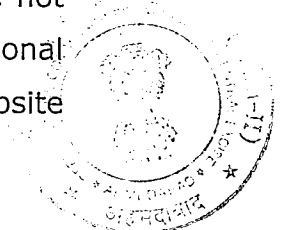
- III. Appellant has provided output service in nature of Software Development Service, Information Technology and IT Information Technology based services, etc. and not OIDAR service. Refund claim is rejected on ground that registration is for OIDAR service for which 'place of provision of service' is location of service provider i.e. Taxable territory, in terms of rule 9 of Place of provisions of service rules, 2012 and therefore it is not export of service.
- IV. Certificate of registration can not determine the category or nature of service provided. Non-registration can not be a ground of rejecting refund claim. Through oversight registration is obtained in OIDAR service instead of 'Information Technology Software Service'.
- V. The appellant does not provide any data rather receives data. Client send data to the appellant for providing various services like data entry services, calling services, quality control, imaging review, billing, Software Development.

4. Personal hearing in the case was granted on 06.12.2016. Shri Gunjan Shah, CA, appeared before me and reiterated the grounds of appeal. He stated that data is provided by overseas client and they process it and export it. He also submits that for subsequent period, refund is allowed vide OIO No. STC/ Ref/ 50/ Mednautix/ K.M.Mohadhikar /AC/ Div-III/16-17 dated 18.07.2016.

DISUSSION AND FINDINGS

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 and documents produced by the appellants at the time of personal hearing. Sort question to be decided is as to whether service rendered is 'online information and database access or retrieval service' (OIDAR service) or 'Information Technology Software Service'.

6. I have perused the flow chart submitted in respect of two clients and I find that client can not access or retrieve information without intervention of applicant. Services rendered are not completely automated and requires intervention of appellant for seeking information. Services rendered are not similar to description given for OIDAR service at para 5.9.5 of educational guide released by CBEC. From agreement I find that ownership of website



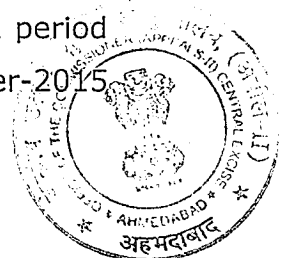
and data compiled are of client and not of appellant. Appellant are only managing the data on the basis of data supplied by client and such compiled data can not be sold to anybody else. In OIDAR services ownership of data are always with service provider and data can be given/sold to any other person. I have perused the bills raised and find that charges are collected for calling, data entry, medical review, fax routing, billing service and agreement is also for such purposes.

7. CEBEC vide Circular 202/12/2016-ST dated 09.11.2016 issued from F. No. 354/149/2016-TRU at point No. 16 of clarification table in para 2 with regard to query "Do OIDAR services include all services mediated by information technology over internet or electronic network?" has clarified that "Using the internet, or some electronic means of communication, just to communicate or facilitate outcome of service does not always mean that a business is providing OIDAR services."

8. I hold that service rendered by appellant is information technology service and place of provision of service is location of service receiver i.e foreign territory in present case, in terms of rule 3 of Place of provisions of service rules, 2012. Further registration taken in category other than actual category of service rendered is only procedural/technical lapse and it is rectifiable. Merely on procedural lapse substantial benefits should not be denied when. Adjudicating authority has never disputed the receipt and usages of services in export of goods. My view is supported by following judgments -

- I. Wipro Limited Vs. Union of India [2013] 32 Taxmann.com 113 (Delhi High Court)
- II. Kothari Infotech Ltd V/S Commissioner of Central Excise, Surat - [2013] 38 taxmann.com 298 (Ahmadabad - CESTAT)
- III. Mannubhai & Co. Vs. Commissioner of Service Tax (2011)(21)STR(65)- CESTAT (Ahmadabad)
- IV. M/S Mangalore Fertilizers & Chemicals Vs Deputy Commissioner 1991 (55) ELT 437
- V. CST Delhi vs. Convergys India Private Limited 2009 -TIOL -888-CESTAT -DEL-2009 (16) STR 198 (TRI. - DEL)
- VI. CST Delhi vs. Keane Worldzen India Pvt. Ltd. 2008 - TIOL -496 - CESTAT -DEL: 2008 (10) STR 471 (Tri. - Del)

09. Appellant have produced before me copy of OIO dated 17.07.2016, 28.09.2016 and 13.10.2016 vide which refund claim for subsequent period April-2015 to June-2015, July-2015 to September-2015 and October-2015



to December-2015 has been sanctioned. Department has not filed appeal against said OIO`s.

10. In view of above, appeal filed by the appellants is allowed.

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

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

उमा शंकर
(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED

R.R. Patel
(R.R. PATEL)

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

To,
M/s. Mednautax Outsourcing Pvt. Ltd,
Pinnacle Business Park 301/302,
Corporate Road, Nr. Auda Garden,
Prahald Nagar Garden,
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.

