


 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन, सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 : 079-26305065	 GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलिफैक्स : 079-26305136

क फाइल संख्या : File No : **V2(BAS)78/STC-III/2016-17** / 1136 to 1049
 ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0134-17-18**
 दिनांक Date : **03.10.2017** जारी करने की तारीख Date of Issue: 6-11-17
श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
GNR-STX-DEM-SUPDT-01/2016-17 दिनांक : **13.01.2017** से सृजित

Arising out of Order-in-Original: **GNR-STX-DEM-SUPDT-01/2016-17**, Date: **13.01.2017**
 Issued by: Superintendent, Central Excise, Div: Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Punjab Cars Pvt. Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

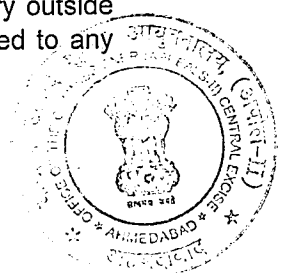
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

076



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (C) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- ए0बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 5 लाख या 50 लाख तक हो तो रुपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 50 लाख या उससे ज्यादा है वहाँ रुपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any

nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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 होंगे।

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,

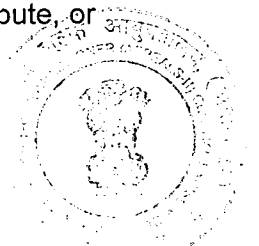
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

(6)(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।

(6)(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

M/s. Punjab Cars Private Limited, Plot No. 1004/A, GIDC, Opposite DSP Office, Gandhinagar, Gujarat-382 028, [for short - 'appellant'] has filed this appeal against OIO No. GNR-STX-DEM-SUPDT-01/2016-17 dated 13.01.2016, passed by the Superintendent, Service Tax, Range -I, Division-Gandhinagar, Ahmedabad-III Commissionerate[for short - 'adjudicating authority'].

2. Briefly stated, a show cause notice dated 24.10.2016, was issued to the appellant, *inter alia*, alleging that they had not discharged the service tax under Business Auxiliary Service [BAS] in respect of services rendered to various clients during the period from April 2014 to March 2016. The notice, therefore, proposed [a] classification of the service rendered by the appellant under BAS; [b] recovery of service tax along with interest on the services rendered under BAS; and [c] proposed penalty under sections 76 of the Finance Act, 1994.

3. This notice, was adjudicated vide the impugned OIO dated 13.01.2017, wherein the adjudicating authority classified the services rendered by the appellant to their various client as BAS; confirmed the service tax along with interest; imposed penalty under sections 75 and 76 of the Finance Act, 1994.

4. Feeling aggrieved, the appellant, has filed this appeal against the impugned OIO, wherein he has raised the following averment:

- (a) that the adjudicating authority distinguished the case law of M/s. Sai Service Station Limited 2015(37) STR 516 (Tri-Bang)] on bare hypothetical situations, ignoring the facts of the case;
- (b) that the Hon'ble Tribunal has already held that once the possession is handed over at a price, the transaction of sale, is complete;
- (c) that the period involved is from April 2014 till March 2016 and the duty is demanded u/s 65(19)(i) of the Finance Act, 1994, the demand, w.e.f. 1.7.2012 is not correct since the section was deleted from the Finance Act, 1994;

5. Personal hearing in the matter was held on 08.09.2017, wherein Shri Pravin Dhandharia, CA, appeared on behalf of the appellant and reiterated the submissions advanced in the grounds of appeal.

6. I have gone through the facts of the case, the appellant's grounds of appeal, and the oral submissions made during the course of personal hearing. The only question to be decided in the present appeal is, whether the appellant is liable for service tax under BAS.

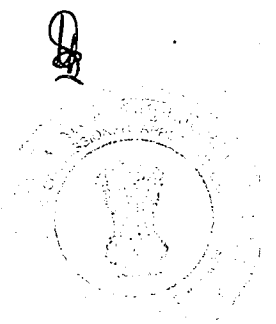
7. Briefly, the facts to the present dispute are that the appellant [an authorized dealer] for new cars manufactured by M/s. Hyundai Motors India Limited [HMIL], is also engaged in the sale of spares of HMIL. In order to promote/market the sale of new models of cars, they also offer services relating to exchange of the old vehicle. Now inherent to the

question, *supra*, is whether the appellant is engaged in sale and purchase of cars, as claimed by them or is engaged in providing the services to such new buyers [i.e. clients] by finding prospective customers for pre-owned cars among other services. The appellant has vehemently stated that they purchase the old cars from the customers after fixing a price for their old cars; that the agreed price is adjusted in the value of the new car. However, the adjudicating authority has held that the purchase and sale of cars is governed by the Motor Vehicles Act, 1988; that there is no purchase and sale of cars from such customers; that in the present case the pre-owned vehicle is never registered in the name of the appellant, a mandatory condition for a new buyer; that the vehicles get transferred from the name of their client/customer to the name of the buyer in the RTO records; that the appellant has never acted as a mercantile agent while the transaction took place. The adjudicating authority has further held that the dealers only take possession of the vehicle by giving a delivery receipt, a blank sale letter without mentioning the buyers name and address and obtain an authorization from the original owner of pre-owned vehicles, to sell the vehicle. The adjudicating authority therefore, concluded that the sale actually took place between the original RC owner and the prospective buyer; that the appellant was merely acting as an intermediary or as a broker and the difference in price is the value of service provided by them in the said transaction. The adjudicating authority therefore, taking into consideration the fact that the re-registration charges were separately collected; that the assessee would take possession of the used cars only if the seller is purchasing a new car; that in case of accidents or damages if any happening to the used vehicles while in their custody, the original RC owner remains responsible; that the ownership is not transferred to the appellant; that there is no transfer of property but only transfer of possession and the ownership remains with the customer- concluded that the service provided by the appellant was akin to promotion or marketing or sale of goods belonging to the client as they have identified the prospective buyers for owners of the pre-owned cars and hence, it would appropriately fall under the definition of BAS.

9. I find that this issue has already been dealt by the Tribunal in the case of M/s. Sai Service Station Limited [2016(37) STR 516 (Tri-Bangalore)], wherein it was held as follows:

"..... The conclusion that appellants are rendering a service and it is not a transaction of sale and purchase is coming only because registration certificate remains in the name of the owner and he provides blank forms enabling transfer of the vehicle as required under the Motor Vehicles Act. Therefore, the only point that arises for consideration is whether non-transfer of registration at the time of transferring possession of the old vehicle by the owner cannot be considered as a sale as held by the Commissioner or not. In this connection, we find that the decision of the Hon'ble High Court of Kerala relied upon by the learned counsel is applicable to the facts of this case. Hon'ble High Court of Kerala in para-15 has made the following observations which in our opinion is relevant and therefore is reproduced below :

"15.. It is quite surprising and shocking to note that the lower Court had noticed that Ext. B5 cannot be accepted because it is not registered and sufficiently stamped as required under the Registration Act and Transfer of Property Act. It appears that the lower Court has omitted to notice that the transaction involved in this case is the sale of vehicle which is a movable article



and it is governed by the provisions of the Sale of Goods Act. Section 4 of the Sale of Goods Act read as follows :

4. *Sale and agreement to sell.* - (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Once the price is received and the property is delivered, the sale is complete. Going by the definition of sale, when the property is delivered for a price, the sale is complete. The Trial Court seems to be under the impression that unless the registration is effected there is no complete sale. The sale does not depend upon registration at all. Registration before the RTO is a consequence of sale. Therefore, the Trial Court was not justified in discarding Ext. 85 for the reason mentioned by it."

7. As can be seen, the observations are very clear and for considering a transaction as to whether it is a sale or not, what is required to be seen is not the aspect of registration but whether the price has been received and the property has been delivered or not. In this case, as observed by the Commissioner himself in paragraph 55, the property is delivered and the price has been received by the seller of the old car. Therefore, the first transaction cannot be considered as the one which is not a sale....."

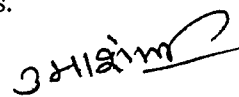
10. This view was also upheld by the Principal Bench of the Tribunal in the case of My Car Pvt. Ltd. [2015(40)STR 1018]. In view of the foregoing, the activity of purchase and sale of pre-owned car does not fall within the purview of Business Auxiliary Service and hence the demand in this regard is not sustainable and the appellant is not liable for service tax under BAS in respect of this activity.

10.1. I find that the appellant had relied on these case laws before the adjudicating authority who distinguished it on the grounds that in the present case there is no transfer of property in the goods involved, it being only transfer of possession and the ownership of the vehicle remains with the customer. The adjudicating authority however, missed the point that the facts of the case in M/s. Sai Service Station Limited were exactly similar to the one in the present dispute; that the Tribunal had based its order on the judgement of the Hon'ble High Court of Kerala which had held that once the price is received and the property is delivered, the sale is complete. I find that even in the present case, the price has been received by the customer of the appellant and the property is delivered to the appellant, therefore, following the findings of the Tribunal, I hold that the activity of purchase and sale of pre-owned car, does not fall within the purview of Business Auxiliary Service and hence the demand in this regard is not sustainable and the appellant is not liable for service tax under BAS in respect of this activity.

11. In view of the foregoing, the appeal is allowed and the impugned OIO dated 13.01.2017, is set aside.



12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
12. The appeal filed by the appellant stands disposed of in above terms.

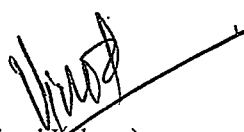


(उमा शंकर)

आयुक्त (अपील्स - I)

Date : 02/11/17

Attested


(Vinod Zukose)
Superintendent (Appeal-I),
Central Excise,
Ahmedabad.

By RPAD.

To,
M/s. Punjab Cars Private Limited,
Plot No. 1004/A, GIDC, Opposite DSP Office,
Gandhinagar,
Gujarat-382 028

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Commissioner, Central Excise, Ahmedabad-III.
3. The Deputy/Assistant Commissioner, Central Excise, STR Gandhinagar, Service Tax Division, Gandhinagar, Ahmedabad-III.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad-III
5. Guard File.
6. P.A.



