

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(BAS)36/STC-III/2016/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-267-16-17

दिनांक Date 23.03.2017 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-10/2016 dated 23.06.2016 Issued by:
Assistant Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

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

M/s. Bluemax Services

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 मैनटल 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, 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 हैं

- (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 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,

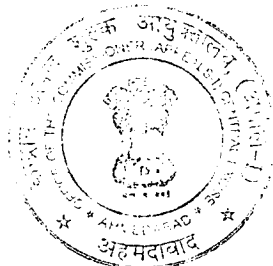
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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."



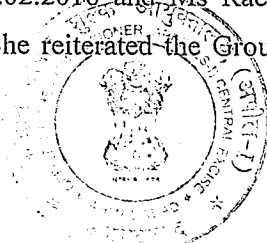
ORODER-IN-APPEAL

This appeal has been filed by M/s Bluemax Services, 1st floor, Parag Shopping Centre, Nr. B.K.Cinema, Mehsana-2 (hereinafter referred to as "the appellant") against Order-in-Original No.GNR-STX-DEM-DC-10/2016 dated 23.06.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Service Tax Division, Gandhinagar, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

2. Facts of the case are that the appellant is engaged in providing Business Auxiliary Service and Manpower Supply Service with service tax registration. While auditing the records of the appellant, the was noticed that they had issued invoice dated 16.06.2015 pertains to the period from March 2015 to May 2015 to M/s HCL Services Ltd for the service of 'Manpower Supply Service' without payment of service tax; that as per provisions of notification No.30/2012-ST dated 20.06.2012, the liability of service tax @25% of taxable value is required to be discharged by the appellant for the month of March 2015 which was not paid by them. The said notification has been amended by notification No.07/2015-ST dated 01.03.2015 (with effect from 01.04.2015) and accordingly to which no liability of service tax lies with the appellant. Therefore, a show cause notice dated 29.02.20016 was issued to them for demand of service tax amounting to Rs.1,10,282/- with interest on taxable value of Rs.35,69,000/- received during March 2015 and imposition of penalty under Section 78 of the Finance Act, 1994. Vide the impugned order, the service tax amount was confirmed with interest and imposed a penalty of 50% of the service tax amount.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that they have issued the invoice on 16.06.2015 and payment thereof was received thereafter for the service rendered in the month of March 2015 in question; that with effect from 01.04.2015, no service tax is required to be paid by them in view of amended notification No.07/2015-ST dated 01.03.2015; that as per provisions of Rule 4 of Point of Taxation Rule, 2011, no service tax is leviable from them for the said period in such situation. They further submitted that as per the amended notification, the recipient has already been paid the tax in question and accordingly, the appellant is only liable for the differential interest for the delayed payment; that service tax cannot be charged twice for the same service. No penalty under Section 78 imposable in the present case. The appellant cited various case laws in support of their argument.

4. A personal hearing in the matter was held on 17.02.2016 and Ms Rachna M Khandhar, Chartered Accountant appeared for the same. She reiterated the Grounds of



Appeal and stated that the service recipient has discharged service tax liability for the month of March 2015 to May 2015. She further submitted additional submission in this respect.

5. I have carefully gone through the facts of the case and the submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The short point to be decided in the instant case is relating to short payment of service tax amounting to Rs.1,10,282/- by the appellant as a service provider under notification No.30/2012-ST for the month of March 2015.

6. As per provisions of Notification No.30/2012-ST dated 20.06.2012, service tax is payable for the service provided or agreed to be provided by way of 'supply of manpower' for any purpose by a provider of the service on 25% of taxable value; that this provisions has been amended with effect from 01.04.2015, vide notification No.07/2015-ST dated 01.03.2015 under which the service receiver is required to be paid tax on 100% of taxable value and service provider is not required to pay the tax as a service provider.

7. In the instant case, the adjudicating authority has contended that though the provisions of notification No.30/2012-ST are applicable for March 2015, the appellant has not discharged the prescribed amount of service tax of Rs.1,10,282/- towards 'supply of manpower' service rendered during the relevant month. The adjudicating authority has further held that the appellant shall be liable to pay service tax as per the provisions of Rule 3 of Point of Taxation Rules, 2011 i.e the date of completion of service. On the other hand, the appellant has argued that as per provisions of Rule 4 a (i) *ibid* the point of taxation shall be the date of issuing of invoice or date of payment whichever is earlier; that in the instant case they had issued invoice in the month of June 2015 and payment was received thereafter.

8. For the sake of clarity, the relevant provisions of said Rules is reproduced and read as under:

RULE 3. Determination of point of taxation. - For the purposes of these rules, unless otherwise provided, [point of taxation] shall be,-

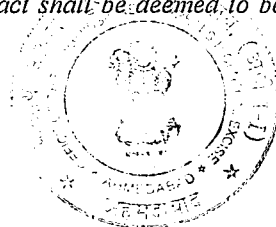
(a) the time when the invoice for the service provided or agreed to be provided is issued :

Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment :

Provided that for the purposes of clauses (a) and (b), -

(i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;



[Handwritten signature]

(ii) wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a).

Explanation - For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

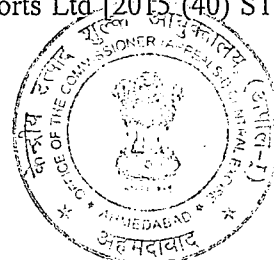
Rule 4. Determination of point of taxation in case of change in effective rate of tax. - Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change in effective rate of tax in respect of a service, shall be determined in the following manner, namely :-

(a) in case a taxable service has been provided before the change in effective rate of tax,-

(i) where the invoice for the same has been issued and the payment received after the change in effective rate of tax, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or

9. In the instant case, I observe that the appellant, after completion of the service pertaining to March 2015, had issued invoice on 16.06.2015 and received payment later on. This fact was not disputed. The provisions of Rule 3 *ibid* clearly stipulates that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service. As per Rule 4A of Service Tax Rules, the invoice shall be issued within thirty days from the date of completion of service. On other side, provisions of Rule 4 a(i) which stipulates that where the invoice for the same has been issued and the payment received after the change in effective rate of tax, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier. Rule 4 refers a situation in case of change in effective rate of tax. Due to amendment in notification No.30/2012-ST with effect from 01.04.2015, vide notification No.07/2015-ST, service tax of 25% of the value of taxable service to be paid by the service provider has been withdrawn, instead service tax of 100% of the value of taxable service to be paid by the service recipient. In the circumstances, I am of the considered view that there is no change in effective rate of service tax but only the percentage of tax to be paid by the service provide and service recipient is changed. Therefore, for payment of service tax for the month of March 2015, the notification applicable in the instant case is notification No.30/2012-ST and determination of point of taxation shall be as per Rule 3 of Point of Taxation Rules, 2011.

9. However, in the instant case a situation arisen that the appellant had issued a combined invoice for the month of March 2015 to May 2015 on 16.06.2015 and payment of service tax on 100% of the value of taxable service was paid by the recipient as per provisions of notification No.07/2015-ST dated 01.03.2015 (effective from 01.04.2015). In this regard, the appellant has argued that as far as receipt of service tax concerned, there is no losing to the revenue. However, the adjudicating authority has held that as per law prevails, the person who is liable to pay tax shall pay the tax. The appellant has relied on case law of Hon'ble Tribunal in case of M/s Kakinada Seaports Ltd. [2015 (40) STR



509-Tri. Bang], wherein, it has been held that once tax paid by the service provider under reverse charge mechanism, service tax cannot be demanded.

10. Looking into above facts, I find merit consideration in the argument of the appellant. If the appellant paid the service tax in question for the month of March 2015, the recipient is eligible for refund of the amount so paid and to that extent net liability of service tax shall stand neutral, therefore, it is an exercise of revenue neutral. Hence the demand on tax which has already paid does not exist. However, the issue remains for deciding whether interest and penalties are to be demanded. Simply because a situation leads to revenue neutrality does not imply that tax need not be paid on time. When law requires tax to be paid it has to be paid as per time specified. The time to be considered for interest purposes is between the due date and the payment day. Therefore, I hold that interest is payable under Section 75 of the Finance Act. As regards penalty, I observe that the payment of service tax was missed due to interpretation of prevailing notification and intention to evade payment of duty is not on the part of the appellant. Therefore penalty is set aside.

11. In view of the foregoing, I set aside the demand and penalty and hold to pay interest. The appeal stands disposed of accordingly.

U. Shankar

(उमा शंकर)

आयुक्त (अपील्स - I)

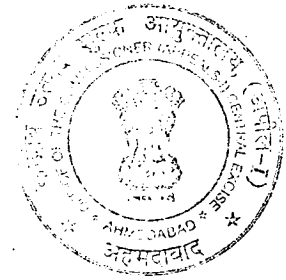
Date: 28/02/2017

Attested

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

BY R.P.A.D.

To
M/s Bluemax Services,
1st floor, Parag Shopping Centre,
Nr. B.K.Cinema, Mehsana-2 (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, ST Division, Gandhinagar.
 5. Guard file.
 6. P.A.