

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील-1) का कार्यालय केन्द्रीय उत्पाद शुल्क :  
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,  
आंबावाडी, अहमदाबाद- 380015.

क फाइल संख्या : File No : **V2(CS)29/STC-III/2015/Appeal-I**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-007-16-17**  
दिनांक Date **26.04.2016** जारी करने की तारीख Date of Issue **6/5/16**

श्री उमाशंकर, आयुक्त (अपील-1) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by **Shri Uma Shankar** Commissioner (Appeals-I) Central Excise  
Ahmedabad

ग \_\_\_\_\_ आयुक्त केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश सं  
दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No **GNR-STX-DEM-DC-43/2015** dated : **29.07.2015** Issued by:  
Deputy Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

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

**M/s. Shri Popatbhai Sharadbhai Thakkar, Proprietor of M/s.Divya Construction**

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 :-

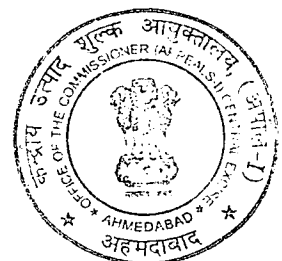
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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-धारा (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/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For 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 or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise 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 adjuration 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, 1988 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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 अर्ज़ी 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,

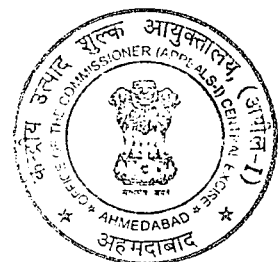
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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)(i) 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)(i) 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."



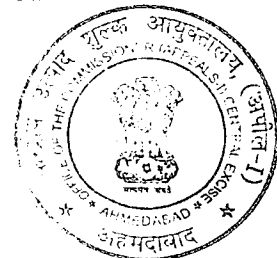
**ORDER-IN-APPEAL**

This appeal has been filed by **M/s Divya Construction, 29, Ambica Nagar, Idgah Road, Palanpur** (present address-Shri Popatbhai Sharadbhai Thakkar, Prop. M/s Divya Construction, A-10, Sudarsam Apartment, Near Sai Baba Temple, Ghatlodia, Ahmedabad) (hereinafter referred to as "the appellant") against Order-in-Original No.GNR-STX-DEM-DC-43/2015 dated 20.07.2015 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner of Central Excise, Gandhinagar Division (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case is that during the course of survey conducted by the jurisdictional central excise officer, it was noticed that the appellant was providing taxable services to M/s Gujarat Energy Transmission Corporation Ltd (GETCO) and no service tax has paid on such taxable service. On further verification/investigation it was noticed that the appellant has registered with service tax for "Construction of commercial or Industrial Building and Civil Structure" since 2008 and providing services to M/s GETCO during the period 2009-10 to 2011-12 for Rs.65,61,489/- and neither paid any service tax on services nor filed ST-3 returns with the service tax department. Accordingly, after granting exemption under Notification No.06/2005-ST dated 01.03.2005 and abatement under Notification 01/2006 dated 01.03.2006, service tax amounting to Rs.2,04,980/- with interest was demanded under Section 73 of the Finance Act, 1994 (FA) vide show cause notice dated 21.10.2014. The said show cause notice also proposes for imposition of penalty under Section && (1) and (2) and 78 of FA. The show cause notice was adjudicated by the adjudicating authority, vide the impugned order and confirmed the demand with interest and also imposed penalty of Rs.5,000/- each under Section 77 (1) and (2) and Rs.2,04,980/- under Section 78 of the FA. A penalty under Rule 7 C of Service Tax Rules, 1994 for failure to furnish ST-3 return was also imposed in the impugned order. The appellant has paid Rs.1,00,309/- with interest amounting to Rs.22,797/- during the course of investigation and the same was appropriated in the impugned order.

3. Being aggrieved, the appellant has filed the present appeal, wherein, they inter-alia stated that against the total demand of Rs.2,04,980/- they had deposited Rs.4,10,622/- and as per section 73(1) when tax has already been paid, provisions of section 73 of FA will not come into play; that also as per Board's Circular No.137/167/2006-CX 4 dated 03.10.2007 proceedings under Section 73 of FA shall deemed to be concluded when liability of tax with interest and penalty is paid. The show cause notice was issued by invoking extended period of five years which is not applicable to their case as they have not suppressed any facts and also not evaded tax liability. The appellant has relied on various court/tribunal's citation in their support.

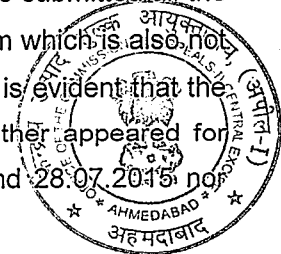
4. A personal hearing in the matter was held on 13.04.2016 and Shri Rohan Thakkar, Chartered Accountant appeared for the same. He reiterated the submissions made in the appeal memorandum and further submitted that duty has been paid in the matter but not considered in the impugned order. He further submitted that the details of duty paid particulars, duly verified by the range superintendent will be submitted within 15 days.



5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as during the course of personal hearing.

5.1 In the instant case, I find that the matter is relating to the service tax liability of service "Commercial or Industrial Construction" provided by the appellant to M/s GETCO during the period from 2009-10 to 2011-12. In the case, I find that the appellant has not disputed the liability of service tax as confirmed in the impugned order. In the circumstances, I do not find worth to discuss further regarding the liability of service tax against the service rendered by them in the matter. The contention made by the appellant in the matter is that they have paid total amounting to Rs.4,42,357/- (with interest) against the demand of Rs.2,04,980/- with interest and penalty, in respect of the said service rendered for the disputed period, however, the adjudicating authority has not considered the total amount paid but considered Rs.1,00,309/- with interest of Rs.22,797/- at the time of investigation i.e on March 2013. Therefore, the case was required to be concluded by the department and no further recovery as alleged in the impugned order is applicable.

5.2 In the impugned order, I find that the demand was pertaining to the income received by the appellant towards their service provided during the period 2009-10 (for Rs.46,58,987/-), 2010-11 (for Rs.1,10,191/-) and 2011-12 (for Rs.17,92,311/-) and the service liability of Rs.2,04,980/- has been calculated by the department after granting exemption notification NO.6/2005-ST and abatement under relevant notification 01/2006-ST. Para 3.7 and 3.14 of the impugned order clearly states the details of above mentioned value and tax liability for the disputed period. The appellant's submission that they have paid Rs.4,42,357 (with interest) towards the service rendered during the disputed period, out of which Rs.1,85,075/- and Rs.1,34,176/- paid on 01.06.2009 and 01.08.2009 respectively appears to be not relevant to instant case tax liability, looking into the facts and circumstances of the case. The tax liability of the service rendered, on the basis of calculation mentioned in para 3.14 of the impugned order, comes to Rs.1,74,304/- for the year 2009-10, Rs.3,745/- for the year 2010-11 and Rs.26931/- for the year 2011-12. Against which the appellant said to be paid Rs.1,85,075/- on 01.06.2009, Rs.1,34,176/- on 01.08.2009 towards their tax liability on the service rendered appears to be not correct. The appellant has not revealed that the tax liability so paid covered for which disputed period. Whether it is for the period pertained to 2009-10 as advance payment or only for the period of April 2009 to July 2009. The appellant have not submitted any details regarding such payment to prove that the same is pertaining to the service rendered by them for the disputed period i.e from 2009-10 onwards. In the circumstances, the said argument appears as false, especially in the circumstances, the tax liability actually comes less than what they paid during 2009-10. On other hand, the investigation and the impugned order clearly indicated that they have not discharged the tax liability for the disputed period for the service rendered to GETCO. Further, the other argument of the appellant is that they have submitted all the details before the adjudicating authority but have not considered by him which is also not correct and far behind the facts. On perusal of the impugned order, it is evident that the appellant has not filed any reply to the show cause notice and neither appeared for personal hearing granted on 26.05.2015, 15.06.2015, 07.07.2015 and 28.07.2015 nor



filed any written submissions. Further, the appellant during the course of personal hearing before me stated that they are going to submit a details regarding payment which they have already made in the matter, duly verified by the range superintendent. However, the said details are also not submitted by them within the stipulated period. I find that ample opportunity was provided by the original authority to substantiate their claim and also during this appellate stage, however, party has failed to make any submission.

5.3 From the facts and circumstances as narrated above, I find that the adjudicating authority has correctly confirmed the demand with interest for the disputed period in the impugned order. As regards penalty imposed by the adjudicating authority, I find that though the appellant has registered with service tax department in the year 2008, they never disclosed the details of income received towards the service rendered and also not filed any ST-3 returns. The details came on only when the department conducted survey/enquiry. Thus, the penalty imposed on Section 78 of FA by the adjudicating authority is proper and correct. The other penalty imposed under Section 77(1) and (2) of FA and Service Tax Rule 1994 is also warranted looking into the circumstances of the case.

5.4 In view of above discussion, I do not find any merit to interfere the order passed by the adjudicating authority and the same is upheld. The appeal filed by the appellant is rejected.

*Uma Shanker*

(UMA SHANKER)  
COMMISSIONER (APPEAL-I)  
CENTRAL EXCISE, AHMEDABAD

Date: 26/04/2016

Attested

*Mohan V.V.*  
(Mohan V.V)  
Superintendent (Appeal-I)  
Central Excise, Ahmedabad  
BY R.P.A.D

To,  
M/s Divya Construction,  
29, Ambica Nagar, Idgah Road,  
Palanpur  
(present address-Shri Popatbhai Sharadbhai Thakkar, Prop. M/s Divya Construction, A-10, Sudarsam Apartment, Near Sai Baba Temple, Ghatlodia, Ahmedabad)

Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, Division- Gandhinagar, Ahmedabad-III
5. Guard file.
6. P.A file.

