

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)124 /A-II/2015-16 /1373A 1383  
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-067.-16-17  
दिनांक Date : 11.08.2016 जारी करने की तारीख Date of Issue 12/08/16

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 STC/Ref/DK Jagid/AC/Div-V/15-16Dated 17.11.2015

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

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

M/s. Meghmani Dyeas & Intermediates Ltd-Unit-II 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  
हॉस्पिटल कम्पाउण्ड, मेघानी 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.



(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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 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,

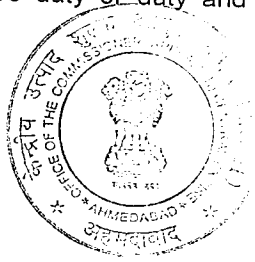
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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**

M/s Meghmani Industries Ltd. Unit-II, Plot No 99, 100 A, Phase -II, GIDC, Vatva, Ahmedabad -382 445 Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number STC/Ref/15/DK Jagid/AC/Div-V/15-16 dated 17.11.2015 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax, Div-V, APM Mall, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants (STC No. AABCM 6639 D ST002 ) had filed refund claim of Rs. 2,41,404/- on 30.07.2015 on ground that they have wrongly paid service tax, under RCM. on services of foreign sales commission agents which is not subject to payment of service tax w.e.f. 01.10.2014 as per amendment vide Notification No. 14/2004 dt. 11.07.2014 w.e.f. 01.10.2014. Deficient documents were called from and same were submitted vide appellant's letter dated 05.11.2015.

3. Neither the show cause was issued to nor the appellant were given chance to represent their case and adjudicating authority rejected the case vide impugned OIO on following grounds.-

(i) said exemption Noti. No. 14/2004 dt. 11.07.2014 was effective from 01.10.2014 and invoices shows date of prior period and for tha said prior period appeallent has rightly was required to pay tax .

(ii) appeallent has paid tax on service of foreign sales commission which is not subject to payment under the place of provision of Service Tax Rule and vide said Noti. No. 14/2004 dt. 11.07.2014

4. Being aggrieved with the impugned order, the appellants preferred an appeal on 22.12.2015 before the then Commissioner (Appeals) with ground of appeal. It is contended in the appeal that-

- (i) The impugned order is arbitrary and bad in law as same is without following the principal of natural justice. Appellant relied upon the apex court judgments in case of Suresh Synthetics 2007 (216) ELT 662 (SC), Dharmapal Satyapal Ltd. Deputy Commissioner C.Ex.-2015- TIOL-121-SC-CX.
- (ii) Adjudicating authority has misinterpreted the liability to payment of service tax under RCM which is not supported by law.



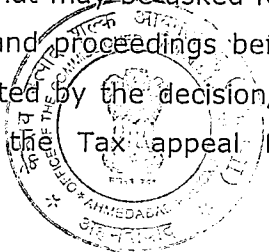
- (iii) Claim is wrongly rejected on the basis that payment of service tax on foreign sales agent is not subject to place of provision of Service Tax Rule (POPSR) and the Noti. No. 14/2004 dt. 11.07.2014. Appellant have not claimed refund on POPSR.
- (iv) Payment of service tax under RCM the point of taxation is date of payment and not the date of invoice, if the payment is made within six months from the date of invoice. Therefore considering invoice date for refund is matter is totally incorrect.
- (v) OIO may please be set aside with consequential reliefs.

5. Personal hearing in the case was granted on 21.07.2016 and Shri Manohar Maheshwari, General Manager, appeared before me and reiterated the ground of appeal.

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. The appellant has vehemently contended that it's gross violation of natural justice.

7. I find that the Adjudicating Authority has decided the present case wherein the appellant had neither been served any show cause notice nor filed any written submission. They were not even give any personal hearing during the course of Adjudication proceedings. Hence, there are no findings at all on any issues raised by the appellant before me in this appeal. The said impugned order is volatile of principles of natural justice.

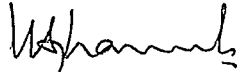
8. Now, in view of the facts and discussion as stated above and without going in to merit of the case and in the fitness of things, it would be just and proper to remit the matter back to the Adjudicating Authority, keeping all the issues open, to decide the case afresh, after due compliance of the principles of natural justice, after proper issuance of show cause notice and after appreciation of the evidences that may be put forth by the appellant before him. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of their 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. These findings of mine are supported by the decision/order dated 03.04.2014 of the Hon'ble High Court, Gujarat in the Tax appeal No.276//2014 in the case of



*[Handwritten signature]*


Commissioner, Service Tax, Ahmedabad V/s Associated Hotels Ltd. and also by the decision of the Hon'ble CESTAT, WZB Mumbai in case of Commissioner of Central Excise, Pune-I Vs. Sai Advantium Ltd and reported in 2012 (27) STR 46 (Tri. - Mumbai).

9. In view of above, appeal filed by the appellants is allowed by way of ramand.

  
(UMA SHANKER)

**COMMISSIONER (APPEAL-II)  
CENTRAL EXCISE, AHMEDABAD.**

ATTESTED

  
(R.R. PATEL)

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

To,

M/s Meghmani Industries Ltd.

Unit-II, Plot No 99, 100 A,  
Phase -II, GIDC, Vatva,  
Ahmedabad -382 445

**Copy to:**

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
  - 2) The Commissioner, Service Tax., Ahmedabad-II.
  - 3) The Additional Commissioner, C.Ex, Ahmedabad-II
  - 4) The Asst. Commissioner, Service Tax, Div-V, APM Mall, Ahmedabad Ahmedabad.
  - 5) The Asst. Commissioner(System), Service Tax, Ahmedabad.
  - 6) Guard File.
- P.A. File.



