

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)161-162-163 /A-II/2015-16 / 1974 जे 1978
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-094-095-096-16-17
दिनांक Date : 20.09.2016 जारी करने की तारीख Date of Issue 28/09/16

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. STC/Ref/109/HCV/ZYMR/Div-III/15-16 Dated 21.01.2016,
STC/Ref/99/HCV/ZYMR/Div-III/15-16 Dated 23.12.2016, STC/Ref/98/HCV/ZYMR/Div-III/15-16 Dated 23.12.2016,

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

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

M/s. ZYMR Systems 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
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 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.

A. J. J.



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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 (सीस्टेट) 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 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 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, penalty, where penalty alone is in dispute.



ORDER IN APPEAL

M/s. ZYMR Systems Pvt. Ltd., A-205, Safal Profitaire, Corporate Road, Nr. Prahladnagar Garden, Satellite, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed by the Deputy Commissioner, Service Tax, Division-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

Sr. No.	OIO No.	OIO date	Amount of refund claim (₹)	Date of filing the refund claim	Amount sanctioned (₹)
1	STC/Ref/98/H.C.Verma/DC/ZY MR/Div-III/2015-16	23.12.2015	1,27,130	01.07.15	0
2	STC/Ref/99/H.C.Verma/DC/ZY MR/Div-III/2015-16	23.12.2015	99,705	01.07.15	0
3	STC/Ref/109/H.C.Verma/DC/Z YMR/Div-III/2015-16	21.01.2016	69,051	01.07.15	39,526

2. The facts of the case, in brief, are that the Appellants are holding Service Tax registration number AACCS1310ESD004 and had filed refund claims of ₹1,27,130/-, ₹99,705/- and ₹69,051/- respectively on 01.07.15, under Notification number 27/2012-CE(NT) dated 18.06.2015.

3. During scrutiny of the above claims, the adjudicating authority had found that in the refund claims amounting to ₹1,27,130/- and ₹99,705/- the ST-3 returns filed by the appellants for the period October to March 2014-15, the CENVAT Credit accumulated shows 'NIL' during the quarters January-March 2015 and October-December 2014 respectively. That means that no Cenvat Credit was availed by the appellants during the said quarters for which the said refund claims were filed. Thus, entire claims were rejected by the adjudicating authority vide the impugned orders mentioned in the serial numbers 1 and 2 in the table above. Further, in the third refund claim amounting to ₹69,051/- (for the period of July-September 2014) it was seen that an amount of ₹19,680/- was pertaining to the branch office of the appellants situated at Pune which was not registered. Though, the appellants informed the adjudicating authority that they had opted for a centralized registration, the said amount of ₹19,680/- was rejected by the adjudicating authority. Also, in the same claim it was noticed that in the concerned ST-3 return, it was shown that the appellants had availed CENVAT Credit amounting to ₹59,206/-. The adjudicating authority considered the claim to



be of ₹59,206/- instead of ₹69,051/- and after rejecting the amount of ₹19,680/-, sanctioned the remaining amount of ₹39,526/-.

4. Being aggrieved with the impugned orders the appellants have preferred the present appeals. Regarding the rejected amounts of ₹1,27,130/- and ₹99,705/-, the appellants argued that filing of Service Tax return or disclosure of any amount in Service Tax return is a procedural requirement when the concerned notification requires to submit all input service invoices in the name of the claimant for the purpose of verification. Also, according to the guideline set in Paragraph 2 (h) in the Notification number 27/2012-CE(NT) dated 18.06.2015, they had reduced accumulated CENVAT Credit, in the respective ST-3 returns, by the amount of refund already claimed and therefore the ST-3 returns show 'NIL' accumulated credit. Further, in the third case of refund claim of ₹69,051/-, the difference in the amount of accumulated CENVAT Credit between the ST-3 return and the refund claim was a procedural mistake. The amount mentioned in the refund claim was to be considered as final as the same was supported by invoices in the name of the appellants. Regarding the rejection of ₹19,680/-, they claimed that they had applied for centralized registration on 30.10.2015 and the registration was granted to them on 22.12.2015. The centralized registration was granted to them well before the issuance of the impugned order mentioned in serial number 3 of the table shown in page 3 of this order. The adjudicating authority should have considered the centralized registration and granted refund of the said amount.

5. Personal hearing in the matter was granted and held on 17.08.2016. Smt. Rima Mehta, CA appeared before me and reiterated the contents of appeal memo.

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.

6.1. At the onset, I would like to discuss the issues involved in the impugned order number STC/Ref/109/H.C.Verma/DC/ZYMR/Div-III/2015-16 dated 21.01.2016 mentioned in serial number 3 of the table shown in page 3 of this order. The adjudicating authority has reduced the claim amount from ₹69,051/- to rejected an amount of ₹59,206/- and also rejected part of the claim amounting to ₹19,680/-. Regarding the issue of rejection of ₹19,680/-, I find that the claim was for the period July-September 2014 and at that time the Pune office of the appellants was an unregistered premises. They filed the refund claim on 01.07.2015 and it seems that after knowing the fact that the claim pertaining to Pune office would be rejected, they applied for centralized registration on 30.10.2015. It is a fallacy on the part of the appellants to believe that they are entitled for the refund relating to



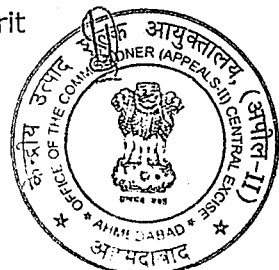
the unregistered premises. To this extent only, I uphold the order of the adjudicating authority for rejecting part of the claim amounting to ₹19,680/- . Regarding the reduction of the claim from ₹69,051/- to ₹59,206/-, the appellants quoted that it was a procedural mistake on their part to show the accumulated amount to be ₹59,206/- instead of ₹69,051/- in their ST-3 return. Their claim of ₹69,051/- is backed by bona fide invoices. In this regard, I found that the adjudicating authority has reduced the claim without going to the merit of the case and without discussing the genuineness of the invoices submitted by the appellants. The appellants are legitimate exporters based as 100% EOU and it is an accepted fact that they have exported the services and brought valuable foreign currency for the country. Therefore, procedural mistakes committed by them are permissible and their claim should have been processed on merit. In this regard, I remand back the claim amounting to ₹49,371/- (₹69,051/- - ₹19,680/-) to be decided afresh exclusively on merit.

6.2. Regarding the second issue pertaining to the rejection of the claims amounting to ₹1,27,130/- and ₹99,705/- vide impugned orders number STC/Ref/98/H.C.Verma/DC/ZYMR/Div-III/2015-16 and STC/Ref/98/H.C. Verma/DC/ZYMR/Div-III/2015-16 respectively both dated 23.12.2015, the appellants have claimed that they have only followed the procedures prescribed in the Notification number 27/2012-CE(NT) dated 18.06.2015. In paragraph 2 (g) and (h) of the said notification it is clarified that;


"(g) the amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.

(h) the amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim."

Thus, they have followed the same procedural requirement while filing concerned ST-3 returns and since the claims of CENVAT were already been made, they reduced the amount of accumulated credit in the ST-3 returns and that is why it appeared to be 'NIL'. I find the argument of the appellants to be genuine. The only lacuna on their part was they could have reflected the same in more understandable manner. This is a procedural lapse on their part which is pardonable. The adjudicating authority has rejected the claims without going to the merit of the cases. In view of the above, I set aside both the impugned orders and remand back the cases to the adjudicating authority for deciding the claims afresh exclusively on merit only.



7. In view of my above discussions and findings, the appeal is disposed off accordingly.


(UMA SHANKER)

COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA)

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

BY R.P.A.D.

To,

ZYMR Systems Pvt. Ltd.,

A-205, Safal Profitaire,

Corporate Road, Nr. Prahladnagar Garden, Satellite,

Ahmedabad- 380 015

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad.
- 3) The Dy./Asst. Commissioner, Service Tax, Division-III, Ahmedabad.
- 4) The Asst. Commissioner(System), Service Tax Hq, Ahmedabad.
- 5) Guard File.
- 6) P.A. File.

