

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)11,12,13,14,15,16 & 17/A-II/2016-17 / 8177821
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-051 to 057-16-17
दिनांक Date : 22.07.2016 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 As per Order Dated As per order

Issued by Assistant Commr STC Div-VI Delhi, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Vodafone Mobile services 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 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 thar 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 भेजी 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 8.50/- 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(संख्य-2) अधिनियम 2014(2014 की संख्या 29) 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, बशर्त कि इस धारा के अंतर्गत जमा की जाने वाली अनेकित 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 बशर्त 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,

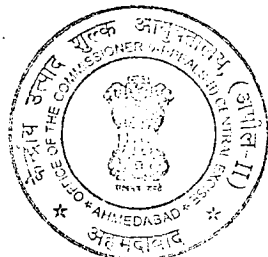
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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. Vodafone Mobile Services Ltd., Vodafone House, Building-A, Corporate Road, Prahladnagar, Ahmedabad (*hereinafter referred to as 'appellant'*) has filed the appeals against the below mentioned Orders-in-Original (*hereinafter referred to as 'impugned orders'*) by the Assistant Commissioner, Service Tax, Division-VI, Commissionerate Delhi-II, New Delhi (*hereinafter referred to as 'adjudicating authority'*).

Sr. No.	OIO No.	OIO date	Amount of rebate claimed (₹)	Date of filing the rebate claim
1	12/ST-II/Div-VI/REBATE/BH/2015-R	24.06.2015	6,34,27,140	09.11.2011
2	13/ST-II/Div-VI/REBATE/BH/2015-R	24.06.2015	3,90,74,456	30.09.2011
3	14/ST-II/Div-VI/REBATE/BH/2015-R	24.06.2015	1,24,53,886	28.03.2012
4	15/ST-II/Div-VI/REBATE/BH/2015-R	30.06.2015	20,515	08.02.2013
5	16/ST-II/Div-VI/REBATE/BH/2015-R	30.06.2015	1,09,086	09.05.2013
6	17/ST-II/Div-VI/REBATE/BH/2015-R	30.06.2015	1,44,998	05.03.2014
7	33/ST-II/Div-VI/REBATE/Amreeta Titus/2015-R	17.09.2015	2,52,657	26.06.2012

2. The facts of the case, in brief, are that the appellants were registered with the Service Tax, New Delhi (Division-VI, Commissionerate Delhi-II, New Delhi) holding registration number AAACS4457QST001 under the category of "Telephone Services, Banking and Financial Services, Goods Transport Operator Services, Maintenance or Repair Services, Business Auxiliary Services, Transport of Goods by Air, IPR Services, Sponsorship Services, Business Support Services and Information Technology Software Services". They had filed rebate claims as mentioned above. On scrutiny of the said rebate claims filed by the appellants certain deficiencies were noticed. Several correspondences were made with the appellants and ultimately opportunity of personal hearing was awarded to them. However, no show cause notices were issued to the appellants. The adjudicating authority, vide the above mentioned impugned orders, rejected the above mentioned claims on the grounds of limitation (except in the OIO No. 14/ST-



II/Div-VI/REBATE/BH/2015-R dated 24.06.2015) and non-submission of certain required documents without going to the merits of the above cases.

3. Being aggrieved with the impugned order the appellants filed appeals before the Commissioner (Appeals-I), New Delhi. In their plea, they stated that the above impugned orders were passed without issuance of show cause notice which denied the appellants with natural justice. Regarding the issue of rejection of the claims on limitation, they claimed that no time limit has been prescribed under the Rebate Notification read with Rule 5 of Export Rules for filing rebate claim. Regarding the issue of non-submission of documents, the appellants stressed that they had submitted required documents along with the claims.

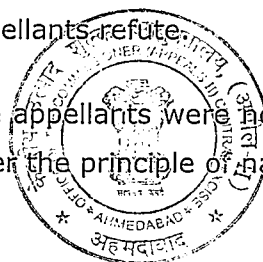
4. The Commissioner (Appeals-I), New Delhi had fixed personal hearing on 22.02.2016 however, the appellants, vide letter dated 22.02.2016, filed a request seeking the transfer of the files to Commissioner (Appeals), Ahmedabad owing to the fact that they had obtained Centralized Registration in Ahmedabad. Accordingly, the files were transferred here before me and I have taken up the matter for decision.

5. Thus, a fresh date of personal hearing was granted to the appellants on 21.07.2016 wherein Shri Mihir Mehta, Advocate, Shri Nirav Worah, S R B C and Smt. Chitra Vyas, Employee appeared before me on behalf of the said appellants and reiterated the grounds of appeal. They pointed out that the orders have been issued without following the principle of natural justice. They further stated that their submissions on merit as well as on limitation have not been appreciated properly and therefore requested to remand the cases back to the present jurisdictional authority.

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. I find that the entire appeal is based on three issues mentioned below which I will discuss one after the other;

- i) The claims were rejected by the adjudicating authority without issuing show cause notice;
- ii) The claims were rejected on the ground of limitation without going to the merit;
- iii) The claims were also rejected on the ground of non-submission of documents which the appellants refute.

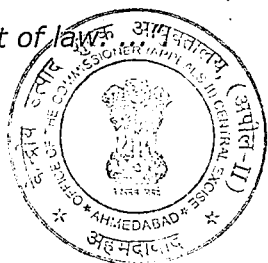
7. Regarding the issue that the appellants were not given any opportunity to present their case properly as per the principle of natural justice as no show



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cause notices were issued to them; I consider that the Adjudication proceedings shall be conducted by observing principles of natural justice. The principles of natural justice must be followed by the authorities at all levels in all proceedings under the Act or Rules and the order passed in violation of the principles of natural justice is liable to be set aside by Appellate Authority. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. Natural justice has certain cardinal principles, which must be followed in every proceeding. Judicial and quasi-judicial authorities should exercise their powers fairly, reasonably and impartially in a just manner and they should not decide a matter on the basis of an enquiry unknown to the party, but should decide on the basis of material and evidence on record. Their decisions should not be biased, arbitrary or based on mere conjectures and surmises. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. The orders passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. The Supreme Court in the case of S.N. Mukherjee vs Union of India [(1990) 4 SCC 594], while referring to the practice adopted and insistence placed by the Courts in United States, emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise". The Hon'ble Supreme Court has further elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under;

".....If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law"



The adjudicating authority should, therefore, bear in mind that no material should be relied in the adjudication order to support a finding against the interests of the party unless the party has been given an opportunity to rebut that material. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

8. Regarding the second issue of rejection of the claims i.e. on the ground of limitation, the applicability of Section 11B of the Central Excise Act, 1944 was not properly discussed in the impugned order. There are several judgments for and against the applicability of limitation on the claim of rebate which need to be discussed properly.

9. Regarding the issue of non-submission of required documents, the adjudicating authority has not properly discussed the same. The appellants have stated that they have submitted all the required documents along with the rebate claims. I believe that this issue needs to be properly verified by the present adjudicating authority.

10. In light of the above discussion, I remand back the matter to the present adjudicating authority to decide the case afresh following the principle of natural justice as per the discussion above. The appeal filed by the appellants stands disposed off on the above terms.

Uma Shanker

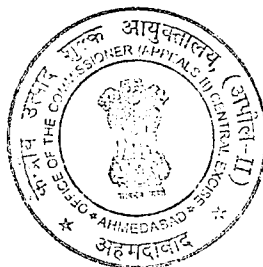
(UMA SHANKER)
COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

[Signature]
(S. D. A.) 22/ST/16
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

BY R.P.A.D.

To,
M/s. Vodafone Mobile Services Ltd.,
Vodafone House, Building-A,
Corporate Road, Prahladnagar,
Ahmedabad-380 015



Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Deputy/Assistant Commissioner, Service Tax, Division-VI, A/bad.
4. The Assistant Commissioner, System-Ahmedabad
5. Guard File.
6. P.A. File.