

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)107/A-II/2015-16 / 279 to 282
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-043-16-17
दिनांक Date : 19.07.2016 जारी करने की तारीख Date of Issue 25/07/16

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-06/Ref/18/AC/Arvind/15-16 Dated 06.11.2015

Issued by Assistant Commissioner, Div-VI, Service Tax, Ahmedabad

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

M/s. Arvind 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 :-

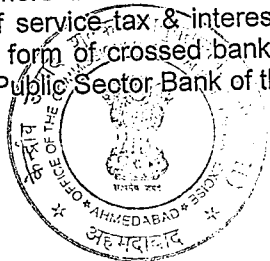
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, 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, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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. Arvind Ltd., Naroda Road, Ahmedabad (hereinafter referred to as "the Appellants") have filed the present appeal against Order-in-Original No. SD-06/Refund/18/AC/Arvind/2015-16 dated 06.11.2015 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Service Tax, Division-VI, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. The facts of the case, in brief, are that the appellant had filed a refund claim, amounting to ₹ 4,30,760/-, on 19.06.2015, before the adjudicating authority, the ground that they had wrongly paid Service Tax on 'Renting of Immovable Property' during the period August 2014 to March 2015 which was exempted from payment of Service tax as per serial number 40 under the Mega Exemption Notification number 25/2012-ST dated 20.06.2012 as amended vide Notification number 6/2014-ST dated 11.07.2014, under Section 11B of Central Excise Act, 1944 made applicable to Section 83 of Finance Act, 1994.

3. On verification of documents it was seen that the appellants had used the services of M/s. Modern Organisers, 900, Parshwanath E Square, Corporate Road, Prahladnagar, Ahmedabad having Service Tax number AABFM1287AST001. The above service providers had issued rent invoices to the appellants along with Service Tax at appropriate rate on assessable value.

4. The appellants, 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 appellants had paid Service Tax to the service provider, the former had filed the above mentioned refund claim 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 provider to avail the exemption and the recipient cannot claim the exemption. It was also found that the neither the rent invoices nor the Insurance policy papers produced by the appellants could show whether the goods stored in the said immovable property (godown) were ginned/ baled or otherwise. Accordingly a show cause notice dated 03.09.2015 was issued to the appellants which were adjudicated by the adjudicating authority. The adjudicating authority, vide the impugned order, rejected the refund claim stating that the appellants are not entitled for the said refund.

6. Being aggrieved with the impugned order of rejecting the refund amount, the appellants filed the present appeal. The appellants claimed that they are well eligible to claim the refund under Section 11B and as per the



judgment of Supreme Court in the case of Mafatlal Industries. Since, the burden of tax was borne by the appellants; therefore, the appellants had stepped into the shoes of the service provider and entitled to the refund claim. Regarding the issue of unjust enrichment, the appellants claimed that it is not applicable to the person who has borne the burden of duty and the incidence of tax. However, in the issue of non-mention of the word 'cotton ginned or baled' in the invoices or insurance papers, the appellants stated that they had produced detailed evidences before the adjudicating authority, with affidavit, which were not even discussed by the adjudicating authority. Regarding the insurance papers, they claimed that these papers are hardly proof of actual storage. The policies were taken to cover all contingencies and thus, reliance on insurance policies is incorrect.

7. Personal hearing in the case was granted on 01.07.2016 wherein Shri S. J. Vyas, Advocate, on behalf of the appellants appeared before me and reiterated the contents of appeal memorandum. He also stated that there is no doubt the service was for storage and they are entitled to file the refund claim.

8. I have carefully gone through the facts of the case on records, grounds of the appeal, and written submission put forth by the appellants 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 appellants 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, no Service tax should have been collected from the appellants 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 supersession 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;*

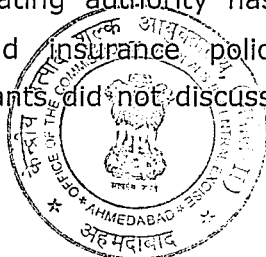
3. *Services by a veterinary clinic in relation to health care of animals or birds;.....*

.....**40. Services by way of loading, unloading, packing, storage or warehousing of rice, cotton, ginned or baled;**

41. *Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves;*

42. *Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India;....."*

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 services provided under the above notification are exempted from payment of Service tax. Therefore, it is an agreeable fact that since, no question of payment of Service Tax arises on the part of the service provider, whatever amount of Service Tax has been collected by the service provider from the appellants 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 provider instead of the appellants. However, if we look at serial number 40 of the Notification Number 25/2012-ST dated 20.06.2012 above, it is very clearly mentioned that the cotton stored, have to be ginned or baled. In paragraph number 5 of the impugned order, the adjudicating authority stated that the invoices and insurance policy papers (supporting documents of the appellants) are silent about the nature of the goods. In the insurance policy papers the property is treated as a cotton godown storing all type of Raw Materials like cotton yarns and Finished Goods like clothes etc. The appellants have stated before me that they have shown the adjudicating authority all detailed evidences with affidavit but the adjudicating authority has rejected the claim without discussing the evidences. Strangely, the appellants have neither clearly said exactly what kind of evidences they have put before the adjudicating authority nor they have submitted the same before me which would have enabled me to verify those supporting evidences. The adjudicating authority has said that the appellants have submitted invoices and insurance policies as supporting documents. Surprisingly, the appellants did not discuss, before me, anything about the



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said invoices and regarding the insurance papers they stated that reliance on insurance policies would be clearly incorrect. I find that the Notification Number 25/2012-ST dated 20.06.2012, on which the appellants have relied upon, specifically says about ginned or baled cotton. Thus, the appellants are eligible to file the refund only if they follow whatever has been specified in the said notification i.e. the goods have to be ginned or baled cotton. For that they have to submit clear documentary evidences in support of their claim. Mere verbal assurance that they followed the procedures laid down in the notification will not suffice their purpose. In view of the above, I remand the case back to the adjudicating authority to allow the appellants to produce the requisite documents for his satisfaction before deciding the case. The appellants should produce all these documentary evidences to claim exemption under Notification number 25/2012-ST *ibid*.

10. In view of above, I allow the appeal by way of remand.


(UMA SHANKER)

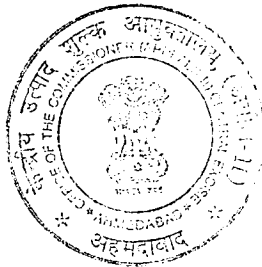
COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA) 130716

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

To,
M/s. Arvind Ltd.,
Naroda Road,
Ahmedabad-380 025



Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Assistant Commissioner, Service Tax, Division-VI, Ahmedabad.
4. The Assistant Commissioner(Systems), Service Tax,, Ahmedabad
5. Guard File.
6. P.A. File.