

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)138 /A-II/2015-16 11775 do 1780
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-087 -16-17
दिनांक Date : 26.08.2016 जारी करने की तारीख Date of Issue 07/09/16
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-180/DRM/2015-16 Dated 30.11.2015
Issued by Asstt. Commr., STC, Div-II, Service Tax, Ahmedabad

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

M/s. Rasna 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 :-

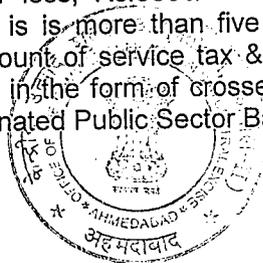
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, 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 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 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) 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, 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 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,

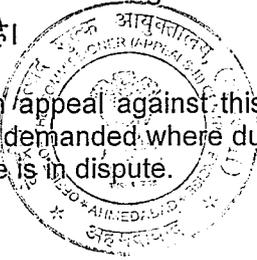
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

M/s Rasna Pvt. Ltd., Opp. Sears Tower, Gulbai Tekra, Ahmedabad -380015 Ahmedabad (hereinafter referred to as 'appellants') have filed the present appeals against the Order-in-Original number SD-02/REF-180/DRM/2015-16 dated 30.11.2015 (hereinafter referred to as 'impugned orders') passed by the Asst. Commissioner, Service Tax, Div-II, APM Mall, Ahmedabad (hereinafter referred to as 'adjudicating authority');

2. The facts of the case, in brief, are that the appellants (STC No. AAAC W4408 M ST002) had filed refund claim under Section 11B of CEA 1944 of Rs11,37,735/- on 16.04.15 on ground that they have wrongly paid service tax during April 2013 to March 2014 on specified services on which exemption was available to appellant under Sr. No. 21(d) of Notification No. 25/2012-ST dt. 26.06.2012 as amended vide 3/2013-ST dated 01.03.2013. Appellant submitted revised claim of Rs.8,65,318/- on 18.05.2015 for service tax payment made vide various challans falling between 17.06.2013 to 31.03.2014. Refund was sought on premise that transportation of fruit based goods manufactured by appellant are eligible for exemption from payment of service tax on freight w.e.f 01.04.2013.

3. SCN dated 15.07.2015 proposing rejection of claim was issued on ground that claim has been filed after expiry of one year from payment of service tax hence refund of Rs. 8,65,318/- is hit by limitation of time bar under Section 11B. No. any other issue was raise except time bar in SCN.

4. Adjudicating authority rejected the refund of Rs. 8,65,318/- vide impugned OIO on limitation ground of 11B of CEA 1944. Being aggrieved with the impugned order, the appellants preferred an appeal on 27.01.2015 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 not appreciating the various goods manufactured are squarely covered under said notification. Service provided by GTA in transporting foodstuff including flours , tea, coffee, jeggrey, sugar, milk product, salt and edible oil, excluding alcoholic beverages thereof are exempted. Appellant is manufacturing and transporting food stuff such as Rasna fruit squash, crystals, instant drink mix, fruit pulp, etc hence exemption is available.



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- (iii) Claim is wrongly rejected on the basis of non-submission of documents as appellant has produced sample copy and showed readiness to make available all document at appellant premises if officer is deputed to verify the same.
- (iv) Any service provided by GTA with respect to aforesaid food items, the same shall be exempted from the payment of service tax and as, due to reverse charge mechanism, the said benefit would be available to service recipient.
- (v) OIO may please be set aside with consequential reliefs.

5. Personal hearing in the case was granted on 21.07.2016 and Shri Mukesh Matrej, Consultant of appellant and Shri Uday Joshi, Advocate on behalf of appellant appeared before me and reiterated the ground of appeal and stated that when they were not required to pay duty, its deposit and limitation is not applicable. They submitted following citation-

- (i) Geojit BNP Paribas Finance Services Ltd V/s C.C.E, CUS & S.T., Kochi-2015(39)STR 706 (Ker.
- (ii) Commr. Of C.Ex., Bangalore-I V/s Sun Electronics Technologies Ltd. 2015939) STR 709 (Kar).
- (iii) Commr. Of C.Ex., Bangalore-III V/s Motorola India Pvt. Ltd. 2008 911) STR 555 (kar.)

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum, citation judgments produced and oral submissions made by the appellants at the time of personal hearing. No where in ground of appeal or during course of hearing it is contended that service received is "non taxable". Appellant is of all clear view that service received is "taxable" but said services are eligible for exemption and consequently the refund.

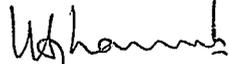
7. Prime issue before me is to decide whether in facts and circumstances of present case the limitation of one year bar as provided under section 11B is applicable or otherwise. Appellant has not contended in appeal memo regarding limitation period. It is only during the course of hearing it is argued that they were not required to pay duty, therefore its "deposit" and limitation under section 11B is not applicable.



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8. Judgments of Geojit BNP Paribas Finance Services Ltd V/s C.C.E, CUS & S.T., Kochi- 2015(39)STR 706 (Ker.) and Commr. Of C.Ex., Banglore-III V/s Motorola India Pvt. Ltd. 2008 911) STR 555 (kar.) relied upon by appellant are applicable to them as refund is related to tax paid on non taxable goods/service.

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


(UMA SHANKER)

COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(R.R. PATEL)

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

To,

M/s Rasna Pvt. Ltd.,

Opp. Sears Tower, Gulbai Tekra,

Ahmedabad -380015 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-II, APM Mall, Ahmedabad Ahmedabad.
- 5) The Asst. Commissioner (System), Service Tax, Ahmedabad.
- ~~6) Guard File.~~
- 7) P.A. File.



