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

क फाइल संख्या : File No : **V2(ST)90 /A-II/2017-18**
 ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP-279-17-18**
 दिनांक Date : **19-01-2018** जारी करने की तारीख Date of Issue 15/01/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **SD-01/30/AC/Shyam/16-17** Dated **31.03.2017**
 Issued by **Assistant Commr STC**, Service Tax, Div-I, Ahmedabad

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

**M/s. Shyam Buildcon
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 :-

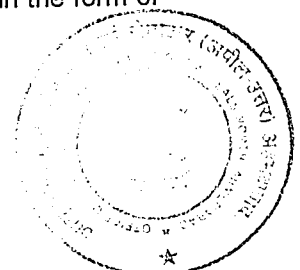
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

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 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 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 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 (कार्यविधे) 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, 1984 की धारा 34फ 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 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 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,

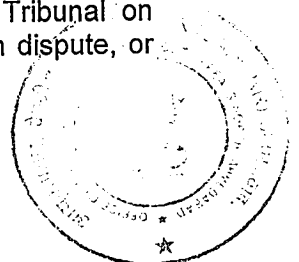
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

This appeal is filed by M/s. Shyam Buildcon, Shyam House, 6, Shivanand Society, Opp. Vijaynagar School, Naranpura, Ahmedabad 380 013 [for short-‘appellant’] against OIO No. SD-01/30/AC/Shyam/16-17 dated 5.4.2017, passed by the Assistant Commissioner, Service Tax Commissionerate, Division I, Ahmedabad [for short – ‘adjudicating authority’]

2. Briefly, the facts are that an investigation against the appellant revealed that the appellant had failed to pay service tax on *Commercial and Industrial Construction Service* and *Transport of Goods by Road Service*; that they failed to get themselves registered with the department; that they had failed to file the prescribed returns with the department. After completion of investigation, a show cause notice dated 11.2.2015, was issued to the appellant *inter alia* proposing demand of service tax of Rs. 9,17,885/- and Rs. 70,272/- along with interest and further proposing penalty under sections 76, 77 and 78 of the Finance Act, 1994.

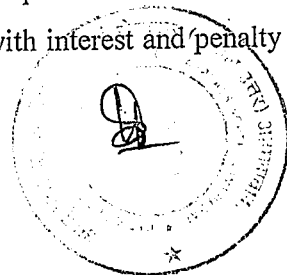
3. This show cause notice was adjudicated vide the impugned OIO dated 5.4.2017, wherein the adjudicating authority confirmed the demand along with interest; appropriated the amount already paid; imposed penalty on the appellant under sections 77 and 78 of the Finance Act, 1994.

4. Feeling aggrieved, the appellant has filed this appeal against the impugned OIO raising the following averments:

- that the impugned OIO is bad and is liable to be quashed and set aside in the interest of justice;
- that the adjudicating authority should have extended the benefit of double payment of Rs. 72,810/- + Rs. 11,444/- made towards payment of GTA;
- that extended period could not have been invoked;
- that the adjudicating authority ought to have considered that the appellant was under a bonafide belief that they were not liable to pay service tax; that no evidence has been brought depicting the intent of the appellant to evade payment of duty;
- the benefit of *cum duty* ought to have been granted;
- the penalties under sections 77 and 78 of the Finance Act, 1994 could not have been imposed on the appellant.

5. Personal hearing in the matter was held on 9.1.2018 wherein Shri Hardik Modh, Advocate, Mayuri Joshi, CA and Shri Jayantibhai Patel, appeared for the appellant and reiterated the grounds of appeal.. The Advocate further pointed out that in para 35, the OIO does not allow set off but in the operating part the adjudicating authority has allowed it. Shri Modh further requested that the remarks of para 35 be deleted or set off allowed.

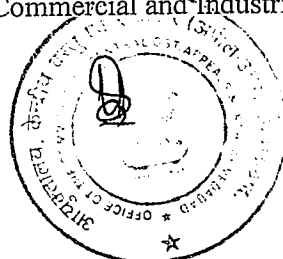
6. I have gone through the facts of the case, the grounds raised by the appellant and the averments raised during the course of personal hearing. I find that the question to be decided in the present appeal is whether the confirmation of the demand along with interest and penalty against the appellant is correct or otherwise.



7. The appellant who was engaged in providing the *Commercial and Industrial Construction Service* had not taken registration and was not filing the statutory returns and was not discharging his service tax liability. Further, the appellant was also liable for payment of service tax on GTA under RCM. The appellant had not discharged the service tax under this service also.

8. I find that during the proceedings, held before the original adjudicating authority, the appellant did not contest [a]the demand of service tax;[b] the invocation of extended period;[c] levy of interest;[d] imposition of penalty [refer para 32 of the impugned OIO]. This finding recorded by the adjudicating authority has not been contested by the appellant. However, I find that in the appellate proceedings, the appellant has requested for cum-duty-benefit and has also questioned the invocation of extended period. The averment, therefore lacks merit, and is also not legally tenable since it appears to be an afterthought. Hence, I would not like to go into the aspect of computation of demand, confirmation of interest, invocation of extended period. As far as penalty goes, the appellant at the adjudicating stage never contested the proposal. In-fact it is recorded in the impugned order itself that penalty of Rs. 1,37,930/- and Rs. 17,588/- stands paid without any protest. Nobody, who is contesting the demand would go forward and pay the penalty.

9. The only averment which the appellant has contested and which I would like to discuss is that the benefit of *set off* should be allowed since there is a contradiction in the original order. The appellant had stated that in respect of the demand for GTA he had paid the amount along with interest twice. However, he did not allow the set-off of the excess paid service tax against the demand in respect of Commercial and Industrial Construction Service, in para 35 of the impugned OIO. However, in para 40(vi) of the impugned OIO, the adjudicating authority has mentioned that "*the notice has preferred the option given under the second proviso of Section 78(1) of the Finance Act, 1994 and paid up the entire demand raised under the captioned SCN along with appropriate interest liable...*" leading to the assumption that the adjudicating authority has allowed the benefit of the set off, since in para 40(ii), the order states that of the demand of Rs. 9,17,885/- confirmed in respect of Commercial and Industrial Construction Service, the amount of Rs. 8,49,619/-, which is paid, stands appropriated. It is on record that the appellant had paid the demand in respect of GTA twice. They had also put in a request to E-PAO, CBD, Bellapur, Navi Mumbai, for change in head of tax and adjust the excess payment towards the service tax liability under Commercial and Industrial Construction Service, however, nothing seems to have been heard in the matter. Surely, the appellant cannot be put to unease on this count. Even otherwise, the tax has been paid, albeit in a different head. The matter being revenue neutral, the request of the appellant to treat the excess payment of the tax under GTA to be considered under Commercial and Industrial Construction Service, is allowed.



10. In view of the foregoing, the impugned OIO is upheld, except for the abovementioned minor change as mentioned in para 9, supra.

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

11. The appeal filed by the appellants stands disposed of in above terms.

उमाशंकर

(उमा शंकर)

आयुक्त (अपील्स)

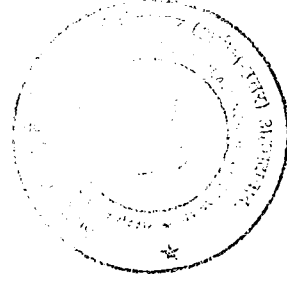
Date : .1.2018

Attested

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

By RPAD.

To,
M/s. Shyam Buildcon,
Shyam House,
6, Shivanand Society,
Opp. Vijaynagar School,
Naranpura,
Ahmedabad 380 013



Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad North.
3. The Deputy/Assistant Commissioner, Central Excise Division-VII, Ahmedabad North
4. The Assistant Commissioner, System, Central Excise, Ahmedabad North.
5. Guard File.
6. P.A.

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