

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)031/A-II/2016-17

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-236-16-17

दिनांक Date : 22.02.2017 जारी करने की तारीख Date of Issue 28/02/2017

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 SD-02/Ref-294/DRM/2015-16 Dated 28.03.2016 Issued

by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Green Channel Travel Services 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 :-

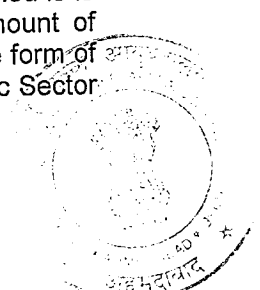
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल
हॉस्पिटल कम्पाउण्ड, 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 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 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. / Asslt. 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 रथगन 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 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 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,

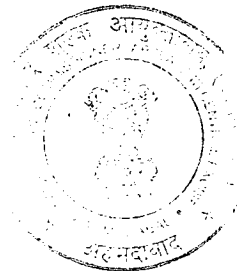
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous 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.



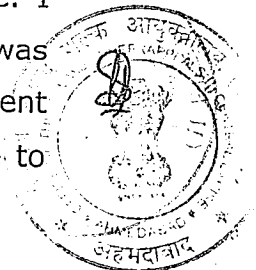
ORDER-IN- APPEAL

This order arises on account of an appeal filed by M/s. Green Channel Travel Services, 5/6, Sun Complex, Opp. State Bank of India, Nr. Stadium Circle Six Roads, C. G. Road, Navrangpura, Ahmedabad (here-in-after referred to as "*the appellants*" for the sake of brevity) against the Order-In-Original number SD-02/REF-294/DRM/2015-16 dated 28.03.2016 (herein after referred to as the "*impugned order*" for sake of brevity), passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (herein after referred to as the "*Adjudicating Authority*" for sake of brevity).

2. Briefly stated the facts of the case are that the appellants were engaged in providing of services classified under the category of 'Air Travel Service' and had filed a refund claim amounting to ₹2,93,248/- on the ground that during the period from October 2014 to March 2015, they were liable to pay Service Tax amounting to ₹2,93,248/- under the Service Tax registration number AAACI3678MST003 of M/s. IRM Ltd. but by the mistake of their accounting staff, they had made online payment in their old registration number AAACI3678MST001, i.e. their earlier firm which has been merged with M/s. IRM Ltd. and the said registration number was surrendered in the year 2004. Thus, they had again deposited the amount due in the correct Service Tax code number AAACI3678MST003 and filed a refund claim for the amount deposited in the Service Tax code number AAACI3678MST001. On going through the refund documents, certain discrepancies were noticed by the adjudicating authority and accordingly a show cause notice, dated 15.03.2016, was issued to them which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority has rejected the refund claim of the appellants alleging that the registration number AAACI3678MST001 was found active and the appellants have wrongly filed the claim before him instead of filing with the proper jurisdictional authority i.e. Bangalore Service Tax Commissionerate. Further, the adjudicating authority claimed that he was unable to ascertain whether the appellants have made excess payment (for which the refund was claimed).



3. Being aggrieved, the appellants filed the present appeal. They argued that they had taken centralized registration for Service Tax number AAACI3678MST001. So, there would be no question for filing refund claim with the proper jurisdiction. They further argued that when they had made excess deposit of Service Tax, then the validation that the refund cannot be sanctioned as it is not within the jurisdiction, is not acceptable.
4. Personal hearing was granted on 17.11.2016, wherein Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellants and re-iterated the contents of appeal memorandum.
5. I have gone through the appeal memorandum, stay application as well as the oral submission made during personal hearing. Looking to the facts of the case, I proceed to decide the case on merits without insisting for pre-deposit.
6. I find that that the appellants had wrongly paid Service Tax in the account of their old Service Tax number AAACI3678MST001 which, according to the appellants, was surrendered by them in the year 2004. Therefore, they had filed a refund claim for the same before the adjudicating authority. The adjudicating authority rejected the said claim claiming that the Service Tax number AAACI3678MST001 was found active and the appellants, under the said registration number, were found to be registered at Group-VI, Division-II, Service Tax Bangalore-I. In view of the above, I agree with the adjudicating authority that it becomes very tough to process a claim that belongs to some other jurisdiction. In fact, the appellants initially filed the refund claim before the Assistant Commissioner, Service Tax, Division-III, Ahmedabad, who in turn, transferred the claim to the adjudicating authority on the ground that the appellant's unit was falling under the jurisdiction of Service Tax, Division-II, Ahmedabad. I agree with the adjudicating authority that it becomes very tough to process the related documents as those were filed before the authorities in Bangalore. I believe that this may be the reason why the adjudicating authority was unable to ascertain whether the appellants had made excess payment or otherwise. However, when the adjudicating authority was unable to

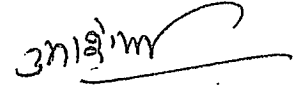


process the claim he could have transferred the same to the actual jurisdictional authority for verification or processing the claim.

7. In view of above facts, I find that the case is fit for remand back to the adjudicating authority. He is directed to process the claim afresh and cross verify the payment particulars from the authorities from Service Tax Bangalore and pass appropriate order.

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.



BY R.P.A.D.

M/s. Green Channel Travel Services,
5/6, Sun Complex, Opp. State Bank of India,
Nr. Stadium Circle Six Roads, C. G. Road, Navrangpura,
Ahmedabad -380 009

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Additional Commissioner, Service Tax, Ahmedabad.
4. The Deputy/Asstt. Commissioner, Service Tax, Div.II, Ahmedabad.
5. The Assistant Commissioner, Systems, Service Tax, Ahmedabad
6. P.A. File.
7. Guard File.

