

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)144 /A-II/2015-16 /1576 do 1521  
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-084 -16-17  
दिनांक Date : 26.08.2016 जारी करने की तारीख Date of Issue 30/08/16

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/10//DKJagid/AC/Div-V/15-16 Dated 30.09.2015

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

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

M/s. Mahak Dye-Chem Indust 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 रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 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-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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 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 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 बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जों 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,

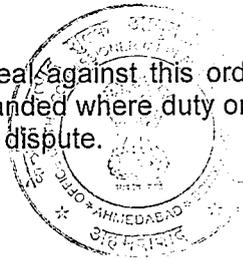
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

M/s Mahak Dye Chem Industries, Plot No. 1209, Phase III, GIDC, Vatava, Ahmedabad - (hereinafter referred to as 'appellants') have filed the present appeals against the Order-in-Original number STC/Ref/10/DKJagid/AC/Div-V/2015-16 dated 30.09.2015 (hereinafter referred to as 'impugned orders') passed by the Asst. Commissioner, Service Tax, Div-V, APM Mall, Ahmedabad (hereinafter referred to as 'adjudicating authority');

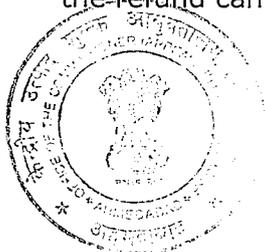
2. The facts of the case, in brief, are that the appellants (Reg. No. AAEF M5172F XM001) had filed refund claim under Section 11B of CEA 1944 of Rs. 1,75,030/- on 23.04.15 on ground that they have wrongly paid service tax on commission paid to commission agent located in foreign territory under Noti. No. 30/2012-ST dated 20.06.2016. Said commission of Rs. 10,15,100/- is paid in 2013-14 for services of foreign intermediaries availed for export of goods. It is argued that the taxable service was provided beyond taxable territory therefore under place of provision of service tax rules 2012, notified by Noti. No. 28/2012-ST dt. 20.06.2012, appellant was not liable to pay service tax on commission.

3. SCN dated 28.05.2015 was issued proposing to reject the claim as they have correctly paid the tax on taxable service provided by parson located in non taxable territory and received by person located in taxable territory in terms of Sr. No. 10 of notification 30/2012-ST. Said tax is paid in category "Business Auxiliary service".

4. Adjudicating authority vide impugned OIO rejected the refund on ground that appellant did not produced the document to substantiate their claim nor could convince that why they were not required to pay tax under "business auxiliary category".

5. Being aggrieved with the impugned order, the appellants preferred an appeal on 10.02.2015 before the Commissioner (Appeals) with ground of appeal. It is contended in the appeal that-

- (i) The impugned order is arbitrary and bad in law. Order suffers from the vice of gross non-application of mind, therefore deserves to be quashed and set aside.
- (ii) Adjudicating authority has erred in appreciating that Noti. No. 42/2012-ST dated 29.06.2012 grants exemption from payment of service tax on services rendered by commission agent located out side the taxable territory. That condition of filing EXP3 and EXP 4 being procedural lapse the refund can not be rejected as substantial requirement is fulfilled.



6. Personal hearing in the case was granted on 20.08.2016 Shri Anil Gidwani,, Consultant of appellant on behalf of appellant appeared before me and reiterated the ground of appeal and stated that adjudicating authority has not considered the submission despite the fact that appellant had provided all information.

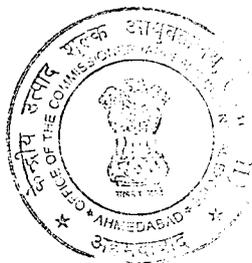
7. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum, and oral submissions made by the appellants at the time of personal hearing. I find from para 9 of impugned OIO that adjudicating authority has rejected claim as appellant did not furnish proper reply and document to substantiate their claim.

8. I find force in the contention of the appellant that the non supply of document is procedural lapses for which legitimate benefit should not be denied when the facts are that the said service rendered by commission agent located out side the taxable territory was in relation export. Thus, I find infirmity in the findings of the Adjudicating Authority and the denial of refund would be incorrect. The adjudicating authority should have examined the merit of the case, instead of taking shelter under Audit report. If a payment made during the audit, and such payment is beyond the scope of law, such payment and refund arising from such payment needs to decided on merit. i

9. Thus, in view of above discussion and in the fitness of things, it would be just and proper to remand this matter to the Adjudicating Authority so as to examine the above said issues afresh in light of Notification 42/2012-ST dated 29.06.2012 and related document submitted and to be submitted again. And also consider the procedural lapse as established by various judicial pronouncements.

10. The appeal filed by the appellant is hereby allowed by way of remand to the original adjudicating authority and the appellant is also directed to co-operate and furnish the necessary documents in this regards as may be sought by the adjudicating authority during de-novo proceedings

11. In view of above, appeal filed by the appellants is disposed off.



*Uma Shanker*

(UMA SHANKER)

COMMISSIONER (APPEAL-II)  
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

*R.R. Patel*  
(R.R. PATEL)

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

To,

M/s Mahak Dye Chem Industries,  
Plot No. 1209, Phase III, GIDC,  
Vatava, Ahmedabad

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. Commr. Service Tax, Div-V, APM Mall, Ahmedabad Ahmedabad.
- 5) The Asst. Commissioner (System), Service Tax, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.



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