



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(STC)12/EA-2 /North/Appeals/2018-19

7105/07108

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-82-18-19

दिनांक Date : 16-Oct-18 जारी करने की तारीख Date of Issue 16/11/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-02/33/AC/2013-14 Dated 31-Dec-13
Issued by Additional Commissioner , Central GST , Div-II , Ahmedabad North
.Service Tax, Ahmedabad

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

M/s Shree Gayatri Clearing Agency

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 अरील:-
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

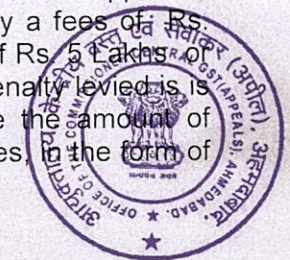
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 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.



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, 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 अर्ज़ी एवं अपील को लागू नहीं होंगे।

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

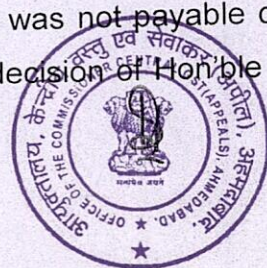
This is an appeal filed by the department against Order-in-original No. SD-02/33/AC/2013-14 Dated 31.12.2013 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Division-II, Service Tax (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the facts of the case are that M/s Shree Gayatri Clearing Agency situated at 502, Sukh sagar Complex, Near Hotel Fortune Land Mark, Usmanpura, Ahmedabad (hereinafter referred to as 'the respondent') were engaged in providing service under the category of Clearing & Forwarding Services and were holding Service Tax registration Certificate No. AAPFS1992NST001.
3. On the basis of intelligence passed on by the DGCEI, Ahmedabad Zonal Unit, Ahmedabad, which was further developed by the officers of Service Tax (Preventive), Ahmedabad, it was revealed that the respondent was issuing two sets of invoices one for agency charges on which the respondent were paying service tax and another invoice for reimbursement of charges spent for providing the said service on which the respondent did not pay service tax. Accordingly, a Show Cause Notice dated 30.08.2009 was issued to the respondent for recovery of Service Tax under the category of Business Auxiliary Service.
4. The said SCN was confirmed vide OIO No. SD-02/OIO No. 42/2011-12 dated 30.08.2011 but the penalties under section 69 & 78 were dropped. Being aggrieved with the above OIO, the respondent preferred an appeal before Commissioner(A). The Commissioner (A) vide OIA No. 45/2012(STC)/ K.ANPAZHAKAN/Commr(A) upheld the OIO No. SD-02/OIO No. 42/2011-12 dated 30.08.2011. Further, being aggrieved with the above OIA, the respondent filed an appeal alongwith stay petition before Hon'ble CEATAT. Further, vide Hon'ble CEATAT order no. A/1361/WZB/AHD/2012 & S/1885/WZB/AHD/2012 dated 30.08.2012 set aside the OIA No. 45/2012(STC)/ K.ANPAZHAKAN/Commr(A) and remanded the matter back to the original adjudicating authority to consider the issue afresh. In the denovo proceedings, the adjudicating authority has passed the impugned order where the demand of Rs. 2,01,423/- is dropped by following the judgment of Hon'ble Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. V/s UOI.
5. The department has preferred the instant appeal mainly on the following grounds:

- 1) The adjudicating authority erred in placing reliance on the judgment of the Honorable Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd., in as much as, the said judgment has not been accepted



- by the department and SLP has been filed before the Honorable Supreme Court against the said judgment by the department
- 2) The adjudicating authority has also erred in placing reliance on the Tribunal's decision in Order No. A/10900 to 10904/WZB/AHD/2013 dated 09.07.2013 as the said order has been rendered by Tribunal in respect of assessee of this Commissionerate and this Commissionerate has not accepted the said decision of Tribunal and Civil Appeal has been filed before the Honorable Supreme Court against the said decision. The adjudicating authority could have very well transferred the case to "call book" in terms of Board's instructions to transfer those cases to "call book" where the department has filed appeal before higher appellate forums.
 - 3) The Commissioner (A) has erred in not appreciating the provisions of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006.
 - 4) The valuation Rules framed under statutory powers vested in the Central Government has full sanctity of law and there is no reason for comparing the provisions contained the Valuation Rules with Section 67, in as much as, these Rules are part and parcel of the provisions contained in Section 67. Further, Section 67 as amended from 18.04.2006 does not speak about "value of taxable service" but uses the expression "service tax chargeable on any taxable service with reference to its value."
 - 5) The Rule 5 of the Valuation Rules, under which the reimbursable cost of expenditure have been treated as a consideration for the purpose of charging service tax, has all the legal sanctity as the tax liability created by Rule 5 of the Rules is within the ambit of taxability as these rules have been framed under the power conferred by the Section 94 of the Finance Act, 1994, passed by the Parliament.
6. Personal hearing in the appeal was held on 11.02.2015, attended by Smt. Shilpa P. Dave, Advocate on behalf of the respondent. The learned advocate pleaded that the departmental appeal is not maintainable in the judgment of Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. 2013(29) STR 9(Del.) and the impugned order had to be upheld.
7. On going through the entire issue, the then Commissioner (Appeals) noticed that the Tribunal had remanded the case and the adjudicating authority had passed the impugned order on the basis of the decision passed by the Hon'ble High Court of Delhi in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. 2013(29) STR 9(Del.), wherein the Hon'ble High Court has held the Rule 5 of the Service tax (Determination of value) Rules, 2006 as *ultra vires* to the provisions of Section 66 and 67 of the Finance Act, 1994 and held that service tax was not payable on reimbursed expense. The department had not accepted the said decision of Hon'ble High Court of



Delhi and an appeal had been filed before the Hon'ble Supreme Court. Hence, the then Commissioner (Appeals) concluded that the said appeal could not be decided at the quasi judicial stage and accordingly, decided to transfer the said appeal in the call book on 10.04.2015. Further, on 04.07.2018, the case was retrieved from call book as the departmental appeal had been disposed off vide the judgment of Hon'ble Supreme Court No. 2018(10)G.S.T.L.401(S.C.) decided on 07.03.2018 in the case of Union of India V/s Intercontinental Consultants and Technocrats Pvt. Ltd. The relevant portion of the aforesaid judgment is reproduced as follows:

"Undoubtedly, Rule 5 of the Rules, 2006 brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assesseees. As per these Rules, these reimbursable expenses also form part of 'gross amount charged'. Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be enacted in the said manner, as done by Rule 5. As noted above, prior to April 19, 2006, i.e., in the absence of any such Rule, the valuation was to be done as per the provisions of Section 67 of the Act. - para 21

.....High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service..... para 24

This position did not change even in the amended Section 67 which was inserted on May 01, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of subsection (1). Mandate of sub-section (1) of Section 67 is manifest, viz., the service tax is to be paid only on the services actually provided by the service provider. - para 25

It is trite that rules cannot go beyond the statute- para 26

It is also well established principle that Rules are framed for achieving the purpose behind the provisions of the Act, as held in 'Taj Mahal Hotel': 'the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect'. - para 28

In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus



only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. - para 29"

As regards the period covered in the present case is from April, 2008 to March, 2009. Accordingly, as per the verdict of Hon'ble Supreme Court, I find that the respondent is not liable to pay service tax. Hence, I reject the appeal filed by the department.

8. In view of the above discussion in Para 7, the appeals filed by the department are rejected.

9. 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.

U. Shankar

(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

Attested:

S. Dutta
(S. DUTTA) 16/11/18
Superintendent, (Appeals)
Central Tax, Ahmedabad.

BY SPEED POST TO:

- (1) M/s Shree Gayatri Clearing Agency,
502, Sukh sagar Complex,
Near Hotel Fortune Land Mark,
Usmanpura, Ahmedabad
- (2) The Assistant Commissioner,
Division-II, Service Tax.

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad-North (RRA Section).
- (3) The Asstt. Commr(System), CGST, Ahmedabad-North.
(for uploading OIA on website)
- ✓ (4) Guard file
- (5) P.A. file.
- (6) Individual file.

