

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

क फाइल संख्या : File No : V2(ST)67/A-II/2016-17

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-035 to 036-16-17

दिनांक Date : 13.06.2016 जारी करने की तारीख Date of Issue 16/06/16

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-06/Refund/10/AC/Asiatic/15-16 Dated 30.07.2015 &
SD-06/Refund/11/AC/Asiatic/15-16 Dated 30.07.2015

Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Asistic ColorChem Industries 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, मेघाणी 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ 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 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 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.



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(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धारा (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/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For 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 or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise 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 adjuration 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 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 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 रूपए 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 होगा।

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,

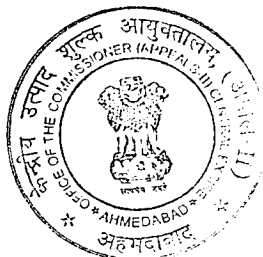
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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)(i) 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)(i) 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

M/s. Asiatic Colour-Chem Industries, Plot No. 1503-04, G.I.D.C., Phase-I, Naroda, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed by the Assistant Commissioner, Service Tax, Division-VI, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

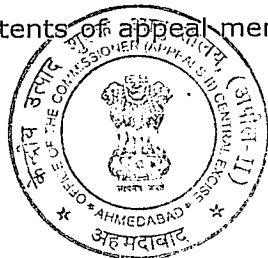
Sr. No.	OIO No.	OIO date	Amount of refund claimed (₹)	Date of filing the refund claim
1	SD-06/Ref/10/AC/Asiatic Colourchem/2015-16	30.07.2015	2,35,007	05.06.2015
2	SD-06/Ref/11/AC/Asiatic Colourchem/2015-16	30.07.2015	1,57,235	05.06.2015

2. The facts of the case, in brief, are that the appellants are holding Service Tax Code No. AABCA6297RST002 and had filed a refund claim of ₹ 2,35,007/- and ₹ 1,57,235/- on 05.06.2015 respectively under Notification No.41/2012-ST dated 29.06.2012 in respect of Service Tax paid on the specified services used for export of goods.

3. During scrutiny of the above claims, the adjudicating authority had found that the price consideration between the buyer and the appellants was on FOB basis. In case of export transaction where FOB price is the consideration, the goods are to be delivered on the vessel which means the place of delivery is the port of shipment. Therefore, the services availed up to the point would become services availed up to the place of removal and not services availed beyond the place of removal hence, the refund claim appeared to had failed to fulfill the basic spirit of the Notification No. 41/2012-ST dated 29.06.2012 and Circular No. 999-2015CX. Thus, show cause notices dated 17.06.2015 were issued to the appellants which were adjudicated by the adjudicating authority vide the impugned orders. The adjudicating authority, vide the above impugned orders, rejected both the claims.

4. Being aggrieved with the impugned order the appellants have preferred the present appeals. The appellants contended that the refund claims have been rejected without considering the purpose of Notification No. 41/2012-ST dated 29.06.2012 and true interpretation in its entirety.

5. Personal hearing in the matter was granted and held on 05.04.2016. Shri Pravin Gupta and Smt. Bhavna Gupta appeared before me and reiterated the contents of appeal memo. He tabled before me the budgetary



changes and requested that the same may be applied while deciding the case.

6. I have carefully gone through the appeal memorandum, submission made at the time of personal hearing and evidences available on records. The main issue to be decided is whether the impugned orders passed by the adjudicating authority is just, legal and proper or otherwise. Accordingly, I proceed to decide the case on merits. At the very onset, I find that the refund is claimed under Notifn. No.41/2012-ST dated 29.06.2012 which is a conditional one. The condition number 1(a)(i) is reproduced below for the sake of ease.

"Provided that-

(a) *The rebate shall be granted by way of refund of service tax paid on the specified services.*

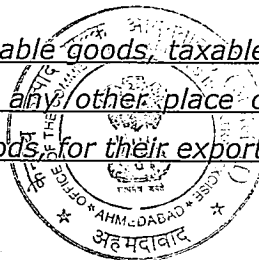
Explanation.- For the purpose of this notification,-

(A) *"specified services" means-*

(i) *In case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;"*

From the above, it is clear that the services used beyond the place of removal are eligible for refund. Normally, the place of removal is factory gate as defined in the Central Excise Act, 1944. But, in case of export of goods, the place of removal is port of export/ICD/CFS as held in series of judgments of the higher appellate forums. In the instant case, I find that the goods have been exported from the port. So, it is obvious that the place of removal is port. I find that the said notification allows refund of service tax paid on the specified services used beyond the place of removal. It is true that the services used by the appellants from the factory gate to the port of export. I also find that there is no dispute regarding 'place of removal' as clarified by the CBEC vide Circular No.988/12/2014-CX dated 20.10.2014 and 999/6/2015-CX dated 28.02.2015. Hence, I find that the services which the appellants have utilized is up to the place of removal i.e. the port whereas the said notification allows refund of service tax paid on specified services used beyond the place of removal and as such the appellants are not eligible for refund in question in terms of said notification. However, the Govt. has amended the said notification vide Notification Number 1/2016-ST dated 01.03.2016 wherein explanation given in Clause (A)(i) has been substituted as detailed below:

"(i) in the case of excisable goods, taxable service that have been used beyond the factory or any other place or premises of production or manufacture of said goods, for their export."



①

Further, I also find that the Finance Act, 2016 has amended retrospectively i.e. from 01.07.2012, the date of application of parent notification.

7. In view of above amendment, (applicable retrospectively) the appellants are entitled for refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods.

8. In view of above, I set aside the impugned orders and remand back the above cases to the adjudicating authority to decide the cases afresh as per Notification Number 1/2016-ST dated 01.03.2016.

Uma Shanker

(UMA SHANKER)

COMMISSIONER (APPEAL-II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

S. Dutta
(S. DUTTA) 13/06/16

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

To,
M/s. Asiatic Colour-Chem Industries,
Plot No. 1503-04,
G.I.D.C., Phase-I, Naroda,
Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad.
- 3) The Dy./Asst. Commissioner, Service Tax, Division-VI, Ahmedabad.
- 4) The Asst. Commissioner (System), Service Tax HQ, Ahmedabad.
- 5) Guard File.
- 6) P.A. File.

