

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) 30-32-33/RA/A-II/2015-16 / 1929 20184

ख अपील आदेश संख्या Order-In-Appeal No. AHM-SVTAX-000-APP-098 to 100-16-17

दिनांक Date : 23.09.2016 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/85/HCV/Ratnam/Div-III/15-16 Date : 18.11.2015, STC/Ref/95/HCV/Ratnam/Div-III/15-16 Date :
14.12.2015, STC/Ref/94/HCV/Ratnam/Div-III/15-16 Date : 14.12.2015 Issued by Asstt. Commr., Div-III, Service Tax, Ahmedabad

घ प्रतिवादी का नाम / Name & Address of the Respondent

M/s. Ratnam Stone Exports, 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, Meghani Nagar, New Mental Hospital Compound, 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।
स्टे के लिए आवेदन- पत्र के साथ रूपए 500/- 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.
Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

C. file



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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 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, 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 होगा।

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 ::

The Deputy Commissioner, Service Tax, Division-III, Ahmedabad (*hereinafter referred to as 'appellant'*) has filed the present appeal against following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed in the matter of refund claim filed by M/s. Ratnam Stone Exports, 903, Indraprasth Corporate, 9th Floor, Opp. Venus Atlantics, Prahladnagar Road, Satellite, Ahmedabad (*hereinafter referred to as 'respondents'*);

Sr. No	OIO No.	OIO date	Amount of refund claimed (₹)	Date of filing the refund claim	Rev. Order No.
1	STC/Ref/85/HCV/Ratnam/Div-III/15-16	18.11.15	2,50,681	27.10.2015	29/2015-16
2	STC/Ref/94/HCV/Ratnam/Div-III/15-16	14.12.15	2,83,396	23.11.2015	30/2015-16
3	STC/Ref/95/HCV/Ratnam/Div-III/15-16	14.12.15	3,39,185	23.11.2015	31/2015-16

2. The facts of the case, in brief, are that the Respondents are holding Service Tax Code No. AAGFR1203EST001 and had filed a refund claims amounting to ₹2,50,681/-, ₹2,83,396/- and ₹3,39,185/- on 27.10.2015, 23.11.2015 and 23.11.2015 respectively under Notification No.41/2012-ST dated 29.06.2012 in respect of Service Tax paid on the specified services used for export of goods.

3. The respondents had filed refund claims amounting to ₹2,50,681/-, ₹2,83,396/- and ₹3,39,185/- under Notification No.41/2012-ST dated 29.06.2012. The adjudicating authority after verification of the claims, sanctioned the same in totality vide the impugned orders.

4. The impugned orders were reviewed by the Commissioner of Service Tax, Ahmedabad and issued review orders No. 29/2015-16 (dated 26.02.2016), 30/2015-16 and 31/2015-16 (both dated 02.03.2016) respectively for filing an appeal under section 84(1) of the Finance Act, 1994 on the following grounds;

(a) In the OIO number STC/Ref/85/HCV/Ratnam/Div-III/15-16 dated 18.11.2015, it was found that ₹16,067/- was paid to the respondents in excess erroneously on the ground that;

(i) STC is not mentioned in two invoices viz. NDL/010284 dated 18.01.2015 and NDL/010310 dated 31.01.2015 involving Service Tax of ₹3,966/- and ₹5,098/- respectively pertaining to M/s. Andrew James Forwarding Pvt. Ltd.



(ii) Bill number 1215 dated 11.02.2015 raised by M/s. APG Logistics Pvt. Ltd. involving Service Tax of ₹4,919/- and invoice number 2620 dated 06.02.2015 raised by M/s. Cargocorp involving Service Tax of ₹2,084/- were not submitted by the respondents along with the refund claim.

(b) In the OIO number STC/Ref/94/HCV/Ratnam/Div-III/15-16 dated 14.12.2015, it was found that ₹4,223/- was paid to the respondents in excess erroneously on the ground that;

(i) STC is not mentioned in the invoice number NDL/010320 dated 18.02.2015 involving Service Tax of ₹3,183/- pertaining to M/s. Andrew James Forwarding Pvt. Ltd.

(ii) Bill number 4221 dated 16.02.2015 raised by M/s. Globus Logisys Pvt. Ltd. involving Service Tax of ₹330/- and invoice number 0849IREX006115 dated 23.03.2015 raised by M/s. Bank of Baroda involving Service Tax of ₹710/- were not submitted by the respondents along with the refund claim.

(c) In the OIO number STC/Ref/95/HCV/Ratnam/Div-III/15-16 dated 14.12.2015, it was found that ₹8,281/- was paid to the respondents in excess erroneously on the ground that STC is not mentioned in two invoices viz. NDL/010394 dated 06.04.2015 and NDL/010395 dated 06.04.2015 involving Service Tax of ₹5,098/- and ₹3,183/- respectively pertaining to M/s. Andrew James Forwarding Pvt. Ltd.

5. Personal hearing in the matter was granted and held on 17.08.2016. Shri Abhishek Chopra, CA, appeared before me and tabled before me written submission in support of his arguments. Shri Chopra stated that STC pertaining to M/s. Andrew James Forwarding Pvt. Ltd. was provided to the concerned range officer who has verified its correctness. Regarding the allegation of non-submission of invoices, they have submitted photocopies of the said invoices before me.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum submitted by the appellant and oral/written submissions made by the respondents at the time of personal hearing.

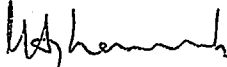
7. Regarding the first issue of appeal where STC is not mentioned in the invoices of M/s. Andrew James Forwarding Pvt. Ltd., the respondents have submitted copy of ST-2 (Service Tax Registration Certificate) of M/s. Andrew James Forwarding Pvt. Ltd. before me. I, having verified the said certificate in the ACES site, am satisfied with the same. M/s. Andrew James Forwarding Pvt. Ltd. are a registered unit but they have not mentioned the Service Tax Code in their invoices. This is a procedural lapse on the part of M/s. Andrew James Forwarding Pvt. Ltd. which is condonable and the respondents should not be



penalised for this. In view of the above, I reject the appeal filed by the department.

8. Regarding the second issue that the respondents have not submitted some invoices along with the refund claim, the respondents claimed that they had already submitted the original invoices along with the refund claim before the adjudicating authority. However, they have submitted before me the photocopies of invoices number 1215 dated 11.02.2015 raised by M/s. APG Logistics Pvt. Ltd. involving Service Tax of ₹4,919/-, 2620 dated 06.02.2015 raised by M/s. Cargocorp involving Service Tax of ₹2,084/-, 4221 dated 16.02.2015 raised by M/s. Globus Logisys Pvt. Ltd. involving Service Tax of ₹330/- and invoice number 0849IREX006115 dated 23.03.2015 raised by M/s. Bank of Baroda involving Service Tax of ₹710/-. I have verified all the concerned invoices and content with the same. Once, the respondents have submitted all the invoices, the appeal filed by the department becomes null and void. Thus, in view of the discussion held above, I reject the appeal filed by the department.

9. The appeal is disposed off in terms of the discussion held above.


(UMA SHANKER)

COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA) 230916

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

To,

M/s. Ratnam Stone Exports,
903, Indraprasth Corporate, 9th Floor,
Opp. Venus Atlantics,
Prahlnadnagar Road, Satellite,
Ahmedabad- 380 015

Copy to:

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



