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) 8/RA/A-II/2016-17** /1317/1325

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-SVTAX-000-APP-0261-16-17**

दिनाँक Date : **27.03.2017** जारी करने की तारीख Date of Issue 5/4/17

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. **STC/REF/147/HCV/IQR/Div-III/15-16** Date : **15.02.2016**

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

ध **प्रतिवादी का नाम / Name & Address of the Respondent**

M/s. IQR Analytics Pvt Ltd Ahmedabad, 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, 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 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। स्टे के लिऐ 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 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 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 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 वर्णित 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 होगे।

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 Cenval 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

The Deputy Commissioner, Service Tax, Division-III, Ahmedabad (hereinafter referred to as *'the appellant'*), has filed the present appeal against the Order-In-Original number STC/Ref/147/HCV/IQR/Div-III/15-16 dated 15.02.2016 (hereinafter referred to as *'the impugned order')* passed in the matter of refund claim filed by M/s IQR Analytics Private Ltd, Ahmedabad (herein after referred to as *'the respondents'*) by the Deputy Commissioners of Service Tax, Division-III, Ahmedabad (hereinafter referred to as *'the adjudicating authority')*.

2. The fact of the case, in brief is, respondent is exporter and availing benefit of Notification No 27/2012-CE (NT) dated 18.06.2012 for refund of unutilized CENVAT Credit. The respondent had filed refund claim of ₹1,52,965/- along with required documents. The respondent was sanctioned the refund claim of ₹1,46,744/-and rejected the refund claim of ₹6,258/- vide the impugned order, by the adjudicating authority, as per the conditions laid down in the Notification number 27/2012- CE (NT) dated 18.06.2012.

3. The said impugned order was reviewed by the Principal Commissioner of Service Tax, Ahmedabad vide review order no 05/2015-16 dated 11.05.2016 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 ₹ 78,722/- out of the total refund amount of ₹1,46,744/- on the ground that invoices on which service tax credit availed by the exporter does not bear service tax registration no. and payment of some of the invoices were not traceable from documents submitted.

4. Personal hearing in the matter was granted to the respondent on 13.01.2017, however they did not attended. Second Personal hearing was granted on 21.02.2017, which was attended by their authorized representative. The authorized signatory submitted that they have complied the query regarding mentioning of service tax registration no. on invoice and submitted the same in the division office. They will submit the same within two days. The reply of the respondent received in this office on 28.02.2017.

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 ₹ 152,965/- out of which ₹ 1,46,744/-was sanctioned under Notification No 27/2012-ST dated 29.06.2012. The appellant has proposed to be deny the refund of ₹78,722/- on the ground as shown below.

Sl No	Service Provider	Invoice No & Date	Service Tax Rs.	Remark
1	4C Consultant	0017/31.08.2014	18151	Service tax No. Not mentioned on the invoice. Hence Inadmissible as per Rule 4(a) of Service Tax.
2	4C Consultant	0016/31.08.2014	18151	
3	4C Consultant	0018/31.08.2014	18151	
4	Blazenet Limited	BL_AH/ILL/07/0285 dated 01.08.2014	2108	
5	Tata Communication	190535140913	3090	Payment Not Traceable
6	CRP Technologies (I) Pvt Ltd	3057 Dated 04.09.2014	1767	
7	Ernest & Young	IINL 0100226246	17304	
		Total	78722	

During the personal hearing the authorized representative submitted that compliance of invoice wise will be submitted within two days. Now I have to decide two issues-:

(1) Whether refund may be allowed on invoices which do not bear Service Tax Registration Number.

(2) Whether refund can be granted in such invoices in which payment is not traceable.

To decide first issue I hereby reproduce the relevant Para of Rule 4(a) of Service tax Rule 1994 which says

4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan. –

(1) Every person providing taxable service shall, not later than thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or agreed to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

(i) the name, address and the registration number of such person;
(ii) the name and address of the person receiving taxable service;
(iii) Description and value of taxable service provided or agreed to be provided; and
(iv) the service tax payable thereon.

Provided that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial

company providing service to any person, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information in such documents as required under this sub-rule.

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.

To decide second issue I find that the appellant is in a view that payment of some of the invoices was not traceable. The respondent submitted the invoice-wise Bank Statement showing the payments of the invoice in question. The reason for difference was payment was done after deducting the TDS. The same was found in order.

7. Thus, in view of discussion in paragraph 6 above and in the fitness of things, it would be just and proper to reject the appeal filed by the revenue.

8. अपीलकर्ता द्वारा दर्ज की गई अपीलो 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

30/3/2017
(S S Chowhan)
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,
M/s IQR Analytics Private Ltd,
307, Sarthik-II, Opp Rajpath Club,
Nr Kiran Motors, S G Highway,
Ahmedabad-380015.

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-III, Ahmedabad.
4. The Assistant Commissioner(Systems), Service Tax,, Ahmedabad
5. Guard File.
6. P.A. File.