



सत्यमेव जयते

## 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

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क फाइल संख्या : File No : **V2(ST)14/North/Appeals/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP- 07-08-18-19**

दिनांक Date : **21-May-18** जारी करने की तारीख Date of Issue **21-6-2018**

**श्री उमा शंकर**, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **SD-01/22/AC/Ajay/2016-17** Dated **21-Feb-17**

Issued by **Assistant Commissioner** , Central GST , Div-VII (North) , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता

**Name & Address of The Appellants**

### M/s Ajay Transport

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 हॉस्पिटल 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 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 is 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 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 Ajay transport, 197/3, Near Swastic Autolink, Beside Sardar Patel Ring road, Chankheda – Kalol Highway, Ahmedabad – 382 405 (hereinafter referred to as 'the appellant') was engaged in supplying fluid Tankers under contract to M/s O.N.G.C., Ahmedabad for carriage of fluid such as mud, brine, effluent, technical water etc. from operational base of O.N.G.C. to worksite, that included loading / unloading of fluids into / from the tanker(s) by means of fighter pump attached with the tanker as and when required for services by hiring them on monthly fixed charges. The D.G.C.E.I (A.Z.U.) booked a case against the appellant on the basis that the said service fell under the category of 'Supply of Tangible Goods' service from 16/05/2008 and the appellant was liable to pay Service Tax on the total hire charges but M/s O.N.G.C. was paying only 25% of such hiring charges on reverse charge mechanism, treating the said service to be 'Goods Transport Agency' service availing abatement and thus there was short payment of Service Tax. In view of the above, the following show cause notices (hereinafter 'the SCNs') were issued that were adjudicated vide the Assistant Commissioner, Service Tax Division-I, Ahmedabad (hereinafter referred to as 'the adjudicating authority') who has issued the following Orders-in-original:

Sl.No.	SCN No. & date	Period covered	Tax demand Amount	O.I.O. No. & date and status of demand
1.	F.No.: STC/4-01/O&A/ADC/D-I/2016-17 dated 19/04/2016	01/04/2014 to 31/03/2015	₹13,58,060/-	<b>OIO No.SD-01/22/AC/Ajay/2016-17 dated 21/02/2017 issued.</b>  Demand of ₹13,58,060/- confirmed under Section 73 of F.A., 1994 and appropriated.  Penalty of ₹1,35,806/- imposed under section 76 of F.A., 1994 and  Penalty of ₹10,000/- imposed under section 77 <i>ibid</i>
2.	F.No.: STC/4-50/O&A/ D-I/2014-15 dated 05/03/2015	20/02/2013 to 31/03/2014	₹14,68,234/-	<b>OIO No.SD-01/21/AC/Ajay/2016-17 dated 17/02/2017 issued.</b>  Demand of ₹14,68,234/- confirmed under Section 73 of F.A., 1994.  Penalty of ₹1,46,823/- imposed under section 76 of F.A., 1994 and  Penalty of ₹10,000/- imposed under section 77 <i>ibid</i>



2. The appellant has preferred appeals against OIO No.SD-01/21/AC/Ajay/2016-17 dated 17/02/2017 as well as against OIO No.SD-01/22/AC/Ajay/2016-17 dated 21/02/2017 (hereinafter referred to as the 'impugned order') passed by the adjudicating authority. In both the appeals, the appellant has filed applications for condonation of delay of 347 days.

3. Personal hearing in the matter of both the appeals as well the applications for condonation of delay was held on 16/05/2018. Shri HIRAK GANGULY, Advocate appeared on behalf of the appellant. He stated that the 347 days delay in filing of the appeals was on account of hospitalization of the concerned person.

4. I have carefully gone through the contents of the impugned order as well as the grounds of appeal along with contents of the applications for condonation of delay. At the outset, before discussing the grounds of appeal in both the instant appeals, I take up the applications filed by the appellant for condonation of delay. On considering the appellant's plea for condonation of delay, it is seen that the appellant clearly states in these applications that there is a delay of 347 days in filing of both the appeals from the date of communication of the impugned orders. It is pertinent to mention that both the appeals have been filed by the appellant under Section 85 of the Finance Act, 1994. The time limit stipulated for filing appeal and the time limit allowed to Commissioner (Appeals) for condonation of delay are enshrined in the provisions of Section 85 (3A) of the Finance Act, 1944 as follows:

“ Section 85 (3A) **An appeal shall be presented within two months** from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :

Provided that the **Commissioner of Central Excise (Appeals) may**, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented **within a further period of one month.**”;

From the above extracts it is clear that under Section 85 (3A) of the Finance Act, 1994, an appeal with Commissioner (Appeals) has to be preferred within 2 months from the date of communication of an order. Further, the Commissioner (Appeals) is empowered to condone delay not beyond a period of one month as per the proviso to Section 85 (3A) of the Finance Act, 1994. In the present case the delay is admittedly of 347 days in filing both the appeals i.e. well over eleven months from the date of receipt of the impugned order. The period of delay in the instant case is clearly beyond the scope of condonation allowed under Section 85 (3A) of the Finance Act, 1994 in both the appeals. Therefore, I reject the applications for condonation of delay in both the



appeals. Consequently, without going into the merits of the case, I am constrained to reject both the appeals on limitation.

5. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in the above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 21 / 05 / 2018

Attested

(K. P. Jacob)  
Superintendent (Appeals-I)  
Central Excise, Ahmedabad.

By R.P.A.D.

To

M/s Ajay Transport,  
197/3, Near Swastik Autolink,  
Beside Sardar Patel Ring road,  
Chankheda – Kalol Highway,  
Ahmedabad – 382 405

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. (System), Ahmedabad (North).
4. The Deputy Commissioner, C.G.S.T., Division-VII, Ahmedabad (North),
5. Guard File.
6. P.A.



