

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)26/A-II/2016-17 / 1442 to 1446  
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-075-16-17  
दिनांक Date : 12.08.2016 जारी करने की तारीख Date of Issue 26/08/16

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-02/Ref-243/DRM/2015-16 Dated 04.02.2016

Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. QX KPO Services Pvt 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, 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.



G. J. J.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (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 (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form 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 (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) 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 adjudication 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 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 हैं -

- (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,

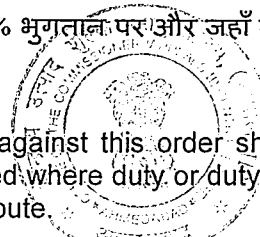
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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(1) 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(1) 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

This order arises on account of an appeal filed by M/s QX KPO Services Pvt. Ltd., 201 & 401, GNFC Info Tower, S. G. Highway, Bodakdev, Ahmedabad (hereinafter referred to as the 'the appellants' for sake of brevity) against Order-in-Original No. SD-02/Ref-243/DRM/2015-16 dated 04.02.2016 (hereinafter referred to as the 'impugned order' for the sake of brevity) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (hereinafter referred to as the 'adjudicating authority' for the sake of brevity).

2. Briefly facts of the case are that the appellants are registered with the Service Tax Department under the category of "Rent-a-Cab Service, Security/ Detective Agency Service, Manpower Recruitment/ Supply Agency Service, Business Auxiliary Service, Legal Consultancy Service' and holding Registration No. AAACQ1087GST001. They filed a refund claim of ₹ 14,67,620/- on 29.06.2015 for the quarter January 2015 to March 2015 under Notification number 27/2012-C.E.(NT) dated 18.06.2012 (hereinafter referred to as 'the said Notification' for sake of brevity) before the proper authority in prescribed format. The adjudicating authority, vide the impugned order, sanctioned the refund of ₹ 13,55,299/-, out of ₹ 14,67,620/- in terms of provisions of Rule 5 of CENVAT Credit Rules, 2004 read with Section 11B of the Central Excise Act,1944 made applicable to the Service Tax matter vide Section 83 of the Finance Act,1994 and Notification No. 27/2012 C.E.(NT) dated 18.06.2012 and rejected the refund claim of ₹ 1,12,321/- (₹ 3,584/- + ₹ 2,750/- + ₹ 1,606/- + ₹ 74,346/- + ₹ 30,035/-) on the following grounds;

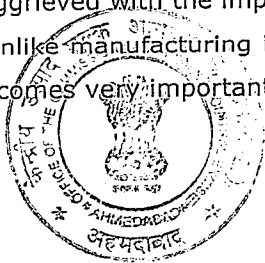
(a) As stated at Paragraph 12 of the impugned order, an Invoice number PRO/WEL/EK/14-15 dated 09.02.2015 issued by M/s. Eklavya Sports Academy involving Service Tax of ₹ 3,584/-, the appellants claimed that the service was related to sports activity. Hence, an amount of ₹ 3,584/- was rejected.

(b) As stated at Paragraph 14 of the impugned order, in respect of an Invoice number 14-15/210 dated 26.02.2015 issued by M/s. Green Leaves Management Pvt. Ltd. involving Service tax of ₹ 74,346/-, the appellants claimed that the service was related to an event organized for employee recognition. Hence, an amount of ₹ 74,346/- was rejected.

(c) As stated at Paragraph 15 of the impugned order, an invoice number 1003151049902279 dated 10.03.2015 of M/s. Gujarat Electronics & Software Industries Association involving Service Tax of ₹ 2,750/-, the appellants claimed that they had participated in the event organized by M/s. Gujarat Electronics & Software Industries Association. However, on verification it was found that the appellants participated in a cricket league match and the amount was the participation fee. Hence, the amount of ₹ 2,750/- was rejected.

(d) As stated at Paragraph 25 of the impugned order, an amount of ₹ 31,641/- was rejected. Out of the said amount, it was seen that ₹ 1,606/- was involved in a catering service provided by M/s. Somnath Catering Services during match event. Rest of the amount i.e. ₹ 30,036/- was claimed on the strength of the invoice issued by M/s. Food & Link during "event".

3. Being aggrieved with the impugned order, the appellants filed the present appeal on the grounds that unlike manufacturing industry, the service industry has its employee as a major asset and it becomes very important and essential for the company to maintain its asset to get



optimum, qualitative and efficient output. Therefore, recreational events are organized to revive the employees. Moreover, the cost of the services for organizing the sports event was borne by the appellants and hence, they are eligible for the refund. Regarding the activities involving M/s. Green Leaves Management Pvt. Ltd. and M/s. Food & Link, they stated that this kind of events was being held by the appellants since last 5 years. In March 2014, the same service was provided by M/s. Green Leaves Management Pvt. Ltd. which was allowed by the adjudicating authority vide OIO number STC/Ref/19/HCV/DC/Div-III/15-16. The said services are directly related with export services because employees are the major assets in call centre and IT enabled services types of industry. They also claimed that in case of sanction of refund beyond the normal period of three months, an Interest needs to be sanctioned as per the existing circulars/instructions issued by CBEC . Reliance is placed on the following judgements/Circulars.

- Circular No.670/61/2002 CX dated 01.10.2002
- Circular No.398/31/98-CX dated 02.06.1998 [ 1998 (100) ELT T16]
- Petrofac International V/s Commr. C.Ex., Vadodara-I-2007 (5) STR 68 (Tri. Del.)
- Voltas Ltd. V/s Commr. C.Ex., Hyderabad -2008 (9) STR 591(Tri. Bang.)

Further, the provisions of Section 11BB of Central Excise Act,1944 are applicable to Service Tax matter vide Section 83 of the Finance Act,1994 and accordingly interest is to be paid if the refund is not sanctioned within three months.

4. Personal hearing in the case was granted on 02.08.2016 wherein Shri Tushar Shah, CA, appeared on behalf of the appellants and reiterated the contents of the appeal memorandum. He also made additional submission.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and oral submissions made by the appellant at the time of personal hearing. I find that there are two reasons for rejection of the part claim of the refund viz., (i) Sports events organized to motivate the employees, (ii) Annual award ceremony and (iii) Payment of interest as refund was sanctioned beyond the normal period of three months.

6. I first of all pick the issue involved with sports and recreation. With regards to the rejection of refund of Cenvat Credit of ₹37,975/- (₹3,584/- + ₹2,750/- + ₹1,606/- + ₹30,035/-) pertaining to M/s. Eklavya Sports Academy, M/s. Gujarat Electronics & Software Industries Association, M/s. Somnath catering Services and M/s. Food & Link respectively, the appellants contended that in service industry, the employees are the only potential assets and to motivate them, sports events are being organized so as to boost up the working quality of the employees directly affecting the quality and efficiency of the output services; that the said services was not primarily for the personal use of employee but the same was for the purpose of maintaining high quality of service standard; that thus, it would have nexus with the output services and hence, refund is admissible. I agree with the view of the adjudicating authority, as stated in the impugned order, that these activities were more of recreational nature and thus, cannot be considered as an input service to the core activity of export, as the said service is outside the preview of the definition of 'Input Service', the refund of ₹37,975/- (₹3,584/- + ₹2,750/- + ₹1,606/- + ₹30,035/-) is not admissible.

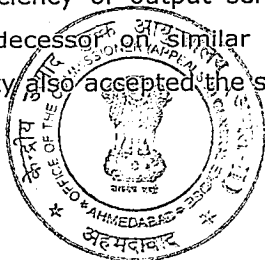
6.1. As per the definition of 'Input Service' as envisaged under Section 2(I) of the Cenvat Credit Rules,2004, input service means any service used by a provider of output service for providing an output services. In view of this whether the service i.e. sports events organized

by the appellants can be considered as Input service for providing an output service or not is the issue to be decided. In this regard a clarification issued by the CBEC vide Circular No.120/1/2010-ST dated 19.01.2010 is relevant and the relevant para thereto is reproduced hereunder for ease of reference.

*3.1.2 Therefore, the phrase, "used in" mentioned in Notification No. 5/2006-CX (NT) to show the nexus also needs to be interpreted in a harmonious manner. The following test can be used to see whether sufficient nexus exists. In case the absence of such input/input service adversely impacts the quality and efficiency of the provision of service exported, it should be considered as eligible input or input service. In the case of BPOs/call centres, the services directly relatable to their export business are renting of premises; right to use software; maintenance and repair of equipment; telecommunication facilities; etc. Further, in the instant example, services like outdoor catering or rent-a-cab for pick-up and dropping of its employees to office would also be eligible for credit on account of the fact that these offices run on 24 x 7 basis and transportation and provision of food to the employees are necessary pre-requisites which the employer has to provide to its employees to ensure that output service is provided efficiently. Similarly, since BPOs/call centres require a large manpower, service tax paid on manpower recruitment agency would also be eligible both for taking the credit and the refund thereof. On the other hand, activities like event management, such as company-sponsored dinners/picnics/tours, flower arrangements, mandap keepers, hydrant sprinkler systems (that is, services which can be called as recreational or used for beautification of premises), rest houses etc. prima facie would not appear to impact the efficiency in providing the output services, unless adequate justification is shown regarding their need."*

On plain reading of the above circular, it is quite clear that in case the absence of such input/input service adversely impacts the quality and efficiency of the provision of service exported, it should be considered as eligible input or input service. Now, the service i.e., sports events organized by the appellants for their employees would have adversely impact the quality and efficiency of the provisions of services exported in case of non-organization thereto, is the question that arises. I find that non-organization of such events would have not impacted the quality and efficiency of the provision of service exported. Further, the sports events being organized are more recreational in nature than can be considered as an essential service so to improve the quality and efficiency of the provisions of services exported by the appellant. In view of this, the service i.e., sports events organized by the appellants cannot be considered as Input service for providing an output service within the meaning of 'Input Service' as defined under Section 2(l) of the Cenvat Credit Rules, 2004.

7. With regard to the rejection of refund of (the second issue) ₹ 74,346/-, the appellants contended that the services received from M/s. Green Leaves Management Pvt. Ltd. is admissible as they have organized event for their employee recognition so as to encourage them to give their best performance; that during the event, they distributed trophies and certificates to their employees; that such type of events are essential to boost up working quality of employees as they are their major assets and subject service is directly impacting on the quality and efficiency of output services. In support of their claim they relied on the decision of my predecessor on similar issue pertaining to M/s. Arohi Starz Club Ltd. the adjudicating authority also accepted the same. The sole issue at that time was that the service



was provided outside the registered premises and the same was allowed by my predecessor. I find that the event was not of recreational nature as it was organized to appreciate the works done by the employees and in recognition to their works trophies and certificates were distributed. This is, in my view, an essential part of the business and encourages the employees to work more sincerely. Thus, I hold that refund of service tax paid on input service received from M/s M/s. Green Leaves Management Pvt. Ltd. is admissible to the appellants. Hence, the refund of ₹ 74,346/- is admissible to them. I allow the appeal and set aside the impugned order to the extent of rejection of refund of ₹ 74,346/-.

8. Regarding the third and final issue that whether the appellants are eligible for the interest for the delayed sanction of refund or not, I find that initially the refund claim was filed on 29.06.2015. The refund claim ultimately was sanctioned/granted vide the impugned order dated 04.02.2016. Thus, the appellants pleaded before me for the interest for delayed sanction of refund claim.

8.1 I find that payment of interest on sanctioning of refund beyond three months from the date of receipt of the application of refund claim till the date of refund of such duty is governed by the provisions of Section 11BB of the Central Excise Act, 1944 made applicable to the Service Tax cases vide Section 83 of the Finance Act, 1994. Section 11BB ibid is reproduced as under for better appreciation of the issue in appeal;

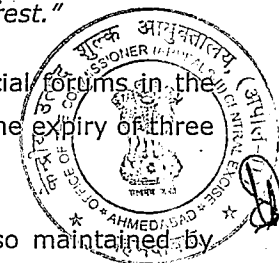
*"SECTION [Interest on delayed refunds. 11BB. — If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, [not below five per cent] and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government, by Notification in the Official Gazette], on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty"*

Further, payment of interest on sanctioning of refund beyond three months from the date of receipt of the application of refund claim till the date of refund of such duty is a settled issue in pursuance to the various judgments passed by the higher judicial forums as well as the issue has allready been clarified by the CBEC also from time to time. The CBEC Circular No.670/61/2002-CX dated 01.10.2002 being relevant in this case, is interalia reproduced as under;

*"In this connection, Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest."*

Further, I find that the issue in question is also decided by the higher judicial forums in the following judgments, wherein it is held that the interest should be paid from the expiry of three months from the date of receipt of refund application.

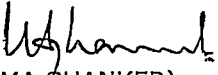
- J.K.cement Works V/s ACC- 2004(170) ELT 4 (Raj. H.C.)- Also maintained by S.C.-2005 (179) ELT A150 (S.C.)
- Kerala Chemicals & Protines Ltd.- 2007 (211) ELT 259- (Tri. Bang.)



- CEX,Pune-III V/s Movilex Irrigation Ltd.-2007 (207) ELT 617 (Tri. Mumbai)

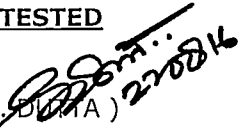
8.2 In view of above, I find force in the contention of the appellants. Accordingly, I hold that the appellants are eligible of the interest at such rate for the time being fixed by the Central Government by Notification in the Official Gazette on such refund amount from the date immediately after the expiry of three months from the date of such application of refund till the date of refund of such Service Tax.

9. The appeal is disposed off in above terms.

  
(UMA SHANKER)

COMMISSIONER (APPEAL-II)  
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

  
( S. D. DIMA )  
SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.

BY R.P.A.D.

To,  
M/s QX KPO Services Pvt. Ltd.,  
201 & 401, GNFC Info Tower,  
S. G. Highway, Bodakdev,  
Ahmedabad-380 054.

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Assistant/Deputy Commissioner, Service Tax, Division-II, Ahmedabad.
4. The Assistant Commissioner, (System) Service Tax, Ahmedabad
5. Guard File.
6. P.A. File.

