



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



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ : 079-26305065 टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : **V2(ST)85 /North/Appeals/2018-19** **686870 6869**
ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP-66-18-19**
दिनांक Date : **12-Sep-18** जारी करने की तारीख Date of Issue **29/10/2018**

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/15/ESSEM/AC/KM/17-18/**
Dated **31-Mar-18** Issued by **Assistant Commissioner** , Central GST , Div-VI ,
Ahmedabad North.

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

M/s Essem Recreation

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 :-

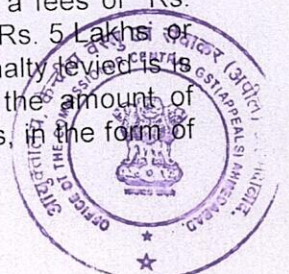
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 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, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1988 की धारा 43 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 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 appeal has been filed by M/s Essem Recreation, 1, Chokhi Dhani, S.G.Highway, Satellite, Ahmedabad (now at 1, Barsana, S.G.Highway, Satellite, Ahmedabad) [hereinafter referred to as "appellant"] against Order-in-Original No.GST/D-VI/O&A/14/Essem/AC/KM/17-18 dated 31.03.2018 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner of Central GST & C.Ex, Division-VI, Ahmedabad North [hereinafter referred to as "adjudicating authority"]

2. Briefly stated, the fact of the case is that the appellant is providing Restaurant Service. On scrutiny of invoices of said service, during the course of audit of records, it was noticed that they are charging a fix amount of Rs.220/- & Rs.550/- per person for the lunch & dinner respectively served by them; that the invoices issued for dinner, they were bifurcating the amount of Rs.550/- charged into two i.e Rs.300/- for 'food' and Rs.250/- for 'cultural programme'. As it appeared that the amount charged and collected towards 'cultural programme' etc form integral part of the dinner charges and required to be included in food/dinner charges in terms of Section 67 of Finance Act, 1994 and service tax is required to be paid on the said amount, a show cause notice dated 28.11.2016 was issued to the appellant for [i] considering the amount collected by the towards Cultural programme, etc as a part of Restaurant Service and included the amount in the value of Restaurant Service; [ii] demand of service tax amounting to Rs.5,58,564/- with interest; and imposition of penalty under Section 77(2) and 78 of Finance Act, 1994. Vide the impugned order, the adjudicating authority has considered the amount collected towards 'cultural programme' as a part of Restaurant Service and confirmed the demand with interest. He also imposed penalty of Rs.10,000/- under Section 77(2) and Rs.5,58,564/- under Section 78 of Finance Act.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- The amount collected towards cultural programme etc cannot be considered as part of 'restaurant service and cannot be included in the taxable value of restaurant service.
- Non-taxability claimed under Negative list as specified in clause (i) to Section 66D of Finance Act cannot be denied as both these services operate in different field for different purpose which cannot be clubbed to demand service tax.
- A Restaurant can be described to be or said to be a public place, where food is normally served with or without beverages to the persons visiting that place. However, in the present case, the areas where cultural programme are performed, no food is served by the appellant. Therefore, the area where cultural programme are organized cannot be treated as Restaurant.
- No penalty is imposable.

3. Personal hearing in the matter was held on 07.09.2018. Shri P.P.Jadeja, Authorized Representative of the appellant appeared for the same and reiterated the grounds of appeal.



4. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The limited to point to be decided is as to whether the value of 'cultural programme' separately shown in the invoice of 'food' can be clubbed with "Restaurant Service" or otherwise.

5. At the outset, undisputed facts revealed that the appellant is providing Restaurant Service and charging a fix amount of Rs.220/- & Rs.550/- per person for the lunch & dinner respectively served by them; that the invoices issued for dinner, they were bifurcating the amount of Rs.550/- charged into two i.e Rs.300/- for 'food' and Rs.250/- for 'cultural programme'.

6. "Restaurant Service" under Section 65(105(zzzzv) of the Finance Act, 19194 means

any service provided or to be provided, to any person, by a Restaurant, by whatever name called, having the facility of air-conditioning in any of establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises.

7. As per the said definition, the Restaurant can be described where food is normally served with or without beverages to the person visiting that place. The appellant vehemently contended that they charges Rs.300/- for food and Rs.250/- for cultural programme separately in the invoices and in the area where cultural programme are arranged or performed, no foods are supplied by the appellant; therefore, both the value cannot be clubbed. I find merit consideration in the argument of the appellant. I observe that the adjudicating authority has not correctly appreciated the definition of "Restaurant Service" and essential ingredients required to be levied service tax for such service. It is not disputed by the department that appellant is charging amount for 'food' and cultural programme' separately and the place where the 'food' and cultural programme' are separate and any kind of food is being supplied at the place where cultural programme is carried out. In the circumstances, the area where the cultural programme is carried out cannot be clubbed with the area where the food is supplied. Hence, the activities carried out on such place cannot be termed under "Restaurant Service".

8. Further, taxable event is completed when service provider has rendered taxable service. In the instant case, it is an admitted fact that the appellant is giving facility viz cultural programme and other activities like pot making, magic show, games, rides and other amusement facilities in the area where food is not supplying and charging amount separately in the invoice. These activities cannot be considered as service but a facility to attract customer for dinner.



9. The adjudicating authority has relied on Board's clarification F No.334/3/2011-TRU dated 28.02.2011 and certain question answer of Service Tax Guide lines which is not relevant to the facts and circumstances of the instant case.

10. In view of above discussion, I allow the appeal filed by the appellant and set aside impugned order. The appeal stands disposed of in above terms.

उमा शंकर

(उमा शंकर)
आयुक्त
केन्द्रीय कर (अपील्स)

Date: / /2018

Attested

Mohan V.V
(Mohan V.V)
Superintendent,
Central GST (Appeals), Ahmedabad.

By R.P.A.D.

To
M/s Essem Recreation,
1, Chokhi Dhani, S.G.Highway,
Satellite, Ahmedabad

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T, Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: II, Ahmedabad (North).
5. Guard File.
6. P.A.



