

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)156/A-II/2015-16 / 738 to 742
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-038-16-17
दिनांक Date : 18.07.2016 जारी करने की तारीख Date of Issue 20/07/16

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-01/Refund/45/AC/Gautam Adani/2015-16 Dated 03.12.2015
Issued by Asstt. Commr., Division-I, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

M/s. Rajesh S Adani 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, 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 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।

(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.



(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 35फ 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 अर्जी 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,

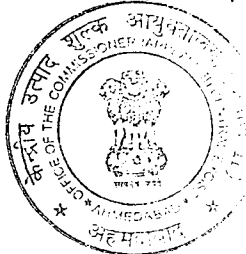
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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)(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

Shri Rajesh Shantilal Adani, Shantinagar, Near Kantam Party Plot Cross Road, Rajpath- Bopal Road, Bodakdev, Ahmedabad (hereinafter referred to as "*the Appellant*"), has filed the present appeal against the Order-in-Original No SD-01/Refund/45/AC/Rajesh Adani/15-16 dated 2/3.12.2015(hereinafter referred to as the '*impugned order*') passed by the Assistant Commissioner of Service Tax, Division-I (previously Division-V before restructuring), Ahmedabad (hereinafter referred to as '*adjudicating authority*').

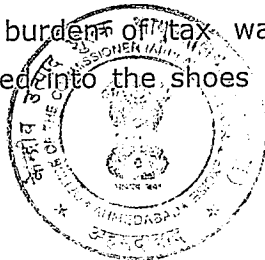
2. The facts of the case, in brief, are that the appellant had filed refund claim on the ground that he had wrongly paid Service Tax on procurement of services for construction of original work pertaining to a single residential unit, under Section 11B of Central Excise Act, 1944 made applicable vide Section 83 of Finance Act, 1994.

3. On verification of documents it was seen that the appellant had used the services of M/s. Shubh Engineers having Service Tax number ACLFS2604HRSD001. The above service provider had issued invoices to the appellant along with Service Tax at appropriate rate on assessable value.

4. The appellant, being recipient of the services, had claimed that the exemption benefit under Notification No. 25/2012-ST dated 20.06.2012 was available to the above mentioned service provider and accordingly, not required to pay Service Tax. Since, the appellant had paid Service Tax to the service provider, the former had filed the above mentioned refund claims under the provisions of Section 11B of Central Excise Act, 1944 made applicable vide Section 83 of Finance Act, 1994.

5. On verification of the claims, it was seen that it was the prerogative of the service providers to avail the exemption and the recipient cannot claim the exemption. Accordingly, a show cause notice, dated 11.09.2015, was issued to the appellant which was adjudicated by the adjudicating authority. The adjudicating authority, vide the impugned order, rejected the refund claim stating that the appellant is not entitled for the refund as the same was eligible to the service provider.

6. Being aggrieved with the impugned orders of rejecting the refund amounts, the appellant filed the present appeal. The appellant claimed that the ground raised in the impugned orders was that the service provider alone had the right to avail exemption. That the appellant had not claimed the exemption under refund claim. The exemption notification is the ground on which it was claimed that the Service Tax, not payable, was paid and therefore, refundable. Ordinarily, the service provider should have claimed exemption or having incorrectly paid Service Tax, should claim refund. Since, the burden of tax was borne by the appellant; therefore, the appellant had stepped into the shoes of the service providers and



entitled to the refund claims.

7. Personal hearing in the case was granted on 13.06.2016 wherein Shri S. J. Vyas, Advocate, on behalf of the appellant appeared before me and reiterated the contents of appeal memorandum. He also stated that in the impugned order, it is the duty of the department to ask the service provider to deposit Service Tax collected from the service recipient. He further submitted that in an earlier matter of identical nature, the case was remanded back and he submitted a photocopy of the order of the said case.

8. I have carefully gone through the facts of the case on records, grounds of the appeal, and written submission put forth by the appellant as well as oral submission made at the time of personal hearing. Looking to the facts of the case, I proceed to decide the case on merits.

9. In the present case, I find that the appellant had decided to file the claims of refund on the ground that as per exemption Notification No. 25/2012-ST dated 20.06.2012, the service provider was not supposed to pay Service Tax and therefore, the no Service tax would have been collected from the appellant by the service provider. In view of the above, I would like to mention below the related contents of the said notification for proper clarity;

"Notification No. 25/2012-Service Tax

New Delhi, the 20th June, 2012

*G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in suppression of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, **being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely:-***

1. *Services provided to the United Nations or a specified international organization;*

2. *Health care services by a clinical establishment, an authorised medical practitioner or para-medics;*

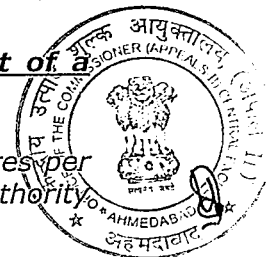
3. *Services by a veterinary clinic in relation to health care of animals or birds;.....*

.....14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) *an airport, port or railways, including monorail or metro;*

(b) a single residential unit otherwise than as a part of a residential complex;

(c) *low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority*



empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;....."

In the above notification, it can be seen that the services listed are exempt from payment of Service tax. Thus, it is quite clear to comprehend that whether the service provider opts for the exemption or not, the service provided under the above notification are exempted from payment of Service tax. Therefore, no question of payment of Service Tax arises on the part of the service provider and hence whatever amount of Service Tax has been collected by the service provider from the appellant needs to be refunded back. The adjudicating authority, in the impugned orders, has verified the circumstances of the refund claims in light of the service providers instead of the appellant. The adjudicating authority, keeping in mind the Notification No. 25/2012-ST dated 20.06.2012, should have granted the refunds after proper verification of documents of the appellant.

10. Thus, in view of discussion at Para 9 above and in the fitness of things, it would be just and proper to remand the matter to the Adjudicating Authority to give independent findings on the said issues raised by the appellant before me and also such other material that may be produced by the appellant in support of his contention. In the event of such materials being placed before the Adjudicating Authority, the same shall be considered in accordance with law. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of his contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority.

11. The appeal filed by the appellant is disposed off accordingly.

Uma Shanker

(UMA SHANKER)

COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.



ATTESTED

S. Dutta
(S. DUTTA) 19/07/16

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

To,
Shri Rajesh Shantilal Adani,
Shantinagar, Near Kantam Party Plot Cross Road,
Rajpath- Bopal Road, Bodakdev,
Ahmedabad- 380 059

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

