



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर शुल्कभवन,

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015

7th Floor, Central Excise Building,

Near Polytechnic,

Ambavadi, Ahmedabad-380015



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क फाइल संख्या : File No : **V2(STC)79/North/Appeals/17-18**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP- 27-17-18**

दिनांक Date : **26-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 **CGST/A'bad-north/Div-VII/S.Tax-DC-004-17-18** Dated **27-Dec-17** Issued by **Deputy Commissioner** , Central GST , Div-VII , Ahmedabad North.

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

M/s Uttar Gujarat Vij Company

Limited

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:-

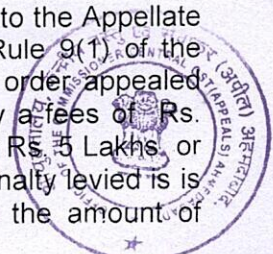
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 39फ 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 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 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,

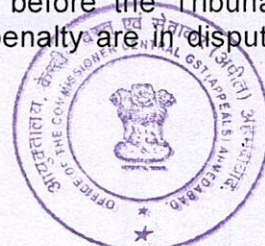
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 order arises out of an appeal filed by M/s. Uttar Gujarat Vij Company Ltd., Sabarmati Division, Near AEC Railway Crossing, Ahmedabad-380005 (in short 'appellant') against Order-in-Original No.CGST/A'bad-North/Div-VII/S.Tax-DC-004-17-18 dated 27.12.2017 (in short 'impugned order') passed by the Deputy Commissioner, C.Ex. & Central GST, Division-VII(S.G. Highway East), Ahmedabad-North (in short 'adjudicating authority').

2. Briefly stated that during the course of investigation by DGCEI, it was found that the appellant appointed various Gram Panchayats as collection agency to collect electricity consumption charges bill issued by them to their customers but failed to pay service tax on commission paid under reverse charge mechanism (RCM) w.e.f. 01.07.2012. On pointing out, the appellant immediately paid due service tax under RCM alongwith interest before issue of show cause notice(SCN). However, SCN dtd.17.04.2017 was issued for demand of service tax alongwith interest and imposition of penalty. The adjudicating authority vide impugned order confirmed the demand alongwith interest under proviso to Section 73(1) and 75 of the Finance Act, 1994 respectively, appropriated the amount already paid against service tax, interest and also imposed penalty equal to amount of service tax confirmed under Section 78ibid with an option to pay penalty equal to 25% only if the amount of penalty so determined is also paid within 30 days of communication of the impugned order.

3. Aggrieved with the impugned order, the appellant has filed the present appeal wherein, inter alia, submitted that:

- They are Gujarat Govt. owned public sector undertaking. Hence, there cannot be any intention to tax evasion and its employees cannot derive any personal benefits by suppression of taxable value and non-payment of service tax.
- They rely on case of CCE, Vadodara-II Vs. BSNL passed by Gujarat High Court confirming the order of the tribunal holding that no malafide intention could be attributed to the assessee being a public sector undertaking of the Govt. of India.

4. Personal hearing in the matter was held on 26.06.2018. Shri Arvindkumar B. Solanki, Supdt. Of Accounts and Shri Dineshkumar S. Kapadia, Executive Engineer, appeared on behalf of the appellant and reiterated the grounds of appeal.

5. I have carefully gone through the appeal memorandum, submissions made at the time of personal hearing and evidences available on records. The main



issues to be decided is whether penalty imposed under Section 78ibid can be waived or otherwise.

6. Prima facie, I find that the appellant is a Public Sector Undertaking (PSU) of Govt. of Gujarat which is not in dispute. The appellant has paid service tax alongwith interest under RCM after investigation initiated by DGCEI officers but before issue of the SCN invoking extended period under proviso to Section 73(1) of the Finance Act, 1994. The period involved is from 1st July, 2012 to 30th Sept, 2016. The adjudicating authority has imposed penalty equal to duty confirmed under section 78ibid vide impugned order. The appellant has mainly contested that penalty is not imposable u/s 78 when there is no intent to evade payment of duty theirs being Govt. of Gujarat public sector undertaking.

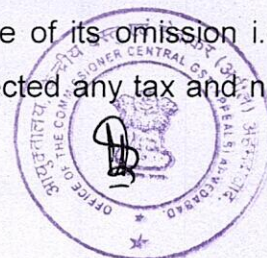
6.1 In this regard, I find that in order to confirm penalty u/s 78ibid, it is invariably required to prove 'intent to evade payment of duty' as held in series of judgements of the higher appellate forum. I find that the adjudicating authority has failed to prove this aspect since the appellant has voluntarily paid due service tax and interest on pointing out by the DGCEI officials and even before issue of the SCN. This act on the part of the appellant itself shows that they were under bonafide belief that Gram Panchayats, to whom they had entrusted the work of electricity bill collection on commission basis, are govt. authority and hence not liable to tax. The apex court in case of Tamilnadu Housing Board Vs. CCE, Madras [1994(74)ELT-09(SC)] has held as under:

“Penalty not imposable when there is no intent to evade payment of duty and the appellant is a non-profit making statutory body - Rule 173Q of the Central Excise Rules, 1944. [para 3, 4]”

Similar view is taken by the Hon'ble Tribunal in case of Surat Munciple Corporation Vs. CCE, Surat [2006(04)STR-044(Tri.Del.)] as under:

“Penalty (Service tax) - Non-payment of Service tax - Mala fide intention - Appellant being a Statutory Government Body, there cannot be any mala fide intention to evade payment of Service tax - It is a case of omission on the part of the appellants - Appellants were under bona fide belief that they are not liable to pay Service tax as being a Statutory Government Body - Penalty not imposable in view of Section 80 of Finance Act, 1994 - Section 76 ibid. [para 7]”

Further, I find that the period covered in the present SCN is from 01.07.2012 to 30.09.2016. Since the appellant is PSU and has paid duty and interest before issue of SCN, they are entitled for benefit of Section 80ibid till the date of its omission i.e. 14.05.2015. I also find that it is not a case that they have collected any tax and not



paid after its collection. Thus, I find that it is not a case of mandatory penalty. I also find that in Explanation 2 of Section 73(3)ibid, it is clearly mentioned that " no penalty under any of the provisions of this Act or the rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon". Since, I do not find any intention of evasion of service tax of the appellant and also being PSU and has paid service tax with interest, I find that lenient view must be taken in the present appeal and accordingly, I set-aside the penalty imposed under Section 78ibid vide impugned order.

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

(उमा शंकर)

आयुक्त (अपील्स)

Date: 26/06/2018

Attested

[Signature]
16/06/18

(B.A. Patel)
Superintendent (Appeals)
CGST, Ahmedabad
BY SPEED POST TO :

M/s Uttar Gujarat Vij Company Ltd.,
Sabarmati Division,
Near AEC Railway Crossing,
Ahmedabad-380005.

Copy to:

1. The Chief Commissioner, CGST, Ahmedabad Zone .
2. The Commissioner, CGST, Ahmedabad-North(RRA Section).
3. The Deputy Commissioner, CGST, Division-VII(S.G. Highway East), Ahmedabad North.
4. The Asstt. Commissioner(System),CGST, Ahmedabad-North.
(for uploading the OIA on website.)
5. Guard File.
6. P.A. File.



