



केंद्रीय कर आयुक्त (अपील)



O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय कर शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015
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क फाइल संख्या : File No : V2(ST)45/A-II/2017-18
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-273-17-18
दिनांक Date : 17-01-2018 जारी करने की तारीख Date of Issue 24/1/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-01/Refund/56/AC/Jyoti/16-17 Dated 04.02.2017 Issued by Assistant Commr STC, Service Tax, Div-I , Ahmedabad

ध अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

**M/s. Jyoti Builder
Ahmedabad**

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, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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 accompany ed 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

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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-धाराओं एवं (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 (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form 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 (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) 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 adjudication 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 (सीस्तेत) 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 अर्ज़ी 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,

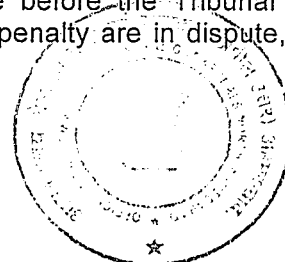
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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(1) 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(1) 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.

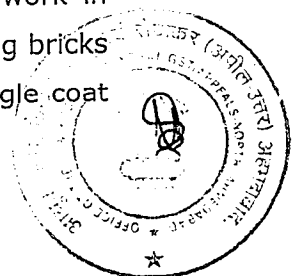


ORDER IN APPEAL

M/s. Jyoti Builders, M-77, Shop No. 63, Shastri Nagar Shopping Centre, Shastri Nagar Road, Nr. Vijay Nagar, Naranpura, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number SD-01/Refund/56/AC/Jyoti/2016-17 dated 04.02.2017 (*hereinafter referred to as 'impugned order'*) passed by the then Assistant Commissioner, Division-I, Service Tax, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants were engaged in providing services under the category of 'Construction Services other than Residential Complex including Commercial/Industrial Buildings or Civil Structures, Works Contract Service, Construction of Residential Complex Services, Transport of Goods by Road/ Goods Transport Agency Service' and hold valid registration number AAGFJ3161RSD001. The appellants had filed a refund claim of ₹ 8,41,292/- on 03.11.2016, before the adjudicating authority, under Section 102 of the Finance Act, 2016 read with the Finance Act, 1994 and rules made thereunder. The appellants provided services to the government authority for construction work of (i) New CHC Building (G+1) at Kalanpura, Ta. Kadi, Dist. Mehsana and (ii) renovation and interior work of SPIPA hostel block, Ahmedabad (Fase-2). The appellants had received payment only for the above works and paid Service Tax from their own account. During scrutiny of the claim, it was found that the appellants had claim excess refund amounting to ₹ 10,914/-. The said amount was deducted from the actual amount and the claim, amounting to ₹ 8,30,378/-, was sent for pre-audit verification. As per the observation of the pre-audit that the work done in the SPIPA Hostel Block is not an original work (interior service is not exempted vide Section 102 of the Finance Act, 1994), the adjudicating authority, vide the impugned order, rejected an amount of ₹ 3,27,429/- (₹ 3,16,535/- + ₹ 10,914/-) and sanctioned ₹ 5,13,862/- out of the actual claim amount of ₹ 8,41,291/-.

3. Being aggrieved with the impugned order, the appellants preferred the present appeal before me. The appellants argued that the works performed at SPIPA was not interior service. They had carried out the work of (i) dismantling of cement asbestos hard board ceiling or partition wall and wooden wall; (ii) demolition work including stacking of serviceable materials and disposal of unserviceable materials with all lead work and lift; (iii) providing and laying cement concrete; (iv) providing and laying controlled cement concrete M-200 and curing; (v) providing thermo mechanically treated bar reinforcement for RCC works; (vi) half brick masonry work in common burnt clay; (vii) brick work using common burnt clay building bricks having crushing strength; (viii) providing and applying 100 thick single coat

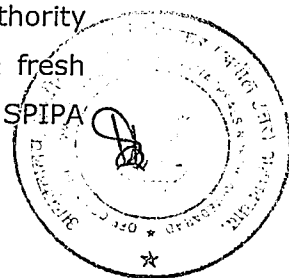


cement plaster on ceiling; (ix) 200 mm thick sand face cement plaster on walls up to 10 mtrs. above ground level consisting of 12 mm thick backing coat of cement; (x) providing and laying 24*24 vitrified 8 mm thick tiles in flooring laid on 20 mm thick cement mortar; (xi) providing and laying 24*24 full body vitrified 8 mm thick tiles in flooring laid on 20 mm thick cement mortar and (xii) other civil works. The appellants argued that all the work done is repairing and renovation of hostel building. In support, they have submitted copies of the detailed bills showing measurement and description of work executed.

4. Personal hearing in the case was granted on 23.11.2017 wherein Shri Nagesh R Belsare, Chartered Accountant, appeared before me, on behalf of the appellants, and reiterated the contents of the grounds of appeal. Shri Belsare further informed me that the work was nothing but repair work and submitted RA bills stating that the said bills were not considered by the adjudicating authority.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that the appellants have been engaged in providing services to government authority. This has been accepted by the adjudicating authority too in paragraph 6 of the impugned order stating that the services of the appellants attract serial number 12 (a) and (c) of Notification number 25/2012-ST dated 20.06.2012 which is exempt from payment of Service Tax. In paragraph 14 of the impugned order, the adjudicating authority has agreed to the fact that any repair and renovation work is exempt from payment of Service Tax under Section 102 of the Finance Act. The only ground that the adjudicating authority has cited for rejection was that interior work to civil structure is not exempted. The appellants have submitted certified copies of RA bills, before me, pertaining to the works executed at the SPIPA Hostel Block premises. I find that none of the works mentioned there are related to any kind of interior work. However, it is not possible to verify the authenticity of the said RA Bills at my level and the adjudicating authority is the best suited person to verify the same. Therefore, in the interest of justice, the case needs to be remanded back for a proper verification and if the adjudicating authority is satisfied that the works executed at the SPIPA Hostel Block premises are of renovation nature and not interior works, then the refund claim should be rightly sanctioned to the appellants.

6. In view of above, I remand the case back to the adjudicating authority for a proper verification of the RA Bills. After that he should pass a fresh speaking order describing clearly as to how the works executed at the SPIPA



Hostel Block premises are of the nature of interior work/ renovation work. The appellants are also hereby directed to present all sort of assistance to the adjudicating authority by providing all required documents during the proceeding for which the case is remanded back.

7. The appeal is disposed off as per the discussion held above.
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

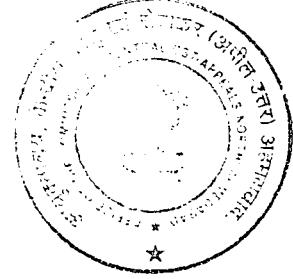
CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED

S. Dutta
22/07/18
(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.



To,

M/s. Jyoti Builders,

M-77, Shop No. 63, Shastri Nagar Shopping Centre,

Shastri Nagar Road, Nr. Vijay Nagar, Naranpura,

Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad (North).
- 3) The Dy./Asst. Commissioner, Central Tax, Division-VII, S. G. Highway (East), Ahmedabad (North).
- 4) The Asst. Commissioner (System), Central Tax, Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.

