

रजिस्टर्ड डाक ए.डी. द्वारा

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

क फाइल संख्या : File No : V2(GTA)38/STC-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-155-16-17
दिनांक Date 18.11.2016 जारी करने की तारीख Date of Issue 22/11/16

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 GNR-STX-DEM-DC-48/2015 dated :28.09.2015
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. Mahavir Goods Carriers

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, मेघानी 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 प्रतियाँ 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.

(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 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 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)(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

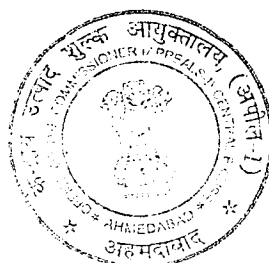
This appeal has been filed by M/s Mahavir Goods Carrier, Kadi, Mehsana (hereinafter referred to as "the appellant") against Order-in-Original No.GNR-STX-DEM-DC-48/2015 dated 28.09.2015 (for brevity- hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central Excise & Service Tax Division, Gandhinagar, Ahmedabad-III (for brevity- hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the appellant is engaged in providing transport of goods service. During the course of investigation conducted against the appellant in the year 2009, it was observed that during April 2008 to June 2012, they had collected service tax amounting to Rs. 4,16,089/- as per the consignment notes/documents from the clients and had short paid Rs.3,28,382/- to the Government. Therefore, a show cause notice dated 23.10.2013 was issued to the appellant, which was upheld by the jurisdictional Deputy Commissioner, vide order No. 28/DC/Dem/S.Tax/2014 dated 28.02.2014. The Commissioner (Appeal), he vide his OIA No. AHM-EXCUS-003-APP-107-14-15 dated 08.12.2014 allowed the appeal of the appellant, by way of remand with a direction to the adjudicating authority to work out the actual amount payable by the appellant during the relevant period. Accordingly, vide the impugned order dated 28.9.2015, the adjudicating authority has re-worked the amount to be paid by the appellant as Rs. 3,26,498/- and confirmed with interest. He has also imposed penalties under Section 77(2) and 78 of the Finance Act, 1994.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that the adjudicating authority has not furnished documents listed at Sr. No. 1 to 4 of Annexure A to the show cause notice, as directed by the Commissioner (Appeals); that opportunity to file fresh reply may be given before the adjudicating authority on the basis of the said documents; that they are not liable to pay service as per Rule 2(1)(d)(v) of Service Tax Rules; that according to the said Rule, the consignees are liable to pay service tax; that the adjudicating authority has confirmed the amount without verifying the facts of payment of service tax by the consignee; that the appellant has paid an amount of Rs.1,52,686/- and Rs.2,95,000/- towards the liability, but the adjudicating authority has considered only Rs.89,503/- and Rs.2,95,000/-. They further requested that the matter may be remanded for fresh adjudication after supplying documents listed at Sr.No.01 to 04 of Annexure to the show cause notice.

4. A personal hearing in the matter was held on 07.11.2016. Shri Rahul Gajera and Shri R.K.Jain, both Advocates appeared before me on behalf of the appellant and reiterated the arguments, advanced in the grounds of appeal.

5. At the outset, I observe that the case is pertaining to short payment of service tax amounting to Rs.3,26,948/- towards Transport of Goods Service by Road. The impugned

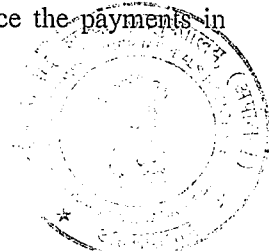


order is a result of the direction given by the Commissioner (Appeals), vide OIA dated 08.12.2014. The relevant order is as under:

"5.1 The appellant further contended; that mere tick mark in the consignment notes in the transporter is not enough to show collection of service tax from all the consignees from whom freight collected. They further contended that there is no evidence referred in the show cause notice to show that appellant actually collected the amount of service tax as shown in consignment notes issued by the appellant from all the consignees from whom freight was collected. They further contended that the amount of service tax recoverable from them is Rs.2,63,315/- and not Rs.3,82,382/-. As per the work sheet prepared by the appellant the amount paid by them is Rs.4,47,686/-. I find force in the contentions of the appellant regarding ambiguity in calculating the amount of service tax, which can be seen from para 5 of the impugned order wherein it is stated that the amount payable worked out to Rs.3,26,382/- but the appellant agreed to pay the amount of Rs.3,26,586/- however, the amount collected is Rs.3,28,382/-. The appellant also produced a worksheet showing the amount actually paid by them is Rs.4,47,686/-. It is, therefore, evident that the actual amount payable by the appellant has not properly worked out in the impugned order. I therefore, in the interest of justice find the case is fit for reconsideration at the adjudication level."

6. As is evident, there was no dispute with respect to liability on payment of service tax; that the only dispute remains regarding ambiguity in the amount of service tax collected and paid by the appellant. Hence, the Commissioner (Appeals) has remanded the case for ascertaining the actual amount payable by the appellant during the relevant period i.e. from April 2008 to June 2012. In the circumstances, the argument of non leviability of service tax on the service of Transport of Goods by Road Service, at this stage, is not legally tenable and lacks merit. Therefore, I limit the issue relating to the actual amount payable by the appellant for the said service during the relevant period.

7. The case against the appellant was that the service tax shown in the consignment note and collected by them was higher than the amount of service tax assessed and paid in ST-3 returns for the period in dispute. The adjudicating authority, as per direction of the Commissioner (Appeals), has worked out the service tax liability and discussed it in detail in the impugned order. The impugned order states that during the period from April 2008 to September 2009, October 2010 to March 2011 and October 2011 to June 2012, the appellant, had collected service tax amounting to Rs.4,16,089/- against their liability of Rs. 4,16,001/- and paid only Rs. 89,503/- through ST-3 returns; thus they short paid an amount of Rs. 3,26,498/- plus Rs. 88/- (excess collected). However, they had paid Rs. 2,95,000/- during investigation, against their liability. Thus, as per the impugned order, the total amount paid by the appellant towards tax liability during the period mentioned supra i.e. April 2008 to September 2009, October 2010 to March 2011 and October 2011 to June 2012 comes to Rs. 3,74,503/- [i.e. Rs. 89,053/- + Rs. 2,95,000/-] against Rs. 4,16,001/-. The appellant contended that they had paid Rs. 1,52,686/- during April 2008 to June 2012 and Rs. 2,95,000/- during investigation. In the instant case, I observe that the appellant while claiming that he has paid Rs. 1,52,686/- is also talking of months in respect of which no demand is being raised. The demand as is evident does not include the periods October 2009 to September 2010 and April 2011 to September 2011. Hence, the amount of Rs. 63,633/- which pertains to the periods October 2009 to September 2010 and April 2011 to September 2011 is not being deducted since the payments in

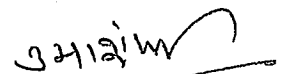


respect of these months were not disputed. Hence, I find that the finding of the original authority that the appellant has paid Rs. 89,053/- [Rs. 1,52,686-63,633] and Rs. 2,95,000/-, is correct. Thus, the argument of the appellant that the total amount of Rs. 4,47,686/- [i.e. Rs. 1,52,686/- + Rs. 2,95,000/-] paid by them is required to be considered is factually not correct, since the demand for the period i.e October 2009 to September 2010 and April 2011 to September 2011 was not at all raised in the instant case. In the circumstances, I find that the adjudicating authority has correctly worked out the liability of service tax in paras 21.3.1 and 21.5.1 to 21.5.4 of the impugned order and hence, I do not find any reason to interfere.

8. The appellant has further contented that the adjudicating authority has not supplied documents mentioned at Sr.No.01 to 04 of Annexure A to the show cause notice as directed by the Commissioner (Appeal) and requested to remand the case for fresh adjudication after supplying the said documents. On perusal of the said OIA, I observe that no such direction for supplying the document was given by the Commissioner (Appeals). The said OIA only states that the actual amount payable by the appellant was not properly worked out by the adjudicating authority and therefore, remanded the case for fresh adjudication to correct the discrepancies. Even otherwise, I observe that as per Annexure A to the show cause notice, the documents mentioned at Sr.No.01 to 04 was available for inspection by the appellant, however, it appears that they had not availed this benefit. Hence, the request for remand the matter to the adjudicating authority lacks merit.

9. In view of above, I find that the adjudicating authority has correctly confirmed the demand along with interest. As regards the penalties imposed, I observe that the adjudicating authority has imposed penalty under Section 77(2) of the Finance Act '94 for failure in correct assessment of tax liability in ST-3 returns during the relevant period and under Section 78 of the Act for suppressing the facts relating to value of taxable services received. Looking into the facts of the case discussed *supra*, the penalties imposed by the adjudicating authority appear to be appropriate and I uphold the same.

10. In view of above discussion, I reject the appeal filed by the appellant and uphold the impugned order. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है। The appeal filed by the appellant stand disposed of in above terms.



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 18/11/2016

Attested


(Mohanan V.V)

Superintendent (Appeals-I)
Central Excise, Ahmedabad

R.P.A.D

To
M/s Mahavir Goods Carrier,
Om Complex, Opp. Reliance Petrol Pump,
Kadi Kalol Road, Kadi,
Dist. Mehsana, Gujarat.

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, Kadi Division, Ahmedabad-III
5. Guard file.
6. P.A.