

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

क फाइल संख्या : File No : **V2(STC)109 /North/Appeals/ 17-18 / 2748-52**

ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP-407-17-18**

दिनांक Date : **26-Mar-2018** जारी करने की तारीख Date of Issue 23/04/17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **GST/D-VI/O&A/04/AC/KM/17-18** Dated **28-Dec-2017** Issued by **Assistant Commissioner** , Central GST , Div-VI , Ahmedabad North.

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

M/s Satyam Developers

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, 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 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 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 (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 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:

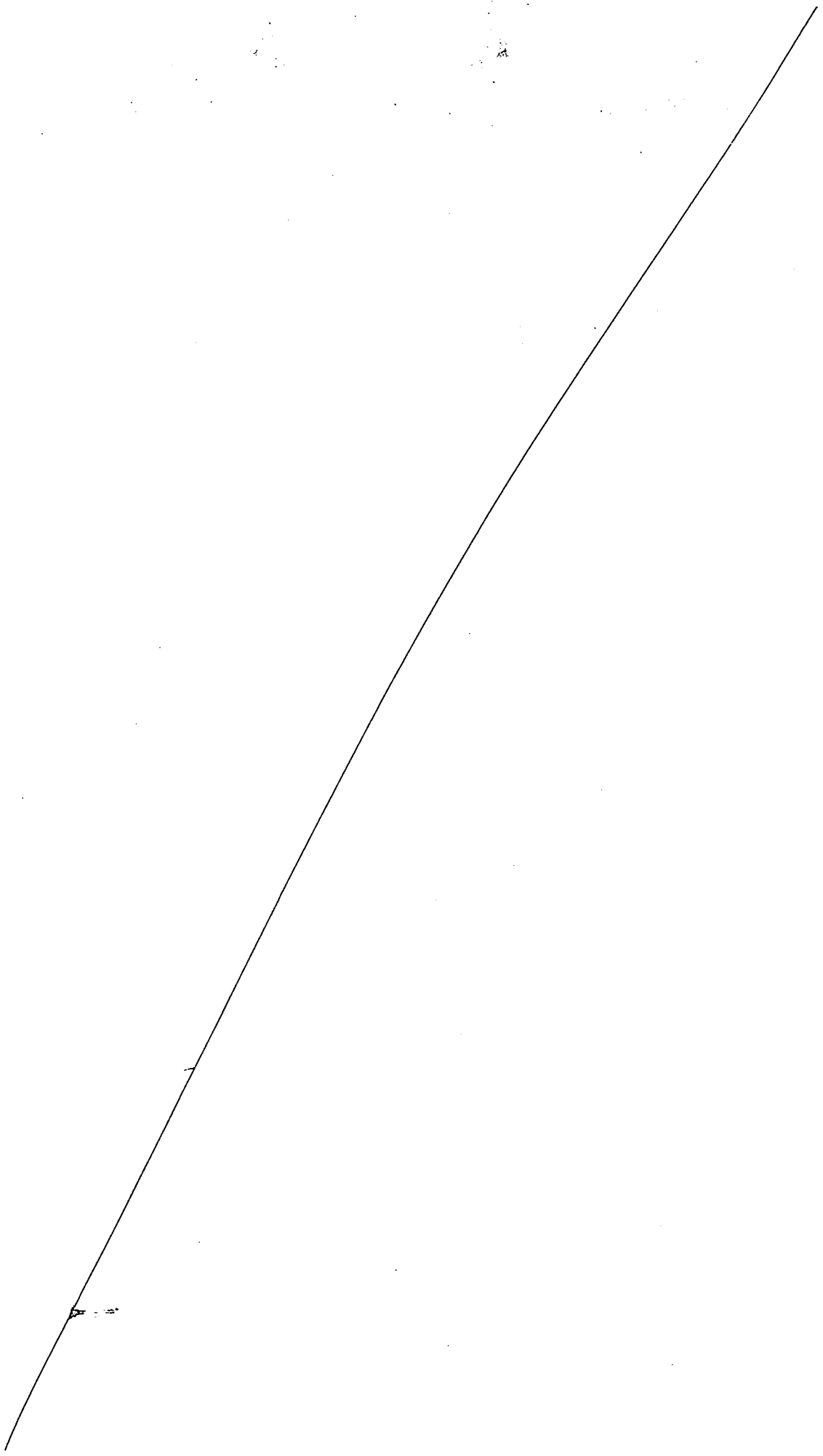
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

⇒ 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. Satyam Developers Limited, Satyam House, B/h Rajpath Club, S G Highway, Ahmedabad 380059 (henceforth, "*appellant*") has filed the present appeal against the Order-in-original No. GST/D-VI/O&A/04/AC/KM/17-18 dated 20.01.2018 (henceforth, "*impugned order*") issued by the Assistant Commissioner, CGST Division-VI, Ahmedabad - North (henceforth, "*adjudicating authority*").

2. To state briefly, the facts of the case are that during auditing by the departmental officers it was noticed that appellant, a service tax registrant for providing construction services, had paid less service tax than he was required to pay on GTA services and Security services as per auditors' reconciliation of financial records of the appellant with ST-3 returns filed for 2012-13 and 2013-14. Subsequently, a show cause notice for recovery of service tax as pointed out in the audit was issued on 31.03.2017. In adjudication, the service tax demand raised in the show cause notice for Rs.1,19,844/- was confirmed alongwith interest and equal penalty was imposed under section 78 of the Finance Act, 1994. A penalty of Rs.10,000/- was also imposed under section 77 of the Finance Act, 1994. Dissatisfied with the impugned order, appellant has preferred this appeal.

3. The main grounds of appeal, in brief, are as follows-

3.1 Appellant reproduces an income reconciliation statement and states that demand has been raised based on reconciliation done by the audit without considering their explanations and documentary evidence produced; that the department has raised the demand without taking into account the correct facts.

3.2 Appellant states that even if the service tax was payable on reverse charge basis, same would be eligible for Cenvat credit and available for utilization against service liability on output services; that therefore, the situation was revenue neutral and there was no loss to revenue. Appellant has cited various decisions in this regard.

3.3 Appellant submits that entire demand is time barred since facts were known to the department since 2012 whereas show cause notice covering the period 2012-13 and 2013-14 was issued on 31.03.2017. Further, as per appellant, they have not suppressed any facts from the department, penalty cannot be imposed under section 78. Appellant has also contested the imposition of penalty under section 77 stating that there was short payment of service tax.



4. In the personal hearing held on 15.03.2018, Shri Vipul Khandhar, Chartered Accountant reiterated the grounds of appeal and stated that their written submissions were not considered.

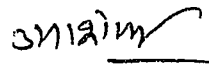
5. I have carefully gone through the appeal papers. As far as appellant's tax liability on GTA services and Security services on reverse charge basis is concerned, appellant has not disputed the applicability of reverse charge mechanism in their case. The dispute is with regard to differential amount of service tax pointed out in the audit and confirmed in the impugned order. The adjudicating authority has relied on the income reconciliation statement prepared by the audit whereas appellant has given their own reconciliation wherein no extra service tax liability arises. Appellant's main argument is that adjudicating authority has not considered the facts and explanations presented by them.

5.1 From para 11.5 of the impugned order, I note that adjudicating authority has not agreed with the appellant's reconciliation in reply stating that the same is not supported by ST-3 returns. I find this reasoning insufficient to draw any conclusion with regard to short payment of service tax, without any elaboration on the reconciliation statement submitted by the appellant. Ignoring appellant's explanations and solely relying on the reconciliation prepared by the audit is presumptive and prejudicial to the interests of the appellant. The matter is obviously more about ascertaining the correct facts than being a legal dispute, and on facts, adjudicating authority's findings lack the clarity. I therefore find it appropriate to remit the case back to the adjudicating authority for a fresh and speaking order in the matter after considering the facts and explanations put forth by the appellant.

6. Accordingly, the impugned order is set aside and appeal is allowed by way of remand.

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


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


(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested


(Sanwamal Hudda)

Superintendent

Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To,

M/s. Satyam Developers Limited,
Satyam House, B/h Rajpath Club, S G Highway,
Ahmedabad 380059

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad South.
4. The Asstt. Commissioner, CGST Division-VI, Ahmedabad- North
5. Guard File.
6. P.A.

