

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) 17/RA/A-II/2016-17 ^{946/946}
ख अपील आदेश संख्या Order-In-Appeal No. AHM-SVTAX-000-APP-0243-16-17

दिनांक Date : 27.02.2017 जारी करने की तारीख Date of Issue 15/3/2017

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. STC/REF/33/DKJ/AC/Div-V/15-16 Date : 22.02.2016

Issued by Asst Commr Div-III STC Abad, Service Tax, Ahmedabad

घ प्रतिवादी का नाम / Name & Address of the Respondent
M/s. Tarasafe International 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 मैनटल हास्पिटल कम्पाउण्ड,
मेघानी 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 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। 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/-.



(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, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की 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 है -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवेट जमा की ली गई गलत राशि
- (iii) सेनवेट 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,

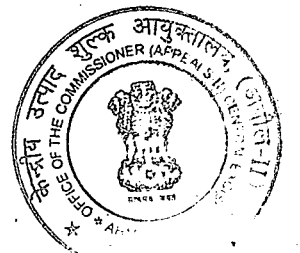
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

The Deputy Commissioner, Service Tax, Division-V, Ahmedabad (hereinafter referred to as '*the appellant*'), has filed the present appeal against the Order-In-Original number STC/Ref/33/D K Jangid/AC/Div-V/15-16 dated 22.02.2016 (hereinafter referred to as '*the impugned order*') passed in the matter of refund claim filed by M/s Tarasafe International Private Ltd, (herein after referred to as '*the respondents*') by the Assistant Commissioners of Service Tax, Division-V, Ahmedabad (hereinafter referred to as '*the adjudicating authority*').

2. The fact of the case, in brief is, respondent is a unit, working in SEEPZ Special Economic Zone and availing benefit of Notification No 12/2013-ST dated 01.07.2013. They are availing the benefit of exemption of service tax paid by them on specified service received and used by them for authorized operation. The respondent had filed refund claim of ₹31,943/- along with required documents for the period Jan, 2015 to March, 2015 for specified service received and used by them for authorized operation under Notification No 12/2013-ST dated 01.07.2013. The said refund claim of ₹31,943/- was sanctioned vide the impugned order, by the adjudicating authority, as per the conditions laid down in the Notification number 12/2013-ST dated 01.07.2013.

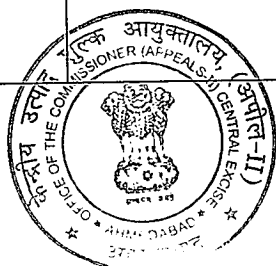
3. The said impugned order was reviewed by the Principal Commissioner of Service Tax, Ahmedabad vide review order no 14/2015-16 dated 19.05.2016 for filling appeals under section 84(1) of the finance act 1994 on the ground that adjudicating authority has wrongly sanctioned the refund claim of ₹28,187/- out of the total refund amount of ₹31,943/- on the ground that the respondent had not followed the condition laid down under Rule 4A of the Service Tax Rules 1994.

4. Personal hearing in the matter was granted to the respondent on 13.01.2017, which was attended by their authorized representative. They have submitted written submission against the appeal filed by the appellant. They have also filed memorandum of cross objection on 26.07.2016.

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 ₹ 31,943/- and the same was sanctioned under Notification No 12/2013-ST dated 01.07.2013. The appellant has proposed to be deny the refund of ₹28,187/- on the ground as shown below.

Sl No	Service Provider	Invoice No & Date	Service Tax Rs.	Remark
1	Tata Teleservices	1824168000	2008.50	(i) Service Tax No not mentioned. Hence the same is inadmissible as per Rule 4(a) of Service



[Handwritten signature]

				Tax.
2	Gujarat Industrial Development Corporation	----- dated 25.06.2015	26178	(i) Service Tax No not mentioned. Hence the same is inadmissible as per Rule 4(a) of Service Tax. (ii) Invoice dated 25.06.2015 and payment date is 26.06.2015. Hence the same does not pertain to this quarter. (Jan-Mar)
Total			28186.5	

During the personal hearing the authorized representative of the party submitted that denial of service tax credit by the appellant on the contention that Registration No. of the service provider is not mentioned, is in contravention of Rule 4A of Service Tax Rules, 1994 is unjustified and bad in the Law. Further Denial of the service tax credit as the invoice relate to period later than the quarter is unjustified and bad in the Law. They have relied upon various judgments. Now I have to decide two issues-:

- (1) Whether refund may be allowed on invoice where payment was made in other quarter.
- (2) Whether Service Tax Credit can be availed on such invoice where Service Tax Registration No. is not mentioned.

To decide first issue I hereby reproduce relevant portion of Para 3 of Notification No 12/2013-NT dated 01.07.2013 which states that-:

3. This exemption shall be given effect to in the following manner:

(i)

(ii)

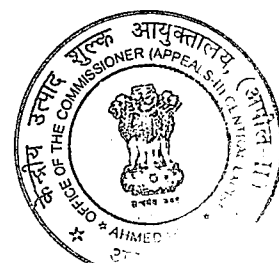
(iii)

(a)

(b)

(c)

(d) *the amount indicated in the invoice, bill or, as the case may be, challan, on the basis of which this refund is being claimed, including the service tax payable thereon shall have been paid to the person liable to pay the service tax thereon, or as the case may be, the amount of service tax payable under reverse charge shall have been paid under the provisions of the said Act;*



[Handwritten signature]

(e) the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

It is clear from the above that all such invoices on which refund is claimed the payment should be made first. Further all such invoices will eligible for refund on which payment is made in that specific quarter only. In the present case the refund is claimed for Jan-Mar quarter whereas payment of invoice in question is done in June which is the last month of another quarter.

To decide second issue Service Tax Credit Rules 1994, Rule 4 is to be referred. The relevant extract of the same is reproduces below-:

4. General Procedures

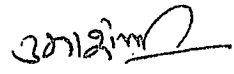
4.1. Every person providing taxable service is required to issue (within 14 days of completion of service or receipt of payment towards value of service, whichever is earlier) an invoice, a bill or challan signed by him or a person authorized by him. Such invoice, bill or challan should be serially numbered and should contain following information:

- i name, address and registration number of such person
- ii the name and address of the person receiving services
- iii description, classification and value of taxable service provided, and

The respondent during the personal hearing submitted the ST-2 of service provider whose credit was denied by the appellant. The same was found in order. Though as per rule service tax credit is not admissible but it is a procedural lapse which is condoned by me. Therefore service tax credit in respect of invoice where service tax no. is not mentioned is allowed.

7. Thus, in view of discussion in paragraph 6 above and in the fitness of things, the OIO is modified to that extent.

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)

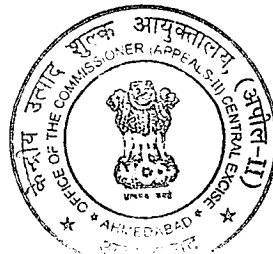
आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S S Chowhan)

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



To,
M/s Tarasafe International Private Ltd,
Plot No, 6-9, Apparel Park,
Special Economic Zone, GIDC,
Khokhra 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-V, Ahmedabad.
4. The Assistant Commissioner(Systems), Service Tax,, Ahmedabad
5. Guard File.
6. P.A. File.

