

रजिस्टर्ड डाक ए.डी. द्वारा

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

क फाइल संख्या : File No : V2(TS)13/STC-III/2016/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-205-16-17  
दिनांक Date 23.01.2017 जारी करने की तारीख Date of Issue 21/1/17

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-021-13 dated 25.04.2013 Issued by: Additional  
Commissioner, Central Excise, Din: Mehsana, A'bad-III.

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

**M/s. Bharat Sanchar Nigam Ltd.**

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 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.



(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, 1994 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 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 s.dwR me., 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."




ORORDER-IN-APPEAL

This appeal has been filed by M/s Bharat Sanchar Nigam Limited, Palanpur, Gujarat (for brevity-'the appellant') along with application for condonation of delay in filing of appeal, against order-in-original No.AHM-STX-003-ADC-021-13 dated 25.04.2013 (hereinafter referred to as "impugned order") passed by the Additional Commissioner of Central Excise, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority').

2. The facts of the case is that during the course of audit of the records of the appellant, it was noticed that "input service credit" amounting to Rs.32,84,645/- were transferred to the appellant by BSNL Circle Office, Khanpur, Ahmedabad, an unregistered assessee under Section 69 of the Finance Act, 1994 through invalid and improper Cenvat Credit document, during 2006-07 to 2012-13. Therefore, a show cause notice dated 16.10.2012 was issued to the appellant for demanding the said Cenvat Credit wrongly availed with interest and imposition of penalty under Section 78 of the Finance Act. The adjudicating authority has confirmed the allegation made in the show cause notice, by confirming the demand with interest and imposition of penalty equal to the demand of service tax.

3. Being aggrieved, the appellant has filed the present appeal along with application for condonation delay in filing on the grounds that BSNL Khanpur circle office is the only coordinating office between BSNL (western project) and the service provider and therefore, the adjudicating authority has erred in holding that neither BSNL western project nor BSNL Khanpur office have not obtained service tax registration as ISD; that vide OIO No.AHD-03-ADC-027-13 dated 28.06.2013, issued by the Additional Commissioner, Ahmedabad-III has dropped the same proceedings against BSNL Nadiad; that the appellant had made representation for re-considering their case in view of order dated 28.06.2013 but the same was not considered. The appellant has filed application for condonation of delay in filing of appeal on the grounds that they were waiting for legal opinion against the impugned order for further proceedings; that meanwhile, they received order dated 28.06.2013 issued by the Additional Commissioner, by dropping proceedings in a similar issue pertaining to BSNL Nadiad, therefore, the appellant was under bonafide belief that no appeal need not to be filed against the impugned order; that the appellant further made an application dated 20.08.2014 to the authority to withdraw the direction of impugned order which was not considered. In view of above reason and circumstances they could not file the appeal in the stipulated period.

3. Personal hearing in the matter was held on 09.01.2017 and Shri Chirag Patel, Chartered Accountant appeared on behalf of the appellant. He reiterated the grounds of appeal.

4. I have considered the facts of the case and submissions made by the appellant in the appeal memorandum as well as in the application for condonation of delay. 

5. At the outset, I observe that the appellant has filed the instant appeal under Section 85 of the Finance Act, 1994 on 09.05.2016 against the impugned order received by them on 08.05.2013 i.e with a delay of almost three years.



6. Section 85 of the Finance Act, 1994 stipulates that:

(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).

(2) .....

(3) An appeal shall be presented within three months from the date of receipt of the decision or order of such adjudicating authority, relating to service tax, interest or penalty under this Chapter, made before the date on which the Finance Bill, 2012, receives the assent of the President:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months

In the instant case, the appellant has filed the appeal with a delay of almost three years. As per provisions of above section, the appellant is required to file the appeal within a period of sixty days from the date of the communication of the impugned order and the Commissioner (Appeals) is empowered to condone the delay in filing of appeal for a further period of thirty days. The delay in filing of appeal taken place in the instant case is beyond the prescribed period empowered to the Commissioner (Appeals), the instant appeal is required to be dismissed as non maintainable in terms of Section *ibid* without going into the merit of the case. Accordingly, I do so.

7. Further, I observe that as per Section 35 F of the Central Excise Act, 1944, made applicable to Service Tax provisions, vide Section 83 of the Finance Act, the Commissioner (Appeals) shall not entertain any appeal, unless the appellant has deposited seven and a half per cent of the duty demanded or penalty imposed or both, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Commissioner of Central Excise;

In the instant case, I also observe that the appellant has not deposited any amount as prescribed in the section *ibid*. In this context also, the appeal filed by the appellant is non-maintainable.

8. In view of above discussion, the appeal filed by the appellant is rejected as time barred/ dismissed as non-maintainable. The appeal stands disposed of in above terms.

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स - I)

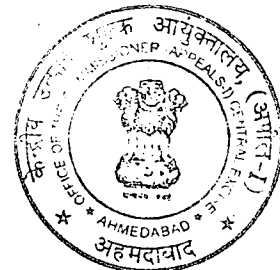
Date: 23/01/2017

Attested

*2nd 3/1/17*  
(Mohan V.V)  
Superintendent (Appeal-I)  
Central Excise, Ahmedabad

BY R.P.A.D.

To  
M/s Bharat Sanchar Nigam Ltd  
O/o the GMTD, BSNL,  
Palanpur, Dist. Banaskantha.



Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III
3. The Additional Commissioner, Central Excise (System), Ahmedabad-III
4. The Assistant Commissioner, Central Excise, Mehsana Division.
- ✓ 5. Guard file.
6. P.A.

