

	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केन्द्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पोलिटेकनिका के पास, आम्बावाडी, अहमदाबाद-380015	7 <sup>th</sup> Floor, Central Excise Building Near Polytechnic Ambavadi, Ahmedabad-380015
	079-26305065	टेलिफैक्स 079-26305136

रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): V2(ST)49/A-II/2017-18 / 2018 to 2020  
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-119-17-18  
 दिनांक (Date): 27/10/2017, जारी करने की तारीख (Date of issue): ३०-१०-१७  
 श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित  
 Passed by Shri Uma Shanker, Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद, आयुक्तालय द्वारा जारी  
 मूल आदेश सं----- दिनांक -----से सृजित  
 Arising out of Order-In-Original No. \_STC/22/KM/AC/D-III/16-17\_ Dated: 23.02.2017  
 issued by: Assistant Commr STC(Div-III), Ahmedabad.

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

**M/s Sankalp Organisers 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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

Cont...2

- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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 हों।

- (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-बी/35-इ के अंतर्गत:-  
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) 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 मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) 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 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 रूपरूप 5 लाख या उससे कम है वहाँ रूपरूप 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपरूप 5 लाख या 50 लाख तक हो तो रूपरूप 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपरूप 50 लाख या उससे ज्यादा है वहाँ रूपरूप 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 जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 रू.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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस सन्दर्भ 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।

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 is an appeal filed by M/s Sankalp Organisers Pvt. Ltd. (herein after referred to as the appellants) against the OIO No. STC/22/KM/AC/D-III/16-17 dtd. 23.02.2017 (herein after referred to as the impugned order) passed by the Assistant Commissioner (herein after referred to as the adjudicating authority).

2. The brief facts of the case are that the appellants were receiving advances from their customers and in some cases, they sold the flats to their customers without receiving full consideration of the flats and had received the consideration after sale of flats. They were required to pay the service tax on the amount received by them before, during or after providing the services. The Service Tax amounting to Rs. 38,42,770/- on taxable value of Rs. 3,27,89,546/- was required to be paid on the above referred services but they failed to pay the same. As per provisions of Rule 3 of the Point of Taxation Rules, 2011, the point of taxation is the sale of the flat i.e. completion of the service. Further under the provisions of Rule 3 (b)(i) of the Point of Taxation Rules, 2011, the date of advance received by the assessee is the point of taxation of the service. In view of the non-payment of the applicable service tax by the applicants, they were issued a show cause notice proposing demand of service tax of Rs. 38,42,770/- alongwith interest and imposition of penalty. The adjudicating authority, vide the impugned order, confirmed the demand of Rs. 33,26,569/- and dropped the demand for the rest of the amount, ordered recovery of interest and imposed penalties under Section 77 and 78 of the Finance Act, 1994.

3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- (a) That the reconciliation is not correct in view of their submission made in para 3.1.1 of their appeal memorandum. The department has not considered the factual details;
- (b) That the department has added member receipts received after B.U. permission on which service tax cannot be levied and demanded for the differential service tax;
- (c) That they had taken unsecured loans during the impugned period but due to mistake by accountant, they have shown such receipts of unsecured loans under the head of member receipt. They are having all the documentary evidences regarding the receipts of unsecured loans;
- (d) That they have received the receipts from members as a maintenance deposits and the service tax cannot be levied on amount of maintenance deposits as it is the reimbursement of expenses received from the members;
- (e) That the entire demand is time barred as there was no suppression, willful misstatement on their part;
- (f) That penalty cannot be imposed as there was no suppression, willful misstatement on their part;
- (g) The appellants sought support from the following case laws:

Regional Manager, Tobacco Board vs. Commissioner of C. Ex., Mysore - 2013 (31) STR-673 (Tri-Bang.) regarding reconciliation of figures, Anvil Capital Management (P) Ltd. Vs. Commissioner of ST, Mumbai - 2010 (20) STR-789 (Tri-Mum.) regarding reconciliation of figures when documentary

evidence is produced, Commissioner of C. Ex., Ahmedabad vs. Purni Ads Pvt. Ltd. – 2010 (19) STR-242 (Tri-Ahd.) regarding reconciliation of figures shown in various records, SIFY Technologies Ltd. vs. Commissioner of Service Tax, Chennai – 2009 (16) STR-63 (Tri-Chen.) and many other cases.

4. The personal hearing in the case was held on 04.10.2017 in which Shri Vipul Khandhar, Chartered Accountant appeared on behalf of the appellants. They reiterated the grounds of appeal and submitted that their submissions have not been considered. He also submitted additional submission in which the arguments made in their appeal memorandum have been reiterated.

5. I have carefully perused the documents pertaining to the case and submitted by the appellant alongwith the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issue to be decided in the instant case is whether the appellant is liable to pay service tax for the reasons as detailed in the show cause notice and the impugned order.

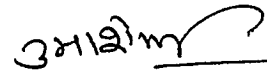
7. I find that the appellant has argued in para 3.1.1 of their appeal memorandum that the reconciliation is not correct in view of the submission made in para 3.1.1 of the appeal memorandum but I do not find any submission made by them. Merely saying that the reconciliation is not correct without giving any explanation is not convincing and is not acceptable and I therefore reject this argument. I find that the citations given by the appellant in their support are not helping their cause in view of absence of any submission by the appellant.

8. I find that the show cause notice proposed to recover service tax on the amounts received in advance on which no service tax had been paid. While perusing the impugned order, I find that the adjudicating authority has noted in para 28 that the appellant has submitted year wise summery for the years 2010-11 to 2014-15 bifurcating total receipts of, among other things, the unsecured loans. But there is no finding about this item i.e. unsecured loan and the impugned order is completely silent on this very important aspect of service tax liability as unsecured loans cannot be liable to service tax. I find that this has been held in the case of Radhika Construction vs Commissioner of Central Excise, Vadodara - 2014 (35) S.T.R. 788 (Tri. Ahm).

9. Since the vital aspect of service tax liability of the amount claimed by the appellant as being unsecured loan amounting to Rs. 5,71,20,202/- has not been dealt with by the adjudicating authority, I remand the case to the adjudicating authority only for ascertaining the character of the amount claimed by the appellant as being unsecured loan. If the amount is found to be unsecured loan then there will be no service tax liability on that amount as discussed before. Except this aspect, I do not find any reason to interfere with the impugned order

10. The appeal is disposed off accordingly with consequent relief if any.

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



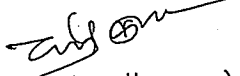
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

अहमदाबाद.

Date: : .2017

ATTESTED



(D.Upadhyaya)  
Superintendent (Appeals),  
Central GST, Ahmedabad.

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

M/s. Sankalp Organisers Pvt. Ltd.,  
"Sankalp House",  
Behind Rajpath Club,  
Opp. Satyam House,  
Off S.G.Road  
Ahmedabad

**Copy To:-**

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad (North).
- (3) The Asstt./Dy. Commissioner, CGST, Div-VI, Ahmedabad (North)
- (4) The Asstt./Dy. Commissioner, Systems, CGST, Ahmedabad (North)
- ✓(5) Guard File.
- (6) P.A. File.