

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(BAS)03/STC-III/2016-17/Appeal-I
V2(BAS)02/STC-III/2016-17/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-211 to 212-16-17
दिनांक Date 23.01.2017 जारी करने की तारीख Date of Issue 21/1/17

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 As Per Order dated 30.12.2015 Issued by:
Superintendent, Central Excise, Din: Mehsana, A'bad-III.

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

M/s. AS PER ORDER.

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.



(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, 1984 की धारा 34फ 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 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,

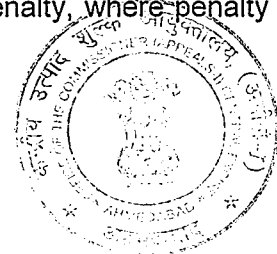
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 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."



ORODER-IN-APPEAL

Following appeals have been filed by M/s Ashirwad Marbles, Malana Patiya, Delhi Highway, Palanpur, H O Banaskatha, Gujarat and M/s Ashish Marbles, Danta Road, Ambaji, Banaskanth, Gujarat (hereinafter referred to "the appellants") against orders-in-original (hereinafter referred to as "impugned orders") passed by the Superintendent of Service Tax Range, Mehsana Division (hereinafter referred to as 'the adjudicating authority').

S No	Name of appellant	OIO No. & date	Appeal No.
1	M/s Ashirwad Marbles	103/Supdt/STR/Meh/2015 dated 30.12.2015	03/STC-III/16-17
2	Ashish Marbles	104/Supdt/STR/Meh/2015 dated 30.12.2015	02/STC-III/16-17

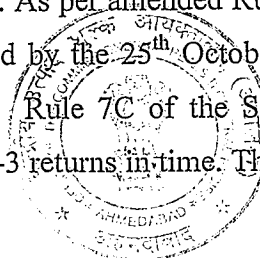
2. A show cause notice dated 11.03.2013 was issued to the appellants for non-filing of ST-3 returns for the period from April 2012 to June 2012, by proposing penalty in terms of Rule 7 of Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994. Vide the impugned orders, the adjudicating authority has imposed penalty of Rs.20,000/- each on the appellants.

3. Being aggrieved, the appellants have filed the instant appeals on the grounds that the impugned orders is patently against law, contrary to the facts on record and the imposition of penalty is required to be set aside; that the appellants are engaged in the business of cutting, polishing of stone on job work basis and their process are amount to manufacture in terms of chapter note and in terms of erstwhile Section 65(19), any activity that amounts to manufacture have been excluded from the definition of Business Auxiliary service and no there is no liability to pay service tax; that as per CBEC circular no.97/8/07-ST dated 23.08.2007, if no service is rendered by service provider, there is no requirement to file ST-3 return.

3. Personal hearing in the matter was held on 04.01.2017 and Shri Punit Prajapati, 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. The limited issue to be decided in the instant case is relating to imposition of penalty for non filing of ST-3 returns during April 2012 to June 2012.

5. As per provisions of Section 70, every person liable to pay the service tax, shall himself assess the tax due on the service provided by him and shall furnish a return in the prescribed format before the concerned authority. As per amended Rule 7 of the Service Tax Rules, 1994, form ST-3 required to be submitted by the 25th October 2012 shall cover the period from 1st April 2012 to 30th June 2012. Rule 7C of the Service Tax Rules 1994 stipulates penalty for non-filing of prescribed ST-3 returns in-time. The statute prescribes that



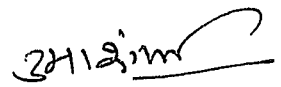
from the date prescribed for submission of ST-3 return, rupees five hundred for the delay of fifteen days, one thousand rupees for beyond fifteen days but not later than thirty days and beyond thirty days, an amount of rupees one thousand plus hundred rupees every day. The provisions to the said Rules provides the total amount payable in terms of the said rule, for delayed submissions of return, shall not exceed the amount specified in Section 70 of the Finance Act. i.e Rs.20,000/-.

6. I observe that the appellants are engaged in the business of cutting, polishing of stone on job work basis and their process are amount to manufacture in terms of chapter note 3 to chapter 68 and any activity that amounts to manufacture have been excluded from the definition of taxable service. The appellant submitted that as per Board's circular No.97/8/2007-ST dated 23.08.2007, the persons who are not liable to pay service tax are not required to file ST-3 returns. The said Circular states as under:

"6.1 The service tax return is required to be filed under Section 70 of the Act read with rule 7 of the Rules, by "any person liable to pay the service tax". This return is required to be filed on a half yearly basis, in Form ST-3. For the periods from April to September and October to March, it must be filed by the 25th October and the 25th April respectively. Further, 'Input Service Distributor' is also required to file this return. Persons who are not liable to pay service tax (because of an exemption including turnover based exemption), are not required to file ST-3 return."

8. Looking into the facts and circumstances of the instant case, I find merit consideration in the argument of the appellant. I observe that the adjudicating authority has not considered the above facts and also not discussed the details of other taxable service if any provided by the appellant. In the circumstances, the penalty imposed by the adjudicating authority is not justifiable and not sustainable. Therefore, the same is required to be set aside and I do so.

9. In view of above discussion, I allow the appeal filed by the appellants and set aside the impugned orders. Both the appeals stand disposed of in above terms.




(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 23/01/2017

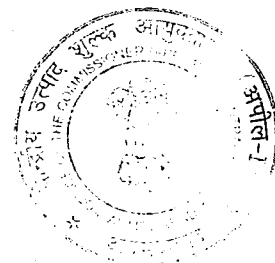
Attested


(Mohanan V.V)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

To
M/s Ashirwad Marbles,
Malana Patiya, Delhi Highway, Palanpur,
H O Banaskatha, Gujarat

M/s Ashish Marbles,
Danta Road, Ambaji, Banaskanth, Gujarat



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.
7. V2(BAS)02/STC-III/16-17

