

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)29/A-II/2016-17 / 1506 To 1510  
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-085-16-17  
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 SD-02/Ref-222/DRM/2015-16 Dated 19.01.2016  
Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. Adani Bunkering 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 :-

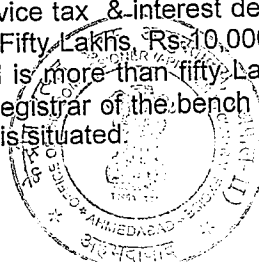
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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.



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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 सकेंगी 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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 अपेक्षित देय राशि दस करोड़ रुपए 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 बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी 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,

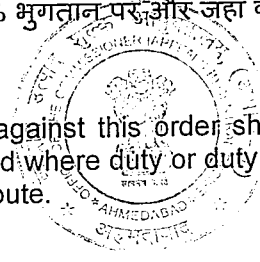
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



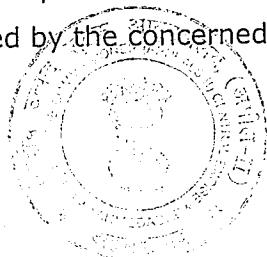
**ORDER-IN-APPEAL**

This order arises on account of an appeal filed by M/s. Adani Bunkering Pvt. Ltd. (previously known as M/s. Chemoil Adani Pvt. Ltd.), Adani House, Near Mithakhali Six Roads, Navrangpura, Ahmedabad (hereinafter referred to as "*the appellants*"), against Order-in-Original number SD-02/Ref-222/DRM/2015-16 dated 19.01.2016 (hereinafter referred to as the "*impugned order*") passed by the Assistant Commissioner, Division-II, Service Tax, Ahmedabad (hereinafter referred to as the "Adjudicating Authority").

2. The facts of the case, in brief, are that the appellants are registered with service tax department having registration number AADCC3765GST001. The appellants had filed refund claim of ₹ 88,71,257/- on 27.11.2009 with Service Tax Division, Rajkot in terms of Notification No. 09/2009-ST, dated 03.03.2009. the notification was amended by the Notification number 15/2009-ST dated 20.05.2009. The said claim was transferred to Service Tax, Division-II, Ahmedabad on 14.03.2011.

3. The adjudicating authority after scrutiny of the claim, vide Order-in-Original number SD-02/Ref-07/2010-11 dated 18.04.2012, sanctioned an amount of ₹ 55,79,795/- (out of total refund claim of ₹ 88,71,257/-) and rejected rest of the amount of ₹ 32,91,462/-. The appellants subsequently filed an appeal before the then Commissioner (Appeals-IV) to allow the remaining amount of ₹ 32,91,462/-. The then Commissioner (Appeals-IV), vide Order-in-Appeal number AHM-SVTAX-000-APP-287-13-14 dated 24.12.2013, allowed an amount of ₹ 4,12,265/-, disallowed an amount of ₹ 2,03,292/- and for the remaining amount of ₹ 26,62,825/-, the case was remanded back to the adjudicating authority. The adjudicating authority, vide the impugned order, admitted the amount of ₹ 4,12,265/- and sanctioned the said amount. Regarding the amount of ₹ 26,62,825/-, for which the case was remanded back to him, the adjudicating authority sanctioned an amount of ₹ 26,42,541/- and rejected an amount of ₹ 20,311/- for non-submission of required documents.

4. Being aggrieved with the impugned order of rejecting the refund amount of ₹ 20,311/-, the appellants filed the present appeal. The appellants have submitted that the adjudicating authority was not correct in holding that they had not produced documentary evidences. As per Rule 4A of Service Tax Rules, 1994, in case the provider of service is a banking company or a financial institution, any document by whatever name, issued by the bank or the financial institution, should be considered as valid document. In the present case, the appellants had submitted the copy of the certificate issued by the concerned bank which is a valid document.



5. Personal hearing in the case was granted on 04.07.2016 wherein Shri Rahul Patel, Chartered Accountant, on behalf of the appellants appeared before me and reiterated the contents of appeal memorandum. He also tabled additional submission before me.

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 adjudicating authority has rejected the refund claim on two grounds. Now, let me examine the various grounds of rejection and the defense reply given by the appellants.

7. In this regard, I find that my predecessor, the then Commissioner (Appeals-IV) had remanded the matter to the adjudicating authority to verify the documents submitted by the appellants. In the previous order, the adjudicating authority, vide Order-in Original number SD-02/Ref-07/2010-11 dated 18.04.2012 rejected the entire amount of ₹ 2,21,427/- stating that mere submission of bank certificate cannot be the sufficient reason for granting of refund. In contrast, the appellants submitted that Rule 4A of Service Tax Rules, 1994, categorically permits bank certificate as a valid document. For better clarification of the matter, I would like to quote the contents of Rule 4A of Service Tax Rules, 1994 as below;

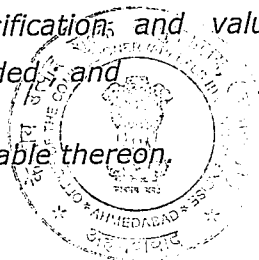
**4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan.-** (1) Every person providing taxable service shall not later than fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of taxable service provided or to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

(i) the name, address and the registration number of such person;

(ii) the name and address of the person receiving taxable service;

(iii) description, classification, and value of taxable service provided or to be provided, and

(iv) the service tax payable thereon.



*[Handwritten mark]*

**Provided that** in case the provider of taxable service is a banking company or a financial institution including a non banking financial company, or any other body corporate or any other person, providing service to any person in relation to banking and other financial services, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information in such documents as required under this sub-rule.

In view of the above, I find that the adjudicating authority has wrongly rejected the refund claim of ₹20,311/-, vide the impugned order, as bank certificate is a sufficient document to grant refund of the said amount. In the case of M/s. Banmore Cables & Conductor vs. The Commissioner of central Excise, Indore, the Hon'ble CESTAT, Principal Bench, New Delhi proclaimed that;

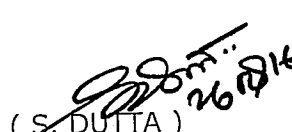
*"As regards, the first question as to whether the document certificate dated 28-8-2008 issued by the bank is the valid document for availment of Cenvat credit, I find that since this certificate has been issued to the appellant and it contains the information regarding the nature of the service, gross amount charged for the service and service tax paid, I am of prima facie view that it is valid document. As regards the question as to whether the services, in question, are covered by the definition of 'input service', I am of prima facie view that the services, in question, financing and bill retiring service, are covered by the definition of 'input services'."*

8. In view of my foregoing conclusions, the impugned order is set aside and the appeal is allowed.

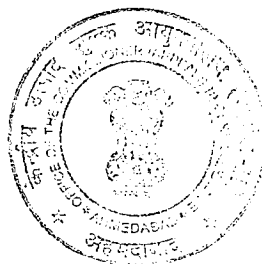
  
(UMA SHANKER)

COMMISSIONER (APPEAL-II)  
CENTRAL EXCISE, AHMEDABAD.

**ATTESTED**

  
(S. DUTTA)

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



**BY R.P.A.D.**

To, M/s. Adani Bunkering Pvt. Ltd.,  
Adani House,  
Near Mithakhali Six Roads,  
Navrangpura,  
Ahmedabad-380 009

**Copy To:-**

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

