

रजिस्टर्ड डाक ए.डी. द्वारा

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

क फाइल संख्या : File No : V2(MRS)50/STC-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-119-16-17

दिनांक Date 17.10.2016 जारी करने की तारीख Date of Issue 26/10/16

श्री उमाशंकर, आयुक्त (अपील-I) 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 AHM-STX-003-ADC-MS-012-15-16 dated :07.10.2015
Issued by: Additional Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

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

M/s. Parth Engineering Works

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 :-

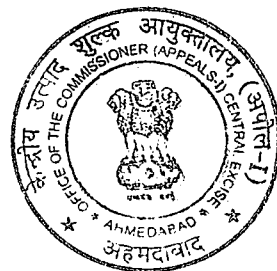
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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।

(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.



(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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1988 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 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 बशर्त 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 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

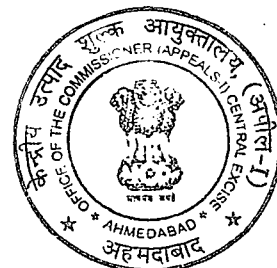
M/s. Parth Engineering Works, J S Tiles, Compound, Near Arts & Commerce College, Motipura, Himmatnagar-393 001 [for short - 'appellant'] has filed this appeal against OIO No. AHM-STX-003-ADC-MS-012-15-16 dated 7.10.2015, passed by the Additional Commissioner, Central Excise, Ahmedabad-III Commissionerate [for short 'adjudicating authority'].

2. Briefly stated, the facts are that during the course of audit of M/s. Oracle Granito Ltd., Himmatnagar, it was observed that the appellant had provided services under the category of "Management, maintenance or repair". An inquiry revealed that they had not paid service tax towards provision of such taxable service. A notice dated 22.10.2012 was therefore issued, *inter alia*, demanding service tax of Rs. 13.71 lacs along with interest and further proposing penalty on the appellant. The notice was adjudicated vide OIO No. AHM-STX-003-ADC-15-13 dated 30.3.2013, wherein the demand was confirmed. However, on the OIO dated 30.3.2013, being assailed before the Commissioner(A), the matter was remanded back vide OIA No. AHM-EXCUS-003-APP-322-13-14 dated 16.12.2013, with a direction to re-quantify the demand of service tax after verifying the appellant's claim in light of notification Nos. 12/2003-ST dated 20.6.2003 and 6/2005-ST dated 1.3.2005.

2.1 The impugned OIO dated 7.10.2015, issued following the directions given in OIA dated 16.12.2013, *supra*, wherein the adjudicating authority has confirmed the demand of service tax along with interest and imposed penalties under sections 77 and 78 of the Finance Act, 1994.

3. The appellant feeling aggrieved, has filed this appeal against the impugned OIO dated 7.10.2015, raising the following averments:

- the appellant has not entered into any contract or agreement with any of the customers for repairs of their machines or its parts;
- that as per the definition, maintenance or repair of any goods provided by any person under a contract or agreement is only taxable under service tax;
- the proprietor of the appellant had stated in his statement dated 30.4.2010 that they had not entered into contract or agreement with any of their customers;
- CBEC vide its letter F. No. B1/6/2005-TRU dated 27.7.2005, has clarified that maintenance or repair, undertaken as part of any contract or agreement is only liable to service tax under this category of taxable service;
- the finding of the adjudicating authority that there existed an oral agreement is far from truth;
- the work done by the appellant is minor repairs without any contractual obligation and would not fall within the purview of maintenance or repair;



- the department has considered the gross income shown in his profit and loss account and demanded service tax; that the bills contain value of goods sold which needed to be excluded from the value of taxable service.

6. Personal hearing in the matter was held on 17.10.2016. Shri M.H.Raval, Consultant, appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal. He also submitted a letter dated 17.10.2016, which reiterates the grounds of appeal.

7. I have gone through the facts of the case, the grounds of appeal and the oral averments and the additional submissions, raised during the course of personal hearing.

8. As the impugned original order dated 7.10.2015 is on the basis of direction contained in OIA dated 16.12.2013, it would be prudent to briefly point out the directions given to the adjudicating authority, while remanding the matter, viz

- the adjudicating authority had not given any reasoning in the order for not considering the exclusion of cost of material used in repair of replaced parts;
- the impugned order is set aside and remanded to the adjudicating authority to pass orders afresh on merit after verifying the appellant's claim in light of notification Nos. 12/2003-ST dated 20.6.2003 and 6/2005-ST dated 1.3.2005.

9. On these directions, the adjudicating authority has vide his impugned original order dated 7.10.2015, held that since the appellant failed to produce any documentary evidence regarding material consumed, he was not inclined to grant the benefit of the notification, *supra*; that the appellant is liable to pay service tax of Rs. 13.71 lacs under the category of "Maintenance or repair service".

10. The appellant has raised various contentions, as listed in para 3 above. The primary contention raised is that since there was no contract/agreement which was entered into by the appellant with the persons who had received the service, they were not liable to pay service tax. It is a fact that prior to 16.6.2005, only maintenance or repair carried out under annual maintenance contract was taxable; that after amendment in section 65(64) of Finance Act, 1994, such activity carried out as a part of any contract or agreement is taxable. I find that the whole argument about exigibility of the service provided by the appellant, is already settled vide OIA dated 16.12.2013, wherein after relying on the case of Stallion Rubbers Limited [2011(23) STR 380] it was held that the service provided was covered within the purview of "Maintenance or repair service". Nothing has been provided along with the appeal papers, to suggest that this portion of the said OIA was appealed against by the appellant before the Hon'ble Tribunal. As the matter stands settled, delving into the exigibility portion, is not legally tenable.



8

11. The only averment that now needs to be addressed is regarding the inclusion of value of goods sold, which as per the appellant, is to be excluded from the value of taxable services. The appellants states that in case the value of goods sold is excluded, the taxable value would be within the threshold limit and he would not be taxable in view of the exemption granted vide notification No. 6/2005-ST dated 1.3.2005, as amended. It is on record that the adjudicating authority undertook all the steps, within his control to obtain documents which could enable him to formulate a view on the claim, that the value of taxable services included the value of goods sold. The appellant not only was indifferent and non cooperative, but in-turn tried to shift the onus on the department. The department has already alleged, based on available facts. The averment is of the appellant that value of goods sold is included in the value of services, hence, it was imperative that he provided the details. The query raised in the letter dated 16.4.2015 of the adjudicating authority, were vital, which needed to be refuted. Since, this was not done, the adjudicating authority rejected the averment. The doubts raised by the adjudicating authority that [a] the bills/invoice did not contain value of sales separately; [b] the details of sales are mentioned in pencil, which apparently were written subsequent to preparation of bills; and [c] no bill wise detail is provided in respect of sales except that the total amount pertaining to a year is provided. The matter was remanded primarily for resolving this dispute. However, since the appellant has failed to provide additional details to substantiate his claim, the adjudicating authority confirmed the demand. I find no reason to interfere with the finding of the adjudicating authority, in this regard.

12. The appellant has relied on various citations, to put forth his point that no penalty is imposable. In the earlier OIA dated 16.12.2013, vide paras 7.1 to 7.3 penalty was upheld only in respect of Sections 76, 77((1)(a) and 78, of the Finance Act, 1994. Penalties imposed under sections 77(1)(b), (c), (e) and under 77(2) of the Finance Act, 1994, was set aside. It is nowhere brought on record that the OIA was either reviewed by the department or an appeal was filed by the appellant, before the Hon'ble Tribunal. Hence, as far as penalties go, the order in appeal dated 16.12.2013, has attained finality. Thus, the adjudicating authority appears to have exceeded his brief by imposing penalties under Section 77(2), 77(1)(b), (c) and (e) of the Finance Act, 1994 and therefore, the same is set aside. The appellant not having challenged the earlier OIA, now does not have the liberty of appealing against the penalties under Section 77(1)(a) and 78 of the Finance Act, 1994, confirmed vide OIA dated 16.12.2013. Thus the penalties imposed under Sections 77(1)(a) and 78 of the Finance Act, 1994, is therefore, upheld.

13. The appeal filed by the appellant is therefore, rejected except for penalties imposed under Sections 77(2), 77(1)(b), (c) and (e) of the Finance Act, 1994, which is set aside.



14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
 14. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date : 17.10.2016

Attested by

o/c Vinod

(Vinod Lakose)
 Superintendent (Appeal-I)
 Central Excise
 Ahmedabad

BY R.P.A.D.

To,
 M/s. Parth Engineering Works,
 J S Tiles, Compound,
 Near Arts & Commerce College,
 Motipura,
 Himmatnagar-393 001

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III.
3. The Deputy/Assistant Commissioner, Central Excise Kalol division, Ahmedabad-III.
4. The Additional Commissioner, System, Central Excise, Ahmedabad-III.
5. Guard File.
6. P.A.

