

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)049/A-II/2016-17 / 321-26  
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-227-16-17  
दिनांक Date : 20.02.2017 जारी करने की तारीख Date of Issue 21/02/17

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-02/35/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 :-

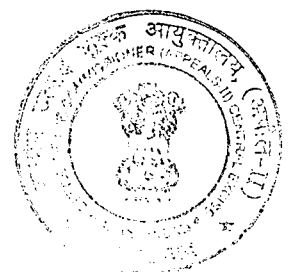
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल  
हॉस्पिटल 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 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 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, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो कि 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 अर्ज़ों 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. 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-02/35/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 Rent-a-Cab service as input service amounting to ₹ 3,51,024/- for the period from 2010-11 to 2013-14. As per Rule 2(I)(B) read with Rule 2a(C) of Cenvat Credit Rules, 2004 as amended, Cenvat credit on input service i.e. Rent-a-Cab service was not eligible to the appellants. However, they had availed/ utilized the said credit resulting in availment of ineligible Cenvat credit which is in violation of Rule 3 of Cenvat Credit Rules, 2004. On being pointed out, the appellants did not agree to the audit objection. Therefore, 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 Cenvat credit availed by the appellants. The adjudicating authority also ordered for recovery of interest under Section 75 of the Finance Act, 1994 and imposed 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 have been providing the service of technical testing & analysis and in the course of providing such service; the appellants have to visit different hospitals and medical institutes. In doing that, they have to hire cab to enable their technical staff to visit those hospitals and medical institutes. The entire episode occurs during the working hour and it is the part and parcel of their output service. In view of their above plea, they requested to set aside the impugned order.



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 reiterated the contents of appeal memorandum.

5. I have carefully gone through the impugned order, appeal memorandum 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, for easy understanding, I will discuss what actually an input service is. Meaning of Input Service: Input service is used by the service provider to provide output service. Thus, the tax paid on the input service can be utilised as CENVAT Credit. In general "input service" means any service, — (i) used by a provider of taxable service for providing an output service; or (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal. It is significant to note that in the main part of the definition, while defining input service for a manufacturer, it is said that 'input service' means any service used by a manufacturer whether directly or indirectly, in or in relation to the manufacture of final products....' and while defining the same for a service provider, it is said that 'input service' means any service used by a provider of taxable service for providing an output service. Thus, the main part of the definition provides that input service is any service used for the provision of output service which can practically lead to an interpretation where all legitimate input services procured for business can get covered under the definition. Therefore the credit of service tax paid on activities although not directly or indirectly related to manufacture of goods, is admissible as input service credit to the appellants treating the same as activities in relation to business. However, w.e.f. 01-04-2011 onwards, one cannot avail or distribute the CENVAT credit on Rent-a-Cab service, as it has been specifically denied in the definition of Input Services under Rule 2(I) of the CENVAT credit Rules, 2004 as amended from time to time. W.e.f. 01-04-2011, the Central Government has amended the definition of 'input service' under Rule 2(I) of Cenvat Credit Rules, 2004 vide Notification No. 3/2011 - CE(NT) dated 01-03-2011 and again vide Notification No. 18/2012 - CE(NT) dated 17-03-2012 (w.e.f. 01-04-2012). The effect of the amendment is that rent-a-cab service has been specifically excluded from the definition of 'input service' and hence cenvat credit is generally not available. Cenvat Credit is available only when rent



a cab service could be related to a motor vehicle which is capital good for them. In other words, when a motor vehicle designed to carry passengers including their chassis, registered in the name of provider of service, when used for provided output service of- (i) transportation of passengers; or (ii) renting of such motor vehicle; or (iii) imparting motor driving skills, then cenvat credit can be availed.

**Notification No 3/2011 CE(NT) dated 1.3.2011 (made applicable from 01-04-2011)**, makes rent-a-cab input services ineligible for credit. The wordings of the text of **Rule 2(I) of CCR 2004** is as follows:

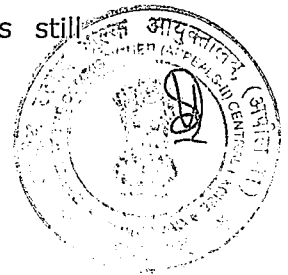
"but ..... excludes services,-  
 (A) ..... or  
 (B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods;"

Now this text survived till 31st of March 2012 because the text was changed through **Notification No. 18/2012 dated 17th of March 2012 (made applicable from 01-04-2012)** as follows:

"but ..... excludes services,-  
 (A) ..... or  
 (B) specified in sub-clauses (o) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle which is not a capital goods;"

From the above, we can come to the following conclusions;

- Generally speaking, the credit of service tax paid on rent-a-cab service is not available since 01-04-2011.
- From 01-07-2012, company, as a service receiver require to pay service tax on reverse charge basis for the rent-a-cab services received from specified service providers. In this case also, the credit of service tax paid on reverse charge basis (100 or 40% i.e. to whatever extent) is not eligible to company on the basis of GAR-7 challan because input service definition excludes rent-a-cab service.
- However, credit is still available to those tax payers who can relate rent-a-cab service to a motor vehicle which is capital goods for them. Who are such tax payers? They can be businessmen running business of renting of motor vehicle or transportation of passengers. Hence, credit is still

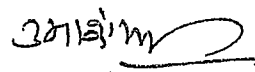


available to these assesses for relating the input service for renting of motor vehicle or transportation of passengers business. Thus, the eligibility of availment of credit is linked with the definition of 'Capital Goods' and in short, credit of rent-a-cab is eligible only if the cab is capital goods. Therefore, I am unable to agree with the argument of the appellants that they are eligible for the credit as the services of the cabs were availed by their staff during office hours.

7. Accordingly, as per the above discussion, 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।

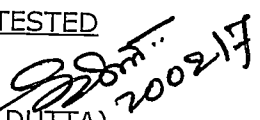
8. The appeals filed by the appellant stand disposed off in above terms.

  
(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,  
2<sup>nd</sup> 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-II, Ahmedabad.
- 5) The Asst. Commissioner (System), Service Tax Hq, Ahmedabad.
- 6) Guard File.
- 7) P. A. File.

