

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)16/STC-III/2016/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-237-16-17

दिनांक Date 31.01.2017 जारी करने की तारीख Date of Issue

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-03-2016 dated 11.03.2016 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. Gemstone Glass Pvt. 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:-

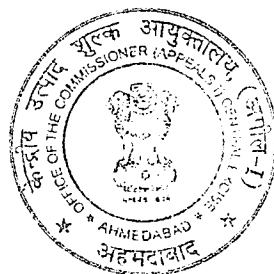
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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, 1994 की धारा 86 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,

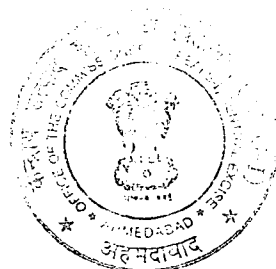
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 अधिनियम के अंतर्गत, 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 Gemstone Glass Pvt Ltd., Plot No.23/E, GIDC Estate, Kadi, Mehsana, Gujarat (hereinafter referred to as "the appellant") against Order-in-Original No.GNR-STX-DEM-DC-03/2016 dated 11.03.2016 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner of Central Excise, Kadi Division (hereinafter referred to as "the adjudicating authority").

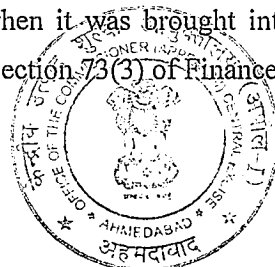
2. Facts of the case is that based on audit objection raised by the jurisdictional Central Excise & Service Tax Audit officers, a show cause notice dated 30.11.2015 was issued to the appellant for non -payment of service tax amounting to Rs.48,510/- incurred towards Technical Consultancy Fee service from M/s Bottero Armando Italy & Falorni Gianfranco SR., Italy, for the period from 2011-12 and 2013-14; that in terms of provisions of Notification No.30/2012-ST dated 20.06.2012, the appellant had not discharged the said service tax on such service as a recipient of service. Vide the impugned order, service tax amounting to Rs.48,150/- with interest was confirmed and also imposed penalty of Rs.48,510/-. The appellant has paid the service tax amount demanded with interest.

3. Being aggrieved, the appellant had filed the instant appeal on the grounds that they had inadvertently missed to pay the service tax in question and on pointed out by the officer, the same was paid by them with interest; that in terms of Section 73 (3) and 76(1) of Finance Act, 1994, no penalty is imposable and the proceedings thereof shall be deemed to be concluded. Since there was no mala fides intention or *mens rea* in the instant case, provisions of Section 78 (1) of FA invoked is incorrect. The appellant has relied on case laws in support of their arguments.

4. Personal hearing in the matter was held on 09.01.2007. Ms. Pooja M Shah, Chartered Accountant appeared on behalf of the appellant and reiterated that the appellant had paid duty with interest; therefore, no penalty is imposable.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. At the outset, I observe that there is, however, no dispute regarding payment of service tax on the service rendered by the appellant during the relevant period. The service tax in dispute with appropriate interest was paid by the appellant before issuance of show cause notice. The only dispute remaining is regarding imposition of penalty under Section 78(1) of Finance Act, 1994.

6. The adjudicating authority has imposed penalty of Rs.48,150/- under the Section *ibid* on the grounds that the appellant has short paid the amount in question by reason of fraud, collusion, willful misstatement or suppression of facts with an intention to evade the service tax as they have not disclosed the receipt of payment to the authority in any way including in periodical returns. On the other hand, the appellant has stated that they had inadvertently missed the payment in dispute and correct by them when it was brought into the notice. Therefore, no penalty is imposable as per provisions of Section 73 (3) of Finance Act.

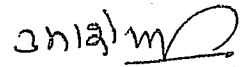


7. I observe that the service tax amounting to Rs.48,150/- due for payment was pertaining to the period 2011-12 and 2013-14 and found as short paid by the Audit Officer, while scrutinizing the records of the appellant in the year 2015 only. In other words, the said due amount could have been escaped from payment, if the departmental officers had not audited the records. The argument of the appellant that the payment of service tax towards the service in question was missed by mistake is not justifiable and cannot be acceptable, looking into the facts that the case; that the taxable income was reflected in their records in the year 2011-12 and also in the year 2013-14 and being a established manufacturer, escaping from payment of tax twice cannot be ignored in the shade of by mistake, but avoiding payment by knowing the facts. In this case, the appellant has paid the service tax in question only after it was brought into notice by the department officers. In the circumstances, I do not find any merit to interfere the facts narrated by the adjudicating authority regarding suppression of facts involved. In the circumstances, the appellant's request for concluding the case in terms of Section 73(3) of the Finance Act has rightly rejected by the adjudicating authority.

9. The appellant has relied on case law viz., CCE,ST Indore V/s ZYG Pharma Pvt Ltd [2016 (3) TMI 618 -Tri Del] and M/s Hiduja Foundries [2016 (4) TMI 768-Tri Chennai]. The case law cited by the appellant is not applicable to the instant case, looking into the facts of the case. In the said decision, it was held that the assessee was submitting their monthly returns, clearly showing availment of the impugned credit and it is incorrect to say that it did not disclose the fact of availment of Cenvat credit on the impugned goods. In the instant case, the appellant was not filing their ST-3 return for the service in dispute and the details of amount received towards the said service was noticed only during the course of audit of records.

8. I observe that the adjudicating authority has imposed penalty of Rs.48,510/- and further reduced 50% of the said amount, as per amended provisions of Section 78 of Finance Act. Looking into the facts and circumstances of the case as discussed above, I do not find any merit to interfere in the impugned order with regard to imposition of penalty also.

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



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 31/01/2017

Attested

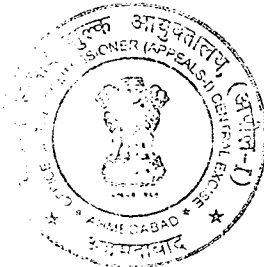


(Mohanan V.V.)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

To

M/s Gemstone Glass Pvt Ltd.,
Plot No.23/E, GIDC Estate, Kadi,
Mehsana, 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.

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