

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(GTA)42/STC-III/2016/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-271-16-17  
दिनांक Date 23.03.2017 जारी करने की तारीख Date of Issue 2/2/17

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 **GNR-STX-DEM-DC-08/2016** dated **16.06.2016** 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. Sona Pumps**

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 :-

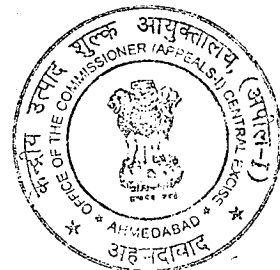
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) 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 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,

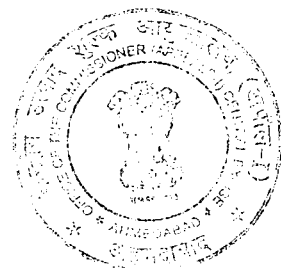
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 Sona Pumps, 39to 43, GIDC Kukarwada, Visnagar to Mansa Road, Kukarwada, Mehsana, Gujarat [hereinafter referred to as "the appellant"] against Order-in-original No.GNR-STX-DEM-DC-08/2016 dated 16.06.2016 [impugned order] passed by the Assistant Commissioner of Service Tax Division, Gandhinagar [adjudicating authority].

2. Briefly stated, the facts of the case is that during the course of audit, it was noticed that the appellant had paid service tax amounting to Rs.1,71,722/- towards Goods Transport Agency Service (GTA) as a recipient of service during 2011-12 to 2014-15 from their Cenvat Account. As it was observed that being a recipient of GTA service, the appellant was not eligible for payment through Cenvat account but was required to pay in cash, a show cause notice dated 08.04.2016 was issued to the appellant for recovery of the said amount with interest and proposal of imposition penalty. Vide the impugned order, the adjudicating authority has confirmed the demand and ordered for recovery of the said amount with interest and also imposed penalty of Rs.1,71,722/- under Section 78 of the Finance Act, 1994.

3. Being aggrieved, the appellant has filed this present appeal on the grounds that the adjudicating authority has not considered the facts of time limit factor involved in the matter; that they were filing regular ST-3 returns for the periods in question and disclosed the payment of service tax as recipient of service of GTA and such no suppression of facts or invocation of extended period is applicable to the present case; that the adjudicating authority has not considered the facts that they were supposed to pay the amount of Rs.23,731/- from out of total demand as the demand from 2011-12 to September 2014 is time barred as they were filing their six month ST-3 return regularly. They also cited various case laws in support of their argument.

4. A personal hearing in the matter was held on 15.03.2017. Shri K.C.Rathod, Authorized Representative of the appellant appeared for the same and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant. At the outset, I observe that the appellant was availing Cenvat credit of various input service credit and has discharged service tax amount of Rs.1,71,722/- from their Cenvat Account towards payment of service tax relating to GTA service as a recipient.

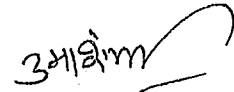
6. The undisputed facts revealed that the explanation to Rule 3 (4) of Cenvat Credit Rules, 2004 inserted vide notification No.28/2012-CE (NT) dated 01.07.2012 stipulates that "*Cenvat Credit cannot be used for payment of service tax in respect of services where the person is liable to pay is the service recipient*". The appellant has admitted that they had paid service tax on GTA service under RCM by debiting from their Cenvat account instead by cash during the period from 2011-12 to 2014-15. This action, obviously tantamount to non- payment of service tax on the said service during the relevant period. In the instant case, the appellant has not disputed the facts relating to payment of service tax during the



relevant period. They only argued that they were supposed to pay an amount of Rs.23,731/- from out of total demand as the demand from 2011-12 to September 2014 and the remaining amount is time barred. Therefore, I take the matter for decision on this aspect only.

7. The appellant has argued that they had brought this fact into the notice of department by filing periodical ST-3 returns, hence no suppression facts or invocation of extended period is applicable to the case. I have perused the copy of ST-3 returns for the relevant period submitted by them. I observed that the appellant has filed the requisite ST-3 returns timely, however, on perusal of the said ST-3 returns, I observe that the appellant misled to the department as to whether they were discharging tax liability as a service provider or as a service recipient and failed to declare the liability for discharging the service tax in the ST-3 Return properly. However, at the time of Internal Audit Team of the Service Tax Commissionerate conducting an audit, such wrong payment of tax from Cenvat credit under RCM have come to the notice of the Department. It is the responsibility of the appellant to declare or ensure that while filing the periodical returns, all correct details regarding availment of notification and payment thereof in the ST-3 returns. The appellant cannot be escaped from the violation of provisions Cenvat Credit Rules, 2004 by stating that they have filed the requisite periodical returns regularly and hence, no suppression of facts can be invoked in such circumstances. Not mentioning proper details in the periodical returns itself invites them for liable to penal action under the provisions of the Finance Act and Rule. This appears as deliberate efforts to avoid cash payment. For all the above reasons, no grounds have been made to interfere with the impugned order and are sufficient to invoke the extended period of limitation. In the circumstances, I adjudicating authority have correctly invoked the extended period of five years and confirmed the demand accordingly with interest. As regards penalty imposed I do not find any merit to interfere the order of the adjudicating authority in view of above discussion and held that the penalty imposed is correct, looking into the facts of the case.

8. In view of above facts, I uphold the order of the adjudicating authority and reject the appeal filed by the appellant. The appeal stands disposed of accordingly.

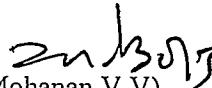


(उमा शंकर)

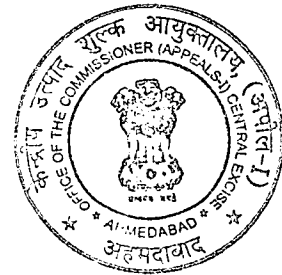
आयुक्त (अपील्स - I)

Date: /03/2017

Attested

  
(Mohanan V.V)  
Superintendent (Appeals-I)  
Central Excise, Ahmedabad  
By R.P.A.D.

To  
M/s Sona Pumps, 39to 43,  
GIDC Kukarwada, Visnagar to Mansa Road,  
Kukarwada, 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, ST Division-Mehsana, Ahmedabad-III
5. Guard file.
6. P.A file.

