

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)89/A-II/2015-16

ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-023-16-17

दिनांक Date : 24.05.2016 जारी करने की तारीख Date of Issue 29/5/16

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

Passed by Shri Uma Shanker Commissioner (Appeals-II)

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

Arising out of Order-in-Original No STC/Ref/53/HCV/DC/Div-III/15-16 Dated 10.09.2015

Issued by Deputy Commr., Din -III, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

M/s. Sanghi Infrastructure 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, 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 रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 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 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.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

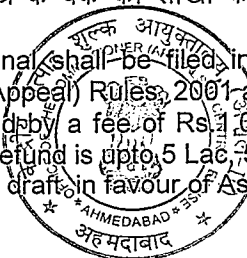
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपे 5 लाख या उससे कम है वहां रूपे 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपे 5 लाख या 50 लाख तक हो तो रूपे 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपे 50 लाख या उससे ज्यादा है वहां रूपे 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



ORDER IN APPEAL

This order arises out of the appeal filed by M/s Sanghi Infrastructure Ltd., 10th Floor, Kataria Arcade, Off S. G. Highway, Makarba, Ahmedabad (hereinafter referred to as the "said appellants") against the Order In Original No. STC/REF/53/H.C.Verma/DC/Div-III/2015-16 dated 10.09.2015 (hereinafter referred to as the "impugned order") passed by the Deputy Commissioner of Service Tax, Division-III, Ahmedabad (hereinafter referred to as the "adjudicating authority").

2. The relevant facts of the case are that the appellants are holding valid Service Tax Registration number AALCS2163AST001 and filed a refund claim of ₹28,70,710/- on 07.08.2014 stating that they had excess paid the above mentioned amount against various invoices. They had filed the said refund claim before the adjudicating authority under the provisions of Section 11B of the Central Excise Act, 1944 made applicable to Service tax matters vide Section 83 of the Finance Act, 1994.

3. In light of discrepancies noticed in the refund claim a Show cause notice was issued on 05.03.2015. The said SCN was adjudicated vide the impugned order wherein the refund claim was rejected by the adjudicating authority on the following grounds;

- (a) that there is no excess payment on the part of the appellants;
- (b) that the claim is hit by the limitation of Unjust Enrichment; and
- © that the refund to the extent of ₹24,17,255/-, paid vide the challan number 69103330608201353455 dated 06.08.2013 was hit by the time limitations under the provisions of Section 11B of the Central Excise Act, 1944, hence time barred.

4. Being aggrieved by the above order, the appellants have filed the present appeal. The appellants claimed that the adjudicating authority has stated that there was an error in calculation of total taxable amount; however, he has ignored the fact that there were multiple invoices raised erroneously by the appellants and services pertaining to the same have never been rendered. They further quoted that the impugned order is a non speaking one and has been passed in gross violation of principles of equity, fair play and natural justice. Regarding the issue of limitation period of one year, the appellants argued that same would not be applicable to the present case as limitation is applicable only when the refund is claimed of the amount paid as duty and in the present case, the excess amount paid by them cannot be treated as duty and has to be considered as deposit. On the issue of unjust enrichment, the appellants contended that the principle of unjust



enrichment is not applicable in the present case as the amount of Service Tax was paid by them during investigation.

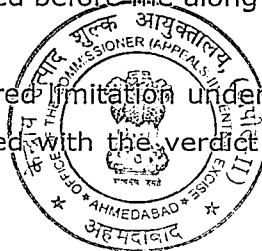
5. Personal hearing in the matter was granted and held on 11.05.2016. Ms. Madhu Jain and Shri Arvind Gupta, Advocates, appeared before me and reiterated the grounds of appeal. Ms. Jain stated that one invoice was Performa invoice and the second invoice was cancelled and the third one was a revised invoice. She tabled before me further written submissions in support of her claims.

6. I have carefully gone through the Statement of Facts, Grounds of appeal and the impugned order issued in the instant case.

7. In the impugned order, in page 4 I find that the adjudicating authority has stated that the claimant had submitted reconciliation in relation to the refund claim which was shown in Table-B in the same page. In the said table, the total value of taxable service was shown to be ₹3,70,70,772/- by the appellants. However the total taxable value, on physical verification, is found to be ₹5,29,41,740/- instead of ₹3,70,70,772/- and @ 10.30%, the total Service Tax liability comes to be ₹54,53,000/- which they have actually paid and I find no excess payment of Service tax made by the appellants. The appellants have not challenged this finding of the adjudicating authority before me and hence I treat that as a note of acceptance on the part of the appellants. Thus, as there is no excess payment made by them, they are not entitled for any refund and the adjudicating authority has very rightly rejected their claim.


8. Further, in the same Table-B of page 4, the adjudicating authority has observed that at serial number 1, 5 and 6, the appellants have shown the Service tax liability as zero in the respective invoices vide which taxable service accounting to a total of ₹2,78,70,968/- was provided to M/s. Shivam Constructions. The adjudicating authority did not receive any justification from the appellants as to how they were not liable for payment of Service Tax against these invoices. During personal hearing, before me, Ms. Madhu Jain stated that the invoice number SIL/DRED/28 dated 18.03.2011 was a performa invoice, invoice number SIL/DRED/09 dated 30.09.2011 was a cancelled one and invoice number SIL/DRED/010 dated 28.10.2011 was a revised one. However, from the photocopies of the said invoices submitted before me nothing could be deduced as the said invoices looked very much normal like any other invoices submitted before me along with.

9. Regarding the issue of time barred limitation under Section 11B of the Central Excise Act, 1944, I am satisfied with the verdict of the adjudicating



authority. In the case of limitation under time bar, the appellants have stated that the limitation of time bar under Section 11B of the Central Excise Act, 1944 is applicable when refund is claimed on the amount paid as duty whereas, they have claimed refund on deposit. I do not agree with the view of the appellants that they have claimed refund of the deposit as they have paid the same as excess amount of duty. In this regard, in view of the above discussion, I find that the appellants have not paid any excess amount of duty and in fact the reconciliation submitted by them is very clear about it.

10. In view of above, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.


(UMA SHANKER)

COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA)

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

BY R.P.A.D

To :-

M/s Sanghi Infrastructure Ltd.,
10th Floor, Kataria Arcade,
Off S. G. Highway, Makarba,
Ahmedabad- 380 051

Copy to:-

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



