

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)28/STC-III/2015/Appeal-I 20/10/24

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-034-16-17  
दिनांक Date 27.05.2016 जारी करने की तारीख Date of Issue 13/6/16

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-41 to 42/2015 dated : 24.07.2015 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. Sabar Cables Private Limited

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 :-

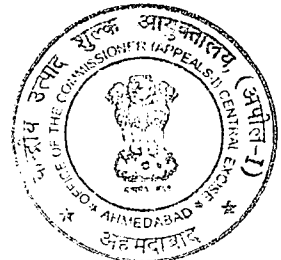
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 प्रतियाँ 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 रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 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 (सीस्टैट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ 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 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,

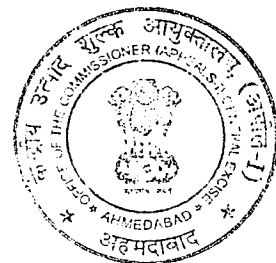
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 संदर्भ में, 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."

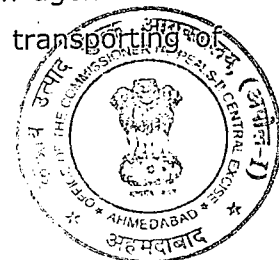


**ORDER-IN-APPEAL**

This appeal has been filed by **M/s Sabar Cables Private Ltd, Opposite Sahakari Gin, Survey No.783, P.N.H.S Kaknol, Himatnagar** (hereinafter referred to as "the appellant") against Order-in-Original No.GNR-STX-DEM-DC-41 to 42/2015 dated 24.07.2015 (hereinafter referred to as "the impugned order" passed by the Deputy Commissioner of Central Excise, Gandhinagar Division, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case are that the appellant is engaged in manufacturing of electric wires, cable and aluminum conductors. They had entered into agreements with buyers such as Uttar Gujarat Vij Company Ltd (UGVCL) and Pashchim Gujarat Vij Company Ltd (PGVCL) for supply of electric cables and other goods. As per the said agreement, freight and packing charges @Rs.6/- per unit had been agreed upon by the buyers to be paid in addition to the assessable value. During the course of Audit of records conducted by the Central Excise Officers, it observed that out of freight collected from the said buyers, the appellant had paid the freight to the Goods Transport Agency (GTA) and had discharged service tax liability under GTA as recipient of service. However, it appeared that they had not paid the entire amount collected as freight from the buyers to the GTA but they had retained some amount with them which has been shown as 'net income of outward freight' in their Personal & Ledger Account. It further appeared that the appellant is not a GTA engaged in providing transportation service but facilitating freight booking for the buyers. As it appeared that the differential amount earned by the appellant is nothing but the commission/remuneration/consideration/facilitation charges for providing Business Auxiliary Service (BAS), two show cause notices dated 01.04.2015 and 14.05.2015 for recovery of Rs.4,03,662/- for the period from October 2009 to July 2014 and for recovery of Rs.2,19,225/- for the period from August 2014 to March 2015 respectively was issued to the appellant with a proposals of penalty under Section 78, 77(1)(a), 77 (1) (b), 77(1) (e), 77 (2) of Finance Act, 1994 and under Rule 7C of Service Tax Rule 1994. The said show cause notices was adjudicated by the adjudicating authority and confirmed service tax demanded and imposed penalty under the said Sections/Rule.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that the appellant is selling goods to the client for which transportation is undertaken by GTA appointed by them; that they pays the freight and recovers the amount of freight from its client which is higher than the actual freight amount paid to GTA. Thus in order to fall under the category of BAS, it is important that they qualifies to be an agent for the client. The amount collected by them is towards facilitating transporting of



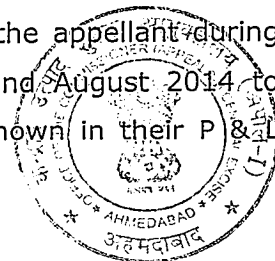
goods, be called as 'income from transportation service' and not 'commission income, hence it cannot be taxed under the head of BAS. The appellant has arranged transportation facility on principal to principal basis and not principal to agent basis to their buyers. The appellant has recovered higher freight amount from buyers than the actual freight amount payable to GTA which clearly signifies profit earned by them from transportation facility given to their clients. Thus demand raised on profit earned by them is illegal as service tax can only be charged on gross amount of service rendered and not on profit earned. The appellant also submitted that based on the above argument, they are not liable to pay service tax and penalty imposed. The appellant has cited various case laws in their favour.

4. A personal hearing in the matter was granted on 03.05.2016 and Shri Rashmin Vaja, Chartered Accountant appeared for the same. He reiterated the grounds of appeal mentioned in the appeal memorandum and submitted that they are not agent of transport and its principal to principal transportation.

5. I have carefully gone through the facts of the case on record and submissions made by the appellant. The short issue to be decided in the appeal is as to whether the extra transportation charges received by the appellant from their client other than the actual cost incurred by them is required taxable or otherwise.

5.1 In the present case, I find that the appellant is paying service tax under GTA, being recipient of service. They had entered with an agreement with UGVCL and PGVCL for supply of electrical cables etc and in order to supply such goods to buyer's premises, they made an arrangement of transportation of goods by road with Goods Transport Agency and recovered transportation charges higher than the amount paid to GTA. However, the appellant has not discharged tax liability for the entire amount charged from the buyers. They retained the additional amount charged towards transportation. The department's contention is that the amount so received by the appellant is nothing but the commission/facilitation charges etc for providing BAS. On other hand, the appellant stated that such amount incurred by transporting of goods, be called as 'income from transportation service' and not 'commission income, hence it cannot be taxed under the head of BAS; that the appellant has arranged transportation facility on principal to principal basis and not principal to agent basis to their buyers and the said amount is a profit of their business..

5.2 In this case, I find that there is no dispute that some extra amount than the amount paid to GTA service was received by the appellant during the disputed periods i.e October 2009 to July 2014 and August 2014 to March 2015. It is also not disputed that the income shown in their P & L



account under the head of 'net income of outward freight is the extra amount received from their clients towards facilitating transportation of goods at the rate at which the same was fixed. Besides, I find that the differential amount received is based on the commercial factors. It is fact that the appellant is not a GTA engaged in providing transportation service but he is facilitating freight booking for their buyers. In the instant case, looking into the fact, I find that the buyer had cast the responsibility of arranging transportation on the appellant, instead of going to the GTA freight booking and paid money for getting the work done. Such activity of the appellant tantamount to procurement of service which is inputs for their client. . I find that in the instant case, it is clear that the service tax is demanded only on the differential amount which has been retained by the appellant after making payment towards GTA service as extra consideration. The amount so realized by them and mentioned under the head 'net income of outward freight' in their P & L Account is nothing but the income from the service provided to their clients. In view of this, such service has to be categorized under BAS. In other words, such service comes under the ambit of BAS

5.3 Notwithstanding above, I find that the service provided by the appellant is to support the business of their clients. They have charged amounts from their clients in excess of what they collected for the payment of GTA. I find that the extra amount collected pertains to the service element over and above the actual cost of freight which is the consideration they received in lieu of services provided by them and the said consideration is the value of taxable service provided by them. I therefore, find that such additional mark-up money received by the appellant from its clients is in the nature of consideration, which they classified as 'profit'. However, the fact remains that in the process of rendering such service, the appellant has earned consideration, which is chargeable to service tax under the category of BAS.

5.4 I find that the appellant has cited other case laws also, however looking to the facts and discussion hereinabove, they have no relevancy to the matter on hand.

5.5 In view of above discussion, I am of the opinion that the appellant had rendered services which are correctly classifiable under the category of BAS and service tax is chargeable. Therefore, I do not find any merit to interfere the impugned order which is totally upheld. In the circumstances, the service tax demanded in the disputed period i.e October 2009 to July 2014 and August 2014 to March 2015 is recoverable from the appellant with interest. Since the appellant has violated the provisions of the Finance Act, 1994 as discussed in the impugned order, the adjudicating authority has rightly



imposed the penalty under Section 78, 77(1)(a), 77 (1) (b), 77(1) (e), 77 (2) of Finance Act, 1994 and under Rule 7C of Service Tax Rule 1994

5.6 In view of above discussion, I reject the appeal filed by the appellant and up held the impugned order. The appeal is disposed off accordingly.

*Uma Shanker*

**(UMA SHANKER)**  
COMMISSIONER (APPEALS-I)  
CENTRAL EXCISE,  
AHMEDABAD

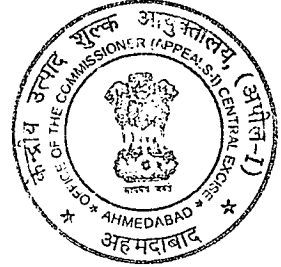
Attested

27/05/2016

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

**By R.P.A.D.**

To  
**M/s Sabar Cables Private Ltd,**  
**Sahakari Gin, Survey No.783,**  
**P.N.H.S Kaknol, Himatnagar**



**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, Central Excise, Division- Gandhinagar, Ahmedabad-III
5. Guard file.
6. P.A (Commissioner-Appeals-I) file.