

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)136 /A-II/2015-16 / 1291 to 1296
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-060 -16-17
दिनांक Date : 03.08.2016 जारी करने की तारीख Date of Issue 09/08/16
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-04/Ref-22/AK/2015-16 Dated 27.11.2015

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

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

M/s. ACE Security & Allied Service 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 :-

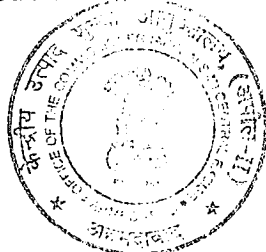
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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, 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 रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 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.



A. A. G. file

(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 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1988 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,

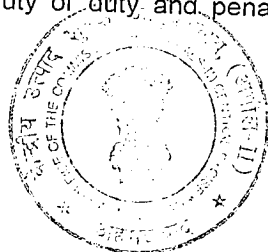
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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."



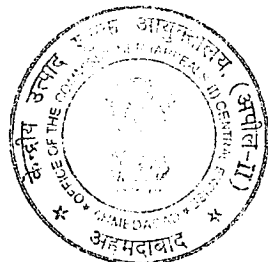
ORDER IN APPEAL

1. M/s Ace Security & Allied Services, 108, J.B. Park, Shopping Complex, Nr. Dena Bank, Opp Sterling City, Bopal, Ahmedabad-58 (*hereinafter referred to as 'appellant'*) has filed this appeal against Refund Order-In-Original No. SD-04/REF-22/AK/2015-16 dated 27.11.2015 (*hereinafter referred to as "impugned order"*) passed by the Asst. Commissioner, Service Tax, Div- IV, APM Mall, Satellite, Ahmedabad (*hereinafter referred to as "Adjudicating Authority"*). Appellant

2. The facts of the case are that the appellant had filed a refund claim under Section 11B of Rs. 2,17,034/- on 25.03.2015 on ground that they have wrongly paid service tax on security service i.e "auxiliary educational service" provided to Indira Gandhi National Open University (IGNOU). They were not liable to pay in terms of sr. No. 9(g) of notification 25/2012 read with circular No. 172/7/2013 ST dated 19.09.2013. Claim was for 2,17,034/- but amount was shown Rs. 2.50,517/- in service tax column in Annexure-2.

Sr.	Challan No.	Payment dt in bank statement	amount
1	20	04.10.2013	34752
2	13	04.10.213	101146
3	3	29.03.2014	128130
4	1	29.03.2014	95530
5	nil	04.10.2012	103830
6	nil	04.10.2012	67436
7	nil	29.03.2013	75625
8	nil	23.03.2013	77230
			683679

3. Show cause notice dated 12.08.2015 was issued to appellant informing the discrepancy on which refund is rejection. It was informed that the Sr. 1 to 6 Invoice were liable for rejection as refund in respect of these six invoices was filed after expiry of one year from the relevant date; that the photocopies of carbon copies of invoices were raised instead of original; that the invoices were hand written & do not bear the service tax No. ; that the invoices submitted was not serially numbered and numbering on invoices was done in different pattern; that the Cheque No. 782312 /27.03.2014 through which payment of Rs. 1,28,130/- was made is not appearing in



transaction details; that the work sheet submitted was not verifiable as TDS, service charge and service tax were different from the bill amount; that the Amount raise in bill did not match with the amount received (credit) shown in bank particular.; that Claimant failed to establish that service tax charged by them was not passed fully/partly to IGNOU hence refund was hit by unjust enrichment.

4. Adjudicating authority after hearing the appellant rejected the refund claim accepting ground proposed in SCN to be true and on ground that exemption to appellant on security service was not available as mega exemption notification 25/2012-ST was amended vide 06/2014- ST dated 11.06.14 which include security service making eligible from 11.06.2014. As regarding claiming exemption under "auxiliary educational service", It is held in impugned OIO that security service is general nature service and it is not included in definition of "auxiliary educational service" hence exemption is not grantable even for prior period also i.e. before 11.06.2014.

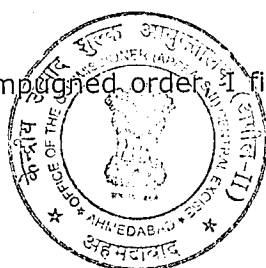
5. Being aggrieved with the impugned order, the appellants preferred an appeal on 25.01.2016 before the then Commissioner (Appeals-II). In ground of appeal appellant has relied upon circular No. 172/7/2013 ST dated 19.09.2013 and no any other arguments has been made.

6. Hearing in the matter was granted and held on 21.07.2014 which was attended by Shri Jitendrasing Sachetee, Advocate on behalf of the appellant who reiterated the ground of appeal and submitted circular No. 172/7/2013 ST dated 19.09.2013 and argued that exemption is available to security service vide para 3 and 4 of said circular.

Discussion and finding

7. I have carefully gone through the facts of the case, impugned order, the grounds of appeals, and the submissions made during the personal hearing and written submission made by appellant.

8. On going through the impugned orders, I find that the Adjudicating Authority



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has rejected refund of Service Tax on ground that-

(i) Refund in respect of 6 invoice is filed beyond one year of relevant date.

(ii) from appellant documents submitted it can not be ascertained when, how, where and what amount of service tax is deposited. Since refund amount is not ascertainable and verifiable due to lack of clarity it was rejected.

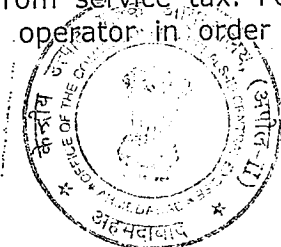
(iii) Tax paying documents were not proper document under rule 4A of service tax rule 1994 as invoices did not show service tax no, service tax value and tax payable thereon etc. hence claim is correctly rejected.

(IV) Security service provided by to IGNOU in period 10/2012 to 02/2014 , no exemption was available under notification 25/2012-ST.

9. Regarding time bar claim for six invoice no argument has been made by appellant. I find that they have argued before adjudicating authority they have filed claim only after IGNOU, service recipient vide their letter dated 18.11.2014 had written to them for filing claim under 11B. I am in total agreement with adjudicating in rejecting such flimsy argument. I uphold the OIO rejecting claim of six invoices on limitation issue.

10. Regarding rejection of claim on merit argument of appellant has force. Adjudicating authority holding that security service is not covered by "auxiliary additional service" is without any base in as much as taxability for the period prior to 11.06.2014 i.e prior to amendment in notification No. 25/2012- ST vide Notification 06/2014- ST dated 11.06.14. I find that this issue is addressed by board circular No. 172/7/2013 ST dated 19.09.2013 at para 3 and 4. Circular No. 172/7/2013 -ST dated 19.09.2013 at para 3 and 4 has clarified that -

"By virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the



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transport services provided by the transport operator to the school are exempt by virtue of the exemption notification.

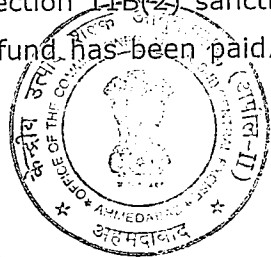
It is also clarified that in addition to the services mentioned in the definition of "auxiliary educational services", other examples would be hostels, housekeeping, security services, canteen, etc.

I hold that on merit exemption is available to IGNOU of security service.

11. Now I come to rejection of claim on ground of invoice not conforming to Rule 4A requirement. I find that CBEC has issued Circular No. 106/ 09 /2008-ST dated 11.12.2008 wherein some clarification has been give regarding filing of claim for refund of service tax paid under notification No. 41/2007-ST dated 6/10/2007-. Same instruction are also applicable for claiming any other type of refund also as without proper document it is not possible to process the refund and not possible to ascertain the deposition of payment in government exchequer. As regards incomplete invoices/bills etc ,it has been clarified in said circular that,

" rule 4A of the Service Tax Rules, 1994 prescribes the statutory requirement. Compliance of this rule requires that the invoices/challan/bills should be complete in all respect. Therefore, the exporter claiming refund of service tax under notification No. 41/2007-ST should ensure in their own interest that invoices/bills/challan should contain requisite details (name, address and registration No. of service provider, S. No. and date of invoice, name and address of service receiver, description, classification and value of taxable service and the service tax payable thereon). Refund claim cannot be allowed on the basis of invoices not having complete details as required verification cannot be carried out by the department on the basis of incomplete invoices."


12. I find that adjudicating authority has at para 6, 7 and 8 categorically brought out that he is not able to ascertain the amount of refund for want of proper payment particulars, taxable value and exact service tax paid and deposited thereon. Moreover claimant has failed to establish that service tax charged by them is not passed on to the IGNU. As per section 11B(2) sanctioning authority has to satisfy himself that amount claimed as refund has been paid. I am in complete agreement



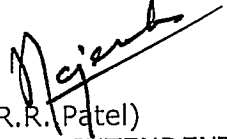
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with adjudicating authority. I hold that refund has correctly been denied on ground of unjust enrichment and on ground of invoice not conforming to rule 4A requirement.

13. In light of the above discussion, appeal filled by appellant is rejected in above terms.


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

ATTESTED


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

By R.P.AD.

To,
M/s Ace Security & Allied Services,
108, J.B. Park, Shopping Complex,
Nr. Dena Bank, Opp Sterling City,
Bopal, Ahmedabad-58.

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Additional Commissioner, Service Tax, Ahmedabad.
4. The Assistant Commissioner, Service Tax, Division -IV, Ahmedabad.
5. The Assistant Commissioner (Systems), Service Tax (HQ), Ahmedabad.
6. PA to Commissioner (Appeals-IV), Central Excise, Ahmedabad.
7. Guard File.



