
 सत्यमेव जयते	केन्द्रीयकर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015		
079-26305065		टेलीफैक्स: 079-26305136	

क फाइल संख्या : File No : **V2/183/GNR/2018-19** | 10247 to 10251

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-204-18-19**
 दिनांक Date : **29-03-2019** जारी करने की तारीख Date of Issue: 01-05-2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

Gr. Jile

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **04/AC/HMT/NRM/2018-19** दिनांक : **30-11-2018** से सृजित

Arising out of Order-in-Original: **04/AC/HMT/NRM/2018-19**, Date: **30-11-2018** Issued by: Assistant Commissioner, CGST, Div: Himmatnagar, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता
 Name & Address of the **Appellant** & Respondent
M/s. Jagdish Mandap Service

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।

1. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 प्रकिया 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.



- (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- ञ0बी/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 दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 इए-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 रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 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 पढी 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 Appellate 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 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 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 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:

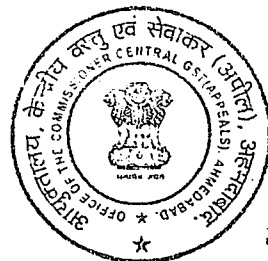
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

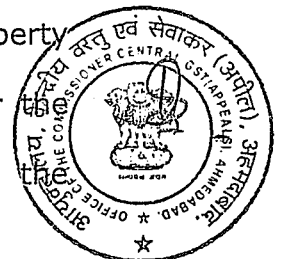
This appeal has been filed by M/s. Jagdish Mandap Service, Jagdish Plaza, Opp. Garden, Tasiya Road, Himatnagar (hereinafter referred to as "the appellants") against the Order-in-Original number 04/AC/HMT/NRM/2018-19 dated 30.11.2018 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST & Central Excise, Himatnagar Division (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case are that the appellants were holding Service Tax Registration number ABFPP2948EST001 under the category of Mandap Keeper and they were also liable to pay Service Tax on providing the service of "Renting of Immovable Property Service". During the course of data verification by the Special Task Force, Central Excise, Ahmedabad, it was noticed that though the appellants had provided the above mentioned services since 2010, they had neither filed any ST-3 returns nor did they pay any Service Tax against the above services. On further reconciliation of documents, it was noted that there was difference in the figures arrived on the basis of invoices vis-à-vis figures shown in P & L accounts vis-à-vis figures shown in Form 26AS.

3. As the appellants could not provide any satisfactory reply, a show cause notice, dated 19.06.2017, was issued to them which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax as mentioned below;

(i) The appellants had received income under Mandap Keeper Service and the Service Tax demanded was ₹6,53,312/- under the provisions of Section 73(1) of the Finance Act, 1994. Since, the appellants had already paid ₹50,000/- towards their Service Tax liability, same was ordered to be appropriated towards the above mentioned demand.

(ii) The appellants had received income under Immovable Property Service and the Service Tax demanded was ₹2,93,698/- under provisions of Section 73(1) of the Finance Act, 1994. Since,



appellants had already paid ₹ 50,000/- towards their Service Tax liability, same was ordered to be appropriated towards the above mentioned demand.

(iii) The adjudicating authority ordered to recover interest at the appropriate rate under Section 75 of the Finance Act, 1994.

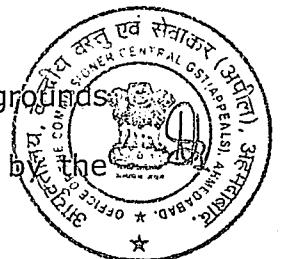
(iv) The adjudicating authority imposed penalty amounting to ₹ 94,700/-, ₹ 94,700/-, ₹ 10,000/-, ₹ 10,000/-, ₹ 10,000/-, ₹ 10,000/- and ₹ 10,000/- under Sections 76, 78, 77(1)(a), 77(1)(b), 77(1)(c), 77(1)(e) and 77(2) respectively of the Finance Act, 1994.

(v) The adjudicating authority further ordered to recover late fee of ₹ 20,000/- as specified under Rule 7C of Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

4. Being aggrieved, the appellants have filed the present appeal on the grounds that they were under the impression that all the income accrued during the disputed period was under exemption limit and hence not liable to pay Service Tax. In paragraph 2 of the grounds of appeal, the appellants mentioned that they had discharged whatever additional liability derived due to non-payment on taxable income which did not fall in the exemption limit and hence, it proves the bonafide belief of the appellants and that their intention was not malafide. They further pleaded that they were in gross financial trouble due to business expansion and simultaneous slowdown in business and that they arranged to make payment of tax but could not arrange for the payment of interest. They have further stated that penalty under Sections 76 and 78 cannot be simultaneously imposed.

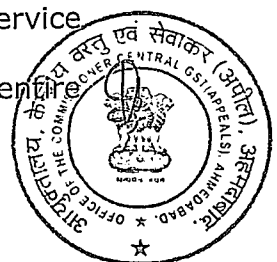
5. A personal hearing in the matter was held on 28.03.2019 and Smt. Bhagyashree Bhatt and Shri Bhavik Patel, both Chartered Accountants, appeared for the same on behalf of the appellants and reiterated the contents of grounds of appeal and requested to set aside the impugned order.

6. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the written and oral submission filed by the



appellants. To begin with, I find that there has been a delay occurred in filing the appeal by the appellants. The impugned order was issued on 30.11.2018 and the appellants have filed the appeal on 06.03.2019, claiming in Form ST-4, to have received the same on 20.12.2018. However, they have not submitted any evidence in support of their claim. Thus, considering the date of issue of the impugned order, the appellants have filed the appeal 6 days late (after counting the 60 days appeal time and 30 days condonation period). The Government has provided certain facilities, time to time, for the convenience of the assessee. Knowingly or unknowingly, if one fails to comply with the Service Tax provisions, then there are rules to facilitate the assessee under certain terms and conditions. Assessee, if not satisfied with the demand, may prefer appeal to the higher authorities [in this case, the Commissioner (Appeals)] **within 2 months** from the date of receipt of order from such adjudicating authority. The Commissioner (Appeals) **may** allow a further period of only **1 month**, if sufficient cause for late filing of appeal is shown and proved to him. The appellants have filed an application before me to condone the delay stating that the impugned order was misplaced by their accountant. However, in the present case, the delay is more than the further period of 1 month and hence, outside my purview. In view of the above, I reject the appeal on the ground of limitation itself; however, as per the principles of natural justice, I would like to discuss the case on merit also.

7. Now, coming to the main issue, the appellants have pleaded before me that they did not pay Service Tax as they were under the impression that all the income received by them during the said period was under exemption limit. In this regard, my only observation is "ignorance cannot be treated as an excuse to save oneself from the penal provisions". The appellants are liable to pay Service Tax and there is no way out from that. So whatever Service Tax the adjudicating authority has confirmed, the appellants are bound to pay. They have themselves accepted the tax liability and are required to pay the same. So, their plea that as they cooperated with the department, their intention was not mala fide; does not hold any ground. The issue of non-payment of Service Tax came to light only after the Special Task Force investigated out the entire



modus operandi. The appellants tried to hide their activity by not filing any ST-3 return thinking that the department will not know about it. Therefore, I do not want to accept their argument that they were ignorant about the issue and there was no malafide intention behind it.

8. Regarding the issue of interest under Section 75 of the Finance Act, 1994, I order the appellants to pay the same at the earliest. About the imposition of penalty under various Sections and Rule, I consider that the adjudicating authority has imposed the same very rightly except the issue of simultaneous imposition of penalty under Sections 76 and 78 of the Finance Act, 1994. I would now discuss, below, the issue of simultaneous imposition of penalty under Sections 76 and 78 of the Finance Act, 1994.

9. As regards simultaneous imposition of penalty under Section 76 and 78 of the Finance Act, 1994, the appellants have argued that same is not permissible. I agree to the argument of the appellants and would like to quote the judgment of CESTAT, Ahmedabad in the case of M/s Powertek Engineers vs CCE Daman. In this case the view of the Hon'ble CESTAT is as below;

"By their very nature, Sections 76 and 78 of the Act operate in two different fields. In the case of Assistant Commissioner of Central Excise v. Krishna Poduval - (2005) 199 CTR 58 = 2006 (1) S.T.R. 185 (Ker.) the Kerala High Court has categorically held that instances of imposition of penalty under Section 76 and 78 of the Act are distinct and separate under two provisions and even if the offences are committed in the course of same transactions or arise out of the same Act, penalty would be imposable both under Section 76 and 78 of the Act. We are in agreement with the aforesaid rule. No doubt, Section 78 of the Act has been amended by the Finance Act, 2008 and the amendment provides that in case where penalty suppressing the value of taxable service under Section 78

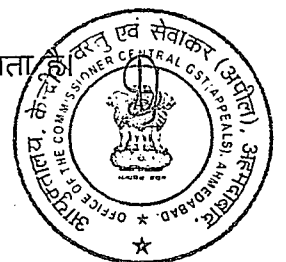


imposed, the penalty for failure to pay service tax under Section 76 shall not apply. With this amendment the legal position now is that simultaneous penalties under both Section 76 and 78 of the Act would not be levied. However, since this amendment has come into force w.e.f. 16th May, 2008, it cannot have retrospective operation in the absence of any specific stipulation to this effect. However, in the instant case, the appellate authority, including the Tribunal, has chosen to impose the penalty under both the Sections. Since the penalty under both the Sections is imposable as rightly held by Kerala High Court in Krishna Poduval (supra), the appellant cannot contend that once penalty is imposed under Section 78, there should not have been any penalty under Section 76 of the Finance Act. We, thus, answer question no. 3 against the assessee and in favour of the Revenue holding that the aforesaid amendment to Section 78 by Finance Act, 2008 shall operate prospectively. In view of the above, penalties can be simultaneously imposed under Section 76 and 78 of Finance Act, 1994 for the period prior to 16.05.2008 before its amendment when proviso to Section 78 was added."

In view of the facts and discussions hereinabove, since the period involved in the present case is after 16.05.2008 and since penalty under Section 78 has been imposed under the impugned order, I hold that imposition of penalty under Section 76 *ibid* is not sustainable in the eyes of law hence I drop the same.

10. In view of the discussion held above, I reject the appeal filed by the appellants on the ground of limitation as well as merit except the issue of simultaneous imposition of penalty under Section 76 and 78 of the Finance Act, 1994 as discussed in paragraph 9.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।



11. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.



To,

M/s. Jagdish Mandap Service,

Jagdish Plaza, Opp. Garden, Tasiya Road,

Himatnagar

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Gandhinagar.
3. The Dy. / Asstt. Commissioner, Central Tax, Div-Himatnagar.
4. The Asstt. Commissioner, Central Tax (System), HQ, Gandhinagar.
5. Guard file.
6. P.A file.

