

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(RCO)23 to 26/STC-III/2015/Appeal 10 to 14

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-037 to 040-16-17  
दिनांक Date 27.05.2016 जारी करने की तारीख Date of Issue 13/6/16

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 GNR-STX-DEM-DC-29 to 32/2015 dated : 19.05.2015 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. Jaydev B Barot

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:-

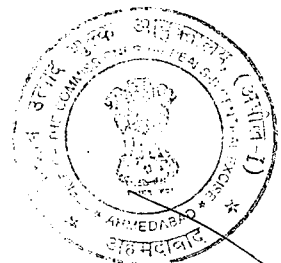
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 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, 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 अर्जी 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,

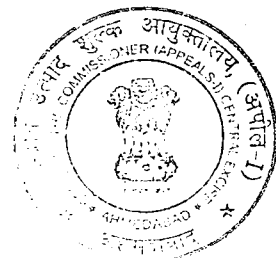
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 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."



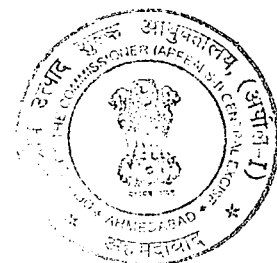
**ORDER-IN-APPEAL**

Following four appeals have been filed by **M/s Jaydev B Barot, Near Gurudwara, Jail Road, Mehsana** (hereinafter referred to as "the appellant") against Order-in-Original No. 29 to 32/2015 dated 19.05.2015 (hereinafter referred to as "the impugned order" passed by the Deputy Commissioner of service tax Division, Gandhinagar, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

S No	Appeal No	SCN No. & date	Period involved	Amount involved
1	23/STC-III/15-16	STR/Meh/Jaaydev Barot/SCN/12-13 dated 20.06.2013	April-11 to Sept-11	4,55,253/-
2	24/STC-III/15-16	STR/ Meh/Jaaydev Barot/SCN/12-13 dated 23.10.2013	Oct-11 to March -12	4,59,250/-
3	25/STC-III/15-16	STR/ Meh/Jaaydev Barot/SCN/14-15 dated 05.05.2014	April-12 to Sept-12	3,97,136/-
4	26/STC-III/15-16	STR/ Meh/Jaaydev Barot/SCN/14-15 RP 1&2 dated 22.07.2014	April-12 to March 13	1,80,957

2. Facts of the case are that the appellant is engaged in providing the services under the category of "Rent-a-Cab Scheme Operator". A case was booked against the appellant for non- payment/short payment of service tax towards the said services rendered by them during period up to March 2011 which was confirmed by the Commissioner of Central Excise, Ahmedabad-III vide his order dated 16.06.2014. Since the appellant had continued the practice of short/non-payment of service tax under the said category or services rendered by them, the above referred show cause notices were issued to the for recovery of service tax not paid and imposition of penalty. The said show cause notices were adjudicated by the adjudicating authority by confirming the demand and also imposed penalty under Section 76, 77(2) of Finance Act, 1994 and Rule 7C of Service Tax Rules, 1994.

3. Being aggrieved, the appellant has filed the above referred appeals on the grounds that without any evidences, adopting the figures of books and invoices cannot be a sole ground to demand service tax liability; that no confirmation of figures obtained by the department from the appellant by recording statements of the authorized persons before confirming the demand; that demand cannot be raised only on the basis of balance sheet.

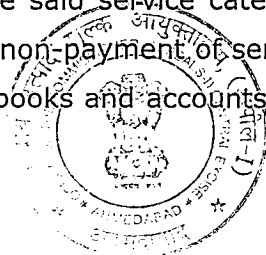


The appellant mainly provided services to Govt. agencies under periodical contracts and agreements and such services do not amount to rent-a-cab service in its true connotation and meaning. The appellant has correctly paid the service tax on their real income from rent-a-cab services and has not evaded any service tax, hence penalty under section 76 and 77 is not invocable. They relied on various case citations in their favour.

4. A personal hearing in the matter was held on 23.05.2016 and Shri Hirak Ganguly, Advocate appeared for the same. He reiterated the grounds of appeal and requested for time to make further written submission and he was allowed two days time. However, till date no written submission has been received from them.

I also note the fact that the appellant have been not cooperating with the Department during investigations as well as during adjudication proceedings as mention in the Order-In-Original. They were issued summons dated 25.10.2010, but they did not appear. Therefore, again a summons dated 14.06.2011 was issued to appear before jurisdictional Superintendent but in vain, therefore, further letters were written dated 08.11.2011, 12.12.2011 and 30.12.2011. They had submitted ST-3 returns for the period 2007-08 to 2009-10 on 11.05.2011, **six months after the summons were issued**. Certain clarifications were asked with respect to the returns filed by them vide letter dated 28.06.2011, however, they did not comply with the same. I also find that O-I-O has noted several instances of non co-operation in the investigation as well as during adjudication proceedings so much so that their balance sheet had to be obtained from Income Tax authorities and I also painfully noticed that despite allowing them time to clarify their stand before me, they have choosen not to make any submissions till 27.05.2016. In view of the above, it can be safely assumed that they have nothing more to add and substantiate their claim. Therefore, I proceed to decide the case on the basis of facts available on the record.

5. I have carefully gone through the facts of the case on record and submissions made by the appellant. The appellant is registered with the department as a service provider of "Rent-a-Cab Scheme Operator". As per Section 65(91) of the Finance Act, 1994, Rent-a-Cab Scheme Operator means any person engaged in the business of renting of cabs. I find that the service rendered by the appellant is taxable during the relevant period. From the records of the case, I find that the appellant is a repeated offender in non-payment/short payment of service tax under the said service category from 2007. The adjudicating authority has confirmed non-payment of service on the basis of figures obtained from the appellant's books and accounts and



compared with the value mentioned in ST-3 returns and records obtained from Income Tax authorities. The appellant argued that adopting figures from books and account cannot be sole ground for confirmation and no confirmation of figures were obtained from them. I find that the appellant has not furnished any details of taxable service under the said service category for the disputed period before the adjudicating authority, despite of his direction. In the circumstances, the adjudicating authority has rightly re-conciliated the value declared in Profit & Loss Account with value declared in ST-3 returns. Further, I also find that during the course of personal hearing before me, the appellant had requested time for submitting their written submission in details in the instant issue which was granted. However, they failed to submit the same. In the circumstances, the argument that the department has not obtained any confirmation figures from them is baseless.

5.1 In view of above, I hold that the department has rightly re-conciliated the figures of the value declared in Profit & Loss Account with value declared in ST-3 returns and thus, I do not find any merit to interfere the grounds discussed by the adjudicating authority as regards confirmation of service tax short paid/not paid and imposition of penalty under Section 76, 77(2) of Finance Act, 1994 and Rule 7C of Service Tax Rules, 1994.

5.2 All the four appeals filed by the appellant are rejected and up held the impugned order.

*Uma Shanker*

**(UMA SHANKER)**

COMMISSIONER (APPEAL-I)  
CENTRAL EXCISE, AHMEDABAD

**Date: 27/05/2016**

Attested

*Mohan V.V.*  
**(Mohan V.V.)**

Superintendent (Appeal-I)  
Central Excise, Ahmedabad

**BY R.P.A.D**

**To,**

**M/s Jaydev B Barot,  
Near Gurudwara, Jail Road,  
Mehsana**

**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, Service Tax, Division-Gandhinagar, Ahmedabad-III
5. Guard file.
6. P.A file.
7. V2(RCO)24/STC-III/15-16 to V2(RCO)26/STC-III/15-16

