



आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या : File No : **V2(ST)25 /North/Appeals/2018-19**

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

दिनांक Date : **25-Jun-18** जारी करने की तारीख Date of Issue **17/7/2018**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **06/AR-V/Supdt/Lyka Engg./17-18** Dated **12:00:00 AM** Issued by **Supdt Commissioner** , Central GST , Div-VII , Ahmedabad North.

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

M/s Lyka Engineering services

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:-

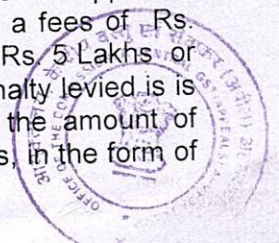
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 (सीस्टेट) 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 13 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 रुपए 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

Shri Mohabatsingh Makwana, Husband of late Smt. Parulben M Makwana, the deceased proprietor of M/s. **Lyka Engineering Services**, 3 & 4, Baronet Complex, 2nd Floor, Opp.- Sabarmati S.T. Stand, Highway Road, Sabarmati, Ahmedabad 380 005 (henceforth, "*appellant*") has filed the present appeal against the Order-in-original No. 06//AR-V/Supdt./Lyka Engineering/17-18 dated 30.01.2018 (henceforth, "*impugned order*") issued by the Superintendent, CGST Range-V, Div-VII, Ahmedabad - North (henceforth, "*adjudicating authority*").

2. The facts of the case, in very brief, are that the appellant, a service tax registrant, failed to file half yearly returns (ST-3 returns) for the years 2013-14 and 2014-15 in stipulated time period. The adjudicating authority, after issuing a show cause notice and following the proper procedure, passed the impugned order wherein he ordered a recovery of Rs.80,000/- as late fee for late filing of returns and imposed penalty of Rs.10,000/- in terms of section 77(2) of the Finance Act, 1994.

3. Shri Mohbatsingh Makwana, husband of the deceased sole proprietor of the firm namely M/s Lyka Engineering Services has filed this appeal as a representative and legal heir of the deceased proprietor to set aside the adjudicating authority's order of recovery. The grounds of appeal, in brief, are as follows-

3.1 Appellant refers to a letter dated 12.05.2017 issued by the Assistant Commissioner (Prev), Service Tax, Ahmedabad to state that preventive inquiry initiated against the firm was closed on the ground that the proprietor of the firm had died; that any inquiry and subsequent order is bad in law.

3.2 Appellant states that all the proceedings are deemed to be concluded once person against whom it is initiated is dead. Appellant relies on Supreme Court's judgment in the case of Shabina Abraham & Ors v. Collector of Central Excise & Customs (copy supplied) which says that there is no provision which empowers the authorities to recover dues from a deceased assessee by proceeding against his legal heirs.

4. In the personal hearing held on 04.06.2018, CA Bishan Shah represented the appellant and reiterated the grounds of appeal. He cited Supreme Court's decision in the case of Shabina Abraham & Ors v. Collector of Central Excise & Customs [2017 (50) STR 241 (SC)].



5. I have carefully gone through the appeal which has been filed after a period of more than 2 months from the date of communication of the impugned order. The appellant has requested for condonation of delay. In terms of powers granted to me in terms of section 85(3A) of the Finance Act, 1994 and considering that the delay is not more than a month, I allow the filing of appeal.

5.1 The short issue to be decided is whether late fee and penalty ordered to be recovered under the impugned order can be recovered from the legal heirs of the deceased proprietor. The appellant claims that once sole proprietor of the firm has died, all proceedings initiated under the Finance Act, 1994 would be discontinued in view of Supreme Court's judgment in the case of *Shabina Abraham & Ors v. Collector of Central Excise & Customs*. Relying on this judgment of the apex court, appellant states that the way section 73 of the Finance Act, 1994 has been worded, it is amply clear that legislature has consciously kept away the legal heirs from answering liabilities under the Finance Act, 1994.

5.2 In *Shabina Abraham* case, the question that arose was whether an assessment proceeding under the Central Excises & Salt Act, 1944 can continue against the legal representative/ estate of a sole proprietor/ manufacturer after he is dead. Hon'ble Court allowed the appeal on the ground that there is no machinery provision in the Central Excises & Salt Act for continuing assessment proceedings against a dead individual. The first head-note of the citation [2017 (50) STR 241 (SC)] reads as under -

Demand - Continuation of - Against legal representatives/estate of sole proprietor/manufacturer after he is dead through natural causes - HELD : It was impermissible to continue such assessment proceedings - In definition of assessee in Section 4(3)(a) of Central Excise Act, 1944 as "means person who is liable to pay duty of Excise under this Act and includes his agent", (i) use of present tense indicates that person referred to can only be living person, and (ii) use of "means and includes" indicates that it was exhaustive, with no scope of reading anything into it - In absence of machinery provisions for proceeding against dead person's legal heirs, duty and other sums do not become "payable" to apply recovery provisions under Section 11 ibid - Situation was not similar to one where firm is dissolved as device to evade tax, as it cannot be said that individual proprietor, who died through natural causes, maneuvered his death to evade Excise duty - Plea that Section 11A ibid was machinery provision which must be construed to make it workable, rejected as there was no charge to Excise duty under main charging provision of dead person - Section 6 ibid does not say anything about how dead person's assessment is to continue after his death in respect of Excise duty that may have escaped assessment - Definition of "person" under Section 3(42) of General Clauses Act, 1897 was not applicable as it does not include legal representatives of deceased.

5.3 I further rely on the Chandigarh Tribunal's order in the case of **Vira Scooters** v. Commissioner of Central Excise, Ludhiana [2017(358) ELT 447 (Trib. Chan.)]



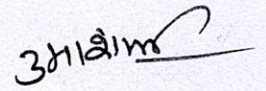
where, relying the apex court's judgment in *Shabina Abraham* case, it was held that proceedings against proprietorship firm cannot be continued after death of sole proprietor.

5.4 Though above citations are in the context of excise duty cases, the ratio is applicable in the service tax matters also as under the Finance Act, 1994 also there is no express provision to hold a legal heir liable to pay the dues. I, therefore, go with the arguments of the appellant and hold that recovery proceedings arising out of impugned order cannot be continued as the sole proprietor is dead. The impugned order, therefore, requires to be set aside.

6. Accordingly, I set aside the impugned order and allow the appeal.

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

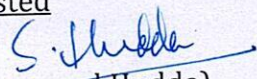
The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested


(Sanwamal Hudda)
Superintendent
Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To,
Shri Mohabatsingh Makwana,
Husband of late Smt. Parulben M Makwana,
the deceased proprietor of M/s. Lyka Engineering Services,
3 & 4, Baronet Complex, 2nd Floor, Opp.- Sabarmati S.T. Stand, Highway Road,
Sabarmati, Ahmedabad 380 005

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Joint/Additional Commissioner, Central Tax (System), Ahmedabad North.
4. The Superintendent, CGST Range-III, Div-IV, Ahmedabad- North
5. Guard File.
6. P.A.

✓
Receive
Copy. Manoj Singh
18-7-18

