

# आयुक्त का कार्यालय, (अपीलस) Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

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फाइल संख्या : File No : V2(ST)2/North/Appeals/2018-19 क

अपील आदेश संख्या : Order-In-Appeal No..AHM-EXCUS-002-APP- 10-18-19 ख

Date of Issue \_2/-6-2018 दिनॉक Date : <u>24-May-18</u> जारी करने की तारीख

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

- Arising out of Order-in-Original No 27/AC/D/BJM/2017-18 Dated 30-Jan-18 Issued by Assistant Commissioner, Central GST, Div-III, Ahmedabad North.
- अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

## M/s Vishwanath Builders

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर

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.

- 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 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 वहां 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 वहां रूपए 10000 / - फीस भेजनी होगी।
- 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 ed by a copy of the order appealed 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 Richard Rules 1994 and Shall be accompanied by a fees of Richard Rules 1994 and Shall be accompanied by a fees of Richard Rules 1994 and Shall be accompany against (one of which shall be certified copy) and should be accompanied by a fees of Richard Rules 1994 and Shall be accompany against (one of which shall be certified copy) and should be accompanied by a fees of Richard Rules 1994 and Shall be accompany against (one of which shall be certified copy) and should be accompanied by a fees of Richard Rules 1994 and Shall be accompanied by a fee of Richard Rules 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 takes of the service tax & interest demanded & penalty levied of Rs. 5 takes of the service tax & interest demanded & penalty levied of Rs. 5 takes of the service tax & interest demanded & penalty levied of Rs. 5 takes of the service tax & interest demanded & penalty levied of Rs. 5 takes of the service tax & interest demanded & penalty levied of Rs. 5 takes of the service tax & interest demanded & penalty levied of Rs. 5 takes of the service tax & interest demanded & penalty levied of Rs. 5 takes of the service tax & interest demanded & penalty levied of Rs. 5 takes of the service tax & interest demanded & penalty levied of Rs. 5 takes of the service tax & interest demanded & penalty levied of Rs. 5 takes of taxes of 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 सकेंगी 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 अधिक्षक केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निर्देश 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 शर्तो पर अनुसूची—1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 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।
- 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 होगे।
- 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 order arises out of an appeal filed by M/s. Vishwanath Builders, 17, N.D. Avenue, Opp. Club O7, Sky City Road, Shela, Ahmedabad (in short 'appellant') against Order-in-Original No.27/AC/D/BJM/2017-18 dated 30.01.2018 (in short 'impugned order') passed by the Assistant Commissioner, CGST & C.Ex. Division-III, Ahmedabad North (in short 'adjudicating authority').

- Briefly stated that the appellant obtained ST registration on 07.12.2014 for 2. providing Residential Construction Service, Legal Consultancy Service, GTA Service etc. and filed ST-3 return on 25.04.2015 for the period 10/2014 to 03/2015. During the course of scrutiny of said ST-3 return, it was found that the appellant had availed Cenvat credit of service tax on input service prior to the date of ST registration. Hence, show cause notice dated 27.03.2017 for recovery of wrong availment of cenvat credit alongwith interest and imposition of penalty. The adjudicating authority ordered recovery of the Cenvat credit of Rs.3,09,194/- alongwith interest under Section 73 and 75 of the Finance Act, 1944 respectively and also imposed penalty of Rs.1,54,597/- under section 78(1)ibid.
- Aggrieved with the impugned order, the appellant filed the present appeal wherein, inter alia, stated that:
  - > There cannot be concurrent jurisdiction in terms of para 4.3.6 of Circular no.185/4/2015-Service Tax dated 30.06.2015 where departmental audit was already completed.

> The adjudicating authority has erred in upholding that they have availed benefit of exemption notification no.33/2012-ST dated 20.06.2012 whereas the fact that they have settled audit para by paying due taxes with interest and penalty.

> The adjudicating authority be directed to allow Cenvat credit availed prior to registration as per provisions of Cenvat Credit Rules and binding precedent of CESTAT, Ahmedabad.

> The adjudicating authority be directed to allow Cenvat credit of input services

used for output service within the provision of Cenvat Credit Rules.

- > The adjudicating authority has erred in not considering the Cenvat of service tax under RCM though paid through cash before taking credit and be directed to allow the said credit as per provisions of Cenvat credit rules.
- Personal hearing in the matter was held on 16.05.2018. Shri Vaibhav N. Shah, 4. Chartered Accountant, appeared on behalf of the appellant and reiterated the grounds of appeal and submitted that detailed scrutiny order was passed while audit going on; that duty paid has not been considered in O.I.O.
- I have carefully gone through the appeal memorandum, submission made at the 5. time of personal hearing and evidences available on records. I find that the main issue to be decided is whether the impugned order is just, legal and proper or otherwise. Accordingly, I proceed to decide the case on merits.
- Prima facie, I find that the appellant had applied for ST registration on 6. 07.12.2014 and had filed ST-3 return for the period 10/2014 to 03/2015 on 25.04 2015

whereas first departmental audit for the period 2014-15 to 2015-16 was conducted on 18.08.2016 and 29.08.2016 and Audit Report No.194/2015-16 dtd.27.09.2016 was issued. As per 'Revenue Para-1: Wrong availment of SSI Exmption' of this audit report, the appellant has paid Rs.41,993/-(ST Rs.27,810/-+Interest Rs.10,012/- + Penalty Rs.4,171/-) on 02.09.2016 and para is settled. Simultaneously, the adjudicatring authority issued SCN dtd.27.03.2017 for wrong availment of Cenvat credit of Rs.3,09,194/- on the basis of manual scrutiny of ST-3 return filed for the period 10/2014 to 03/2015. I find from the said audit report dtd.27.09.2016, the benefit of threshold exemption under Notifn. No.33/2012-ST dtd.20.06.2012 is given to the appellant for the year 2014-15 and thereafter tax due is calculated which is paid alongwith interest and penalty and accordingly said revenue para-1 is settled. The appellant has already submitted this aspect in defence reply dtd.01.05.2017 but the adjudicating authority has failed to address this aspect in his findings in the impugned order. Accordingly, I remand the case to the adjudicating authority for considering the points raised in the present appeal and pass speaking order afresh after following the principle of natural justice.

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 र्शंकर) केन्द्रीय कर आयुक्त (अप्रील्स)

Dt. 24.06.2018

3712·m

Attested:

(B.A. Patel) Supdt.(Appeals)

Central GST, Ahmedabad.

#### **BY SPEED POST TO:**

M/s. . Vishwanath Builders, 17, N.D. Avenue, Opp. Club O7, Sky City Road, Shela, Ahmedabad.

## Copy to:-

(1) The Chief Commissioner, CGST, Ahmedabad Zone.

(2) The Commissioner, CGST, Ahmedabad North (RRA Section).

(3) The Asstt. Commr, CGST Division-III(Sanand), Ahmedabad North.

(4) The Asstt. Commr(System), CGST, Ahmedabad-North. (for uploading OIA on website)

(5) Guard file

(6) P.A. file.

