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 फाइल संख्या : File No : **V2(ST)0155/A-II/2016-17** 1076/1081

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-SVTAX-000-APP-246-16-17**

दिनाँक Date : **02.03.2017** जारी करने की तारीख Date of Issue 24/3/17

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 _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original No SD-04/Ref-16/Skaps/2016-17 Dated **10.08.2016** **Issued by Assistant Commr STC,** Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता **Name & Address of The Appellants**
M/s. SKAPS Industries India 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 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 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 ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना 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 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.

(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 A2l9k 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 रू 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, 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 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) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट 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.

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-II) OFFICE OF THE COMMISSIONER (APPEALS-II) CENTRAL EXCISE AHMEDABAD अहमदाबाद

ORDER IN APPEAL

M/s. Skalp Industries India Pvt. Ltd. (100% EOU), Plot No-A/20, Survey No.423, Mahagujarat Industrial Estate, Moraiya, Taluka- Sanand, Ahmedabad - 382 210 *(hereinafter referred to as 'appellants')* have filed the present appeals against the Order-in-Original number SD-04/Ref-16/Skaps/2016-17 dated 10.08.2016 *(hereinafter referred to as 'impugned orders')* passed by the Deputy 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 were engaged in providing/receiving taxable service and was holding Service Tax registration number AADC P2779D ST001. Appellant had filed refund claim of Rs. 3,50,871/- under notification No.27/2012-CE(NT) dated 18.06.2015on 05.07.2016 for quarter July-2015 to September-2015 .

3. Adjudicating authority has allowed claim of Rs. 1,47,286/- and has disallowed the claim of Rs. 2,03,585/- in respect of following four services -

I. Disallowed Rs. 1,82,383/- on invoices of M/s Zaveri & Co. Exports which is raised for rent of premises having address at Unit No. 101 and 102 on the 1st floor, Parshwanath E. Square, Satellite, Ahmedabad. The said premises are not registered with Service Tax Authorities.

II. Disallowed Rs. 1,051/- on invoices of M/s Shivam Intrnational which is raised for courier charges having address at Unit No. 101 and 102 on the 1st floor, Parshwanath E. Square, Satellite, Ahmedabad. The said premises are not registered with Service Tax Authorities.

III. Disallowed Rs. 445/- on invoices of M/s Ricoh India which is raised for printing charges having address at Darshan Society , Ahmedabad. The said premises are not registered with Service Tax Authorities.

IV. Disallowed Rs. 20,077/- on invoices of M/s Transwaorld Terminal Pvt. Ltd which is raised for Import clearing Charges having address at Mundra SEZ. The said premises are not registered with Service Tax Authorities.

Other common reason for above four services is that there is no nexus between manufacturing of export goods at Plot No-A/20, Survey No.423, Mahagujarat Industrial Estate, Moraiya, Taluka- Sanand, Ahmedabad - 382 210 and said premises shown in invoice of above services, therefore said four services are not input service.

4. Being aggrieved with the impugned order, the appellants preferred an appeal on 10.10.2016 before the Commissioner (Appeals-II) wherein it is contended that renting services and import clearing services are input service in manufacturing activity at 100% EOU. Appellant did not contend for other services i.e courier services and printing charge services.

5. Personal hearing in the case was granted on 21.02.2017. Shri Arjun Akruwal, CA, appeared before me and reiterated the grounds of appeal.

DISUSSION AND FINDINGS

6. 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.

7. Rented premises which is not reflected in STR is used by administrative HO of appellant. STR is in name of factory. I find that definition of "input service" covers the office relating to such factory. Though the invoices are raised in name of HO rented premises but debit notes issued are in name of factory. It is sufficient evidence to conclude that renting service is utilized and consumed in export activity. I hold that renting service is admissible credit and appellant is eligible for refund of that amount. I allow the refund of Rs. 1,82,383/- on invoices of M/s Zaveri & Co. Exports which is raised for rent of premises having address at Unit No. 101 and 102 on the 1st floor, Parshwanath E. Square, Satellite, Ahmedabad.

8. Appellant has produced the agreement between executed appellant and Anand Tradelink Pvt. Ltd, Span Trade Center, Ahmedabad. From said agreement it is not established that Import services of Transworld Terminals Pvt. Ltd. are utilized by appellant. No reference of Transworld Terminals Pvt. Ltd. is made in agreement. Appellant has failed to establish that said services are utilized in export manufacturing activity. There is no nexus between input service and out put export goods. In absence of which I am unable to extend the benefits to appellant.

9. Appellant has not contended for other services i.e courier services and printing charge services. No arguments are made in appeal memo. From records available I am unable to establish that said two services are used in export activity. I up hold the OIO rejecting refund for these two services.

10. In view of above, appeal filed by the appellants is partially allowed.

11. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

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

(उमा शंकर)

आयुक्त (अपील्स - **II**)

ATTESTED

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

To,
M/s. Skalp Industries India Pvt. Ltd.,
Plot No-A/20, Survey No.423,
Mahagujarat Industrial Estate,
Moraiya, Taluka- Sanand,
Ahmedabad - 382 210

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.