दूरभाष: 26305065

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

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| 7 | ==== क | फाइल संख्या : File No : V2(ST)0107/A-II/2016-17 93.6 9 V |
| 7 | ख | अपील आदेश संख्या : Order-In-Appeal No <u>AHM-SVTAX-000-APP-244-16-17</u> |
| | | दिनाँक Date : <u>28.02.2017</u> जारी करने की तारीख Date of Issue |
| | | <u>श्री उमा शंकर</u> , आयुक्त (अपील–॥) 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 SD-04/Ref-50/AK/2016-17 Dated 22.03.2016 Issued |
| | | by Assistant Commr STC, Service Tax, Ahmedabad |
| | ध | अपीलकर्ता का नाम एवं पता Name & Address of The Appellants M/s. Famy Care Ltd Ahmedabad |
| सकता है: | | erson aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in |
| | सीमा श् Appea | ुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील≔ I To Customs Central Excise And Service Tax Appellate Tribunal :- |
| | वित्तीय Under | अधिनियम,1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती: Section 86 of the Finance Act 1994 an appeal lies to :- |
| | पश्चिम हास्पिट | क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल ल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद—380016 |
| | The W | Vest Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at Oww Mental Hospital Compound, Meghani Nagar, Ahmedabad – 380 016. |
| | सकेगी भेजी ज है, वहाँ में जहाँ 1000 / | अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर वली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी— 5 में चार प्रतियों में की जा एवं उसके साथ जिस आदेश के विरूद्ध अपील की गई हो उसकी प्रतियाँ मानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रिजस्ट्रार के नाम से रेखांकित बैंक ड्रांपट के रूप सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए — फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे क्याया गया रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/— फीस भेजनी होगी। |
| | /ii\ | The appeal under sub-section (1) of Section 86 of the Finance Act 1994 to the Appellate |

(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.

- एवं (२ए) के अंतर्गत अपील सेवाकर वित्तीय अधिनियम, 1994 की धारा 86 की उप–धाराओं (गा) नियम व (वप) के अंतर्गत निर्धारित फार्भ 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 होनां 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 ऱ्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संवंधित 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) दिलांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 –

- धारा ।। डी के अंतर्गत निर्धारित रकम (i)
- 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 अपोलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।
- 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;
- amount of erroneous Cenval Credit taken;
- 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 4(1) 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

M/s. Famy Care Ltd. , Plot No. 20,21 & 23, Pharmez, Sarkhej-Bavla N.H. No. 8A, Near Village – Metoda, Taluka Sanand, District-Ahmedabad- Pin-382 213, Ahmedabad (hereinafter referred to as 'appellants') have filed the present appeals against the Order-in-Original number SD-04/REF-50/AK/2015-16 dated 22.03.2016 (hereinafter referred to as 'impugned orders') passed by the Asst.Commissioner, Service Tax Div-IV, APM Mall, Satellite, Ahmedabad (hereinafter referred to as 'adjudicating authority');

- 2. The facts of the case, in brief, are that the appellants holding Service Tax registration number –AAAC F0632Q ST002 have filed refund claim on 01.12.2015 for Rs. 4,97,351/- under notification No. 12/2013-ST for July-2015 to September ,2015. Export turnover of SEZ was 3,08,22,677/- and DTA turnover was 84,44,559/- (DTA+SEZ turnover Rs. 3,92,67,236/-). Adjudicating authority rejected the proportional claim of Rs. 1,06,657/- attributed to DTA turnover [$(84,44,559/- \times 4,97,351/-)/3,92,67,236/-$] and also rejected the claim of Rs. 1,78,006/- as (i) Group Medical Insurance given to employee and their family members are not services used for authorized operation and (ii) invoice was issued in name of HO and HO has not issued ISD invoice in name of SEZ. Total claim of Rs. 2,84,963/- (1,78,006/- + 1,06,957/- was rejected by Adjudicating Authority vide impugned OIO.
- 3. Being aggrieved with the impugned order, the appellants preferred an appeal on 27.06.2016 before the Commissioner (Appeals-II) wherein it is contended that-
 - I. The Notification 12/2013-ST is covering The General Insurance and it is authorized operation. In support of contention decision of Stanzen Toyotetsu India Private Ltd -2008-TMI-33381- CESTAT Banglore [2009 (14) STR 316 (Tribunal)] is relevant in present case.
- II. Adjudicating authority have calculated refund by DTA sales deduction of 1,78,006/- towards insurance premium from refund amount itself, which is not correct. In fact claim amount should have been reduced first to Rs. 3,19,345/- i.e[(4,97,351 1,78,006)]. Then proportional claim of for DTA should have been arrived for rejection as (84,44,559/- x 3,19,345/-)/3,92,67,236/-. Rejection comes to Rs. 68676/-. Claim has been rejected more by Rs. 38,280/- (1,78,006/-68,676/-)

4. Personal hearing in the case was granted on 21.02.2016. Shri Acharya, authorized representative of appellant appeared before me and reiterated the grounds of appeal.

DISUSSION AND FINDINGS

- I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. Sort question to be decided is as to whether relation between appellant and TTPL is principal to principal or Principal to agent
- 6. Regarding contention of appellant that Notification 12/2013-ST is covering The General Insurance and it is authorized operation I mention that everything covered in notification and covered in authorized operation is eligible for refund provided it qualifies as "input service" and utilized in authorized operation. Insurance cover extended to family member is neither input service nor it is authorized operation. CESTAT decision in case Stanzen Toyotetsu India Private Ltd -2008-TMI-33381- CESTAT Banglore, resorted by appellant is not applicable to present case as in said decided case Medical insurance of employees (not family member) is held to be input service in the case of Stanzen Toytetsu (supra) by the Tribunal. I conclude that refund is rightly rejected by adjudicating authority. I hold that credit of said insurance service is not admissible and appellant claim amount is reduced to that amount. I hold that amount of claim should be taken as Rs. 3,19,345/-instead of Rs. 4,97,351/-.
- 7. Regarding calculation mistake as stated in para 3(II) above I find that adjudicating authority has erred in rejecting the whole amount of Rs. 1,78,006/-. I agree with the contention of appellant that first refund amount should be reduced and then proportional refund should be allowed as calculated by appellant in para 3(II) above. I hold that only Rs. 68,676/- should be rejected instead of 1,78,006/- and consequently admissible claim amount comes to Rs. 2,50,669/- [3,19,345/- -68,676/-)
- 8. In view of above, appeal filed by the appellants is allowed.
- 9. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।



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

उभाशेल्प (उमा शंकर)

आयुक्त (अपील्स **- II**)

ATTESTED (P. PATEL)

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

To,

M/s. Famy Care Ltd.,

Plot No. 20,21 & 23,

Pharmez, Sarkhej-Bavla N.H. No. 8A,

Near Village - Metoda,

Taluka Sanand, District- Ahmedabad-

Pin-382 213, 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 Asst. Commissioner, Service Tax Div-IV, APM mall, Satellite, Ahmedabad.
- 5) The Asst. Commissioner(System), C.Ex. Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.



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