रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष: 26305065

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

| क ख | फाइल संख्या : File No : V2(ST) 14/RA/A-II/2016-17 / 3 २ 7 - 3 / अपील आदेश संख्या Order-In-Appeal No. <u>AHM-SVTAX-000-APP-0228-16-17</u> |
|--------|--|
| | दिनाँक Date : 20.02.2017 जारी करने की तारीख Date of Issue 21/02/17 |
| | <u>श्री उमा शंकर</u> ,, आयुक्त (अपील-II) द्वारा पारित |
| | Passed by Shri Uma Shanker Commissioner (Appeals-II) |
| ग | आयुक्त सेवाकर अहमदाबाद ः आयुक्तालय द्वारा जारी मूल आदेश सं |
| | से सृजित |
| | Arising out of Order-in-Original No. <u>STC/REF/156/HCV/IQR/Div-III/15-16</u> Date : <u>25.02.2016</u> Issued by Asst Commr Div-III STC Abad, Service Tax, Ahmedabad |
| | |
| PT. | प्रतितारी का नाम / Name & Address of the Respondent |

M/s. Appttus Software Pvt Ltd Ahmedabad, Ahmedabad इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

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, मेधाणी नगर, अहमदाबाद—380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound, 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 विरूद्ध 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 वहां रूपए 1000/— फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उस के साथ जुर्माना रूपए 50 लाख वा उससे ज्यादा है वहां रूपए 10000/— फीस भेजनी होगी। स्टे के लिए आवेदन— पत्र के साथ रूपए 500/— 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. Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- 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 (OlO) की प्रति भेजनी होगी।
- 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.
- यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तो पर अनुसूची—1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।
- 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.
- 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।
- 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.
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्वित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्त कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है -

- धारा 11 डी के अंतर्गत निर्धारित रकम
- सेनवेंट जमा की ली गई गलत राशि (ii)
- सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम (iii)
- ⇔ आगे बशर्ते यह कि इस धारा के प्रावधान वितीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपालीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।
- 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:

- amount determined under Section 11 D; (i)
- amount of erroneous Cenvat Credit taken; (ii)
- amount payable under Rule 6 of the Cenvat Credit Rules. (iii)
- ⇒ 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.
- 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।
- 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

3

The Deputy Commissioner, Service Tax, Division-III, Ahmedabad (hereinafter referred to as 'the appellant'), has filed the present appeal against the Order-In-Original number STC/Ref/156/HCV/Apttus/Div-III/15-16 dated 25.02.2016 (hereinafter referred to as 'the impugned order') passed in the matter of refund claim filed by M/s Apttus Software Private Ltd, (herein after referred to as 'the respondents') by the Deputy Commissioners of Service Tax, Division-III, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

- 2. The fact of the case, in brief is, respondent is exporter and availing benefit of Notification No 27/2012-ST dated 18.06.2012 for refund of unutilized CENVAT Credit. The respondent had filed refund claim of $\overline{<}4,01,715/-$ along with required documents. The respondent was sanctioned the refund claim of $\overline{<}4,01,282/-$ vide the impugned order, by the adjudicating authority, as per the conditions laid down in the Notification number 27/2012-ST dated 18.06.2012.
- 3. The said impugned order was reviewed by the Principal Commissioner of Service Tax, Ahmedabad vide review order no 13/2016-17 dated 19.05.2016 for filling appeals under section 84(1) of the finance act 1994 on the ground that adjudicating authority has wrongly sanctioned the refund claim of $\mathfrak{T}8,923$ /- out of the total refund amount of $\mathfrak{T}4,01,282$ /- on the ground that the respondent had not followed the safeguards condition and limitation under the said Notification.
- 4. Personal hearing in the matter was granted to the respondent on13.01.2017, which was attended by their authorized representative. They have submitted written submission against the appeal filed by the appellant.
- 5. I have carefully gone through the facts of the case on records, grounds of the appeal, and written submission put forth by the respondent. Looking to the facts of the case, I proceed to decide the case on merits.
- 6. In the present case, I find that the respondent has filed a refund claim of ₹ 4.01,715/- out of which ₹4.01,282/-was sanctioned under Notification No 41/2012-ST dated 29.06.2012. The appellant has proposed to be deny the refund of ₹8,923/- on the ground as shown below.

| SI No | Service Provider | Invoice No & Date | Service Tax Rs. | Remark |
|-------|------------------|--------------------------------------|-----------------|---|
| 1 | Blazenet Ltd | BL_AH/ILL/07/125 dated 01.07.2014 | 5665 | Invoice does not pertain to relevant quarter |
| 2 | Paid Under RCM | 171 | 1576 | As per Rule4 (7) of Cenvat |
| 3 | Paid Under RCM | 170 | 1682 | Credit Rules, 2004 Credit will be available after payment of Service tax. |

| | | Hence, Credit is Inadmissible in relevant quarter |
|-------|------|--|
| Total | 8923 | |

During the personal hearing the authorized representative of the party submitted that they as per Accounting Standard (AS-1) receiving payment and raising invoice are not more relevant. They further submitted that they have not claimed the same refund in the second quarter. However no documentary evidence is submitted in this regard. Now I have to decide two issues-:

- (1) Whether refund may be allowed on invoice of other quarter.
- (2) Whether Service Tax Credit can be availed before payment.

To decide first issue I hereby reproduce of Para 2 of Notification No 27/2012-NT dated 18.06.2012 which says

2.0 Safeguards, conditions and limitations.- Refund of CENVAT Credit under rule 5 of the said rules, shall be subjected to the following safeguards, conditions and limitations, namely:-

- (a)
- (b)
- (c) the value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant.

It is clear that the invoice should be of the same quarter or the refund claim may be filed in that relevant quarter. To decide second issue Cenvat Credit Rules 2004, Rule 4 is to be referred. The relevant extract of the same is reproduces below:

"Provided that in respect of an input service where whole of the service tax is liable to be paid by the recipient of service, credit shall be allowed after the service tax is paid:- In case Full Reverse Charge

"Provided further that in respect of an input service, where the service recipient is liable to pay a part of service tax and the service provider is liable to pay the remaining part, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challen referred to in rule 9:- In case of Partial Reverse charge

Provided also that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, except in respect of input service where the whole of the service tax is liable to be paid by the recipient of the service; is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an equal amount to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules:"

However the respondent has taken the Service Tax credit before the payment. The respondent when filed the claim could have submitted the payment details to the adjudicating authority which they fail to do so. Therefore issue raised by the

appellant is correct and respondent has to return the erroneously refund of $\overline{\xi}$ 8,923/-.

- 7. Thus, in view of discussion in paragraph 6 above and in the fitness of things, it would be just and proper to allow the appeal.
- **7.** The appeal filed by the appellant is disposed off accordingly.
- 8. अपीलकर्ता द्वारा दर्ज की गई अपीलों 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

SUPERINTENDENT (APPEAL-II),

CENTRAL EXCISE, AHMEDABAD.

To, M/s Apttus Software Private Ltd, A Wing, 6th Floor, Commerce House-5, Beside Vodafone House, Preladnagar Corporate Road, Ahmedabad-380051.

Copy To:-

- 1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
- 2. The Commissioner, Service Tax, Ahmedabad.
- 3. The Dy./Assistant Commissioner, Service Tax, Division-III, Ahmedabad.
- 4. The Assistant Commissioner(Systems), Service Tax,, Ahmedabad
- 5. Guard File.
- 6. P.A. File.



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