

	केंद्रीय कर आयुक्त (अपील)	
पत्थमवक जयत	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX केन्द्रीय कर शुल्क भवन 7 th Floor, Central Excise Building Near Polytechnic सतवी मजिल पोलिटेकनिक के पास Ambavadi, Ahmedabad-380015 आम्बावाडी, अहमदाबाद-380015	
 079-26305065		टेलिफेक्स : 079-26305136

क फाइल संख्या : File No : V2(ST)98 /A-II/2017-18

ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP-364-17-18**

दिनांक Date : **15-03-2018** जारी करने की तारीख Date of Issue **4/4/2018**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **SD01/27/AC/Prowess/2016-17** Dated **14.03.2017** Issued by **Assistant Commr STC, Service Tax, Div-I , Ahmedabad**

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

**M/s. Prowess Productions Corporate Services
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 मैनटल हास्पिटल कम्पाउण्ड, मेघाणी 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 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



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 **अधीक्षक** 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 (सीस्टैट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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 रुपये 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,

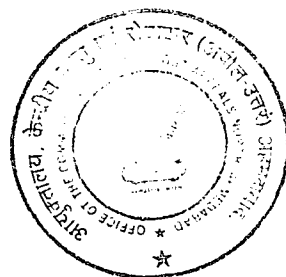
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



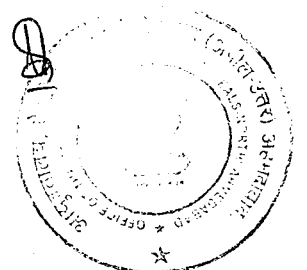
ORDER IN APPEAL

M/s. Prowess Productions Corporate Services, 3/A, Harishchandra Park, Vijay Nagar Road, Naranpura, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number SD-01/27/AC/Prowess/2016-17 dated 14.03.2017 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax Div-I, P.D. Patel House, Naranpura, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*). Appellants hold ST registration for providing the taxable service i.e. "Event Management Service".

2. The facts of the case, in brief, are that it was noticed that the appellants were indulging in evasion of service tax by not paying appropriate service tax on the value of taxable services rendered by them and without filing ST-3 returns. Investigations were carried out and after investigations, a show cause notice dtd. 06.04.2016 was issued proposing demand of service tax of Rs. 32,84,772/- and adjustment of Rs. 1,00,000/- already paid by them against the demand; proposed imposition of penalties and recovery of service tax with interest. The adjudicating authority, in its findings, held that the appellants had failed to submit any document in support of their claim that they had not received the amount from the clients; that the benefit of the proviso under Rule 6 can only be considered on furnishing the proper documents by the appellants and that the gross income was more than Rs. 50 lakh; that their revised income tax return cannot be considered for the valuation of the service provided as it appeared their afterthought; that their plea that the value was cum-duty cannot be accepted as the service tax was shown separately in their Profit & Loss Account and that the appellants had failed to provide any document in support of their contention that their assessable value was less than the exemption limit. The adjudicating authority, vide the impugned order, confirmed the demand of service tax of Rs. 32,84,772/- and recovery of service tax with interest and ordered adjustment of Rs. 2,00,000/- already paid by them against the demand; imposed penalty of Rs. 10,000 under Section 77 (2) of the Finance Act, 1994 (for brevity 'the Act') and imposed penalty of Rs. 32,84,772/- under Section 78 of the Act.

3. Being aggrieved with the impugned order, the appellants have preferred this appeal wherein it is contended that-

- a) The order is illegal, unjust and erroneous;
- b) That it is completely wrong to deny the taxability of taxable services on receipt basis in view of Rule 6 of the Service Tax Rules;



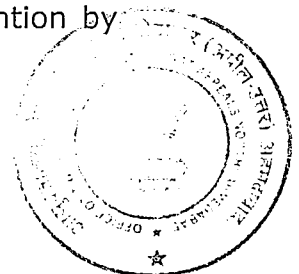
- c) That it is completely wrong to deny the basic exemption of Rs. 10 lakh from the aggregate value of taxable services in the Financial Year 2014-15 as available to small service provider;
- d) That the adjudicating authority should have considered the turnover of Rs. 16,64,648/- for the F.Y. 2014-15 instead of Rs. 91,54,850/- as per revised income tax return submitted;
- e) That according to Section 67(2) of the Act, the gross amount charged by the appellants is inclusive of service tax;
- f) That there is no suppression of facts or willful misstatement made by the appellants and accordingly the imposition of penalty of Rs. 32,84,772/- under Section 78 is liable to be set aside;

4. Personal hearing in the case was held on 09.01.2018 in which Shri Bhavik Khandhediya, Chartered Accountant appeared before me and reiterated the grounds of appeal. They submitted that no bank statement of 2009-10 filed when he is claiming to be employee. He also pleaded the issue of limitation and said that the period of April 2010 to Sept.-2010 is out of five years' period. He further submitted that as per Rule 6 (10), he was not liable to pay in the year in which service was provided but the year in which receipt was made. He also submitted additional written submissions.

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.

6. I find that the issue to be decided in this appeal is whether service tax has been correctly demanded and penalties imposed when the appellants did not file required returns and did not pay service tax on the taxable service for which they were registered.

7. I find that the case came to light only when departmental officers visited the appellants' premises and documents scrutinized after the search. While perusing the grounds of appeal given by the appellants, I find that they have contended that they have not been given the benefit of the basic exemption of Rs. 10 lakh from the aggregate value of taxable services in the Financial Year 2014-15 as available to small service provider. I find that a statement of the proprietor of the appellants was recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. This statement is voluntary and has not been retracted and disputed by the appellants. As per reply to the question No. 3, the taxable values of the appellants have been given which clearly indicate that they are not entitled for the benefit of the basic exemption of Rs. 10 lakh from the aggregate value of taxable services in the Financial Year 2014-15 as available to small service provider and therefore I reject the contention by the appellants.

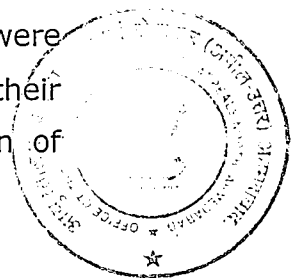


8^e. Now I take up the contention of the appellants that according to Section 67(2) of the Act, the gross amount charged by the appellants is inclusive of service tax. I agree with the findings of the adjudicating authority which are based upon verification of the documents available with the adjudicating authority. It is clearly held that the appellants are showing separate amounts of service tax charged by the appellants in their invoices and therefore the income shown in their income tax returns is excluding the amount of service tax. It is a matter of facts and can be ascertained by verifying the documents and I therefore agree with the findings of the adjudicating authority.

9. Now I take the contention of the appellants that the adjudicating authority should have considered the turnover of Rs. 16,64,648/- for the F.Y. 2014-15 instead of Rs. 91,54,850/- as per revised income tax return submitted. The difference in both the returns i.e. original and the revised is so huge that it needs to be examined with the documents. I remand this issue to the adjudicating authority to examine the details and difference of amounts involved in this case and recalculate the amount of service tax not paid by the appellants. I also direct the adjudicating authority to consider the demand of five years from the date of show cause notice and the demand beyond the period of five years from the date of show cause notice is held time barred.

10. Now I take up the contention of the appellants that as per provisions in Rule 6 of the Service Tax Rules, they were not liable to pay in the year in which service was provided but the year in which receipt was made. I agree with the contention of the appellants that they were entitled to pay service tax on the basis of receipt of the payment. The adjudicating authority has given findings in para 34.3 of the impugned order that the appellants did not produce any supportive documents to show that they have not received the amount shown as income and accordingly the benefit has been denied to them. I find it fit to remand this issue of verification of the supporting documents for the claim of the appellants to the adjudicating authority to recalculate the service tax liability of the appellants by calculating the service tax amount on receipt basis.

11. As far as the charges of suppression of facts is concerned, I find that in the answer to the question No. 3 in the statement recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, the proprietor of the appellants firm has confessed that they have not paid any service tax nor filed any service tax return even when they were aware of their liability and they were collecting the service tax from their customers. It is a serious offence and clearly an intention of evasion of



service tax is established. I therefore reject the defence put forth by the appellants.

12. Now I take up the contention of the appellants that the penalty under Section 78 is not imposable as there is no suppression of facts. I find that a statement of the proprietor of the appellants was recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. As per reply to the question No. 3, the proprietor of the appellants has accepted that they have not paid nay service tax nor filed any service tax returns. He goes on to admit that they were collecting service tax amount as shown in their invoices but the same was not being paid by them to the govt. exchequer. He also admitted that the applicable service tax would be paid at the earliest and towards this, they even paid Rs. 2,00,000/-. This confessional statement has not even been retracted. So I agree with the findings of the impugned order on this issue and find no reason to interfere with the impugned order. However I find that the show cause notice has been issued on 06.04.2016 and the demand shall be restricted only for the period of 5 years from this date i.e. 06.04.2016 and the penalty under Section 78 of the Act shall stand modified accordingly.

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

अपीलकर्ता द्वारा दर्ज की गयी अपीलों का निपटारा उपरोक्त तरीके से किया जाता है !

U. Shankar

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)
अहमदाबाद

दिनांक:

सत्यापित

R.P.A.D.

(धर्मेंद्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To,

M/s. Prowess Productions Corporate Services,
3/A, Harishchandra Park,
Vijay Nagar Road,
Naranpura,
Ahmedabad

Copy to:

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

