



# आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

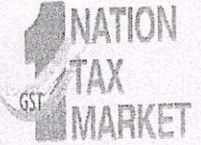
Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ : 079-26305065

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क फाइल संख्या : File No : **V2(ST)89 /North/Appeals/2018-19** **7474/07478**  
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-88-18-19**  
 दिनांक Date : **23-Oct-18** जारी करने की तारीख Date of Issue **6/11/2018**

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-007-18-19** Dated **29-Jun-18** Issued by **Deputy Commissioner** , Central GST , Div-VII , Ahmedabad North.

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

## M/s HCP Design Planning & Management Pvt. Ltd

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 :-

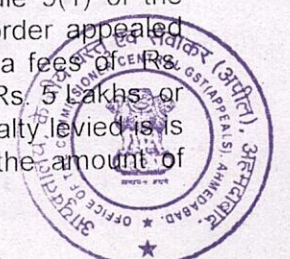
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 प्रतियों (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, 1988 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, बशर्त 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 बशर्त 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**

M/s. HCP Design Planning & Management Pvt. Ltd., Paritosh, Usmanpura, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number CGST/A'bad-North/Div-VII/S. TAX-DC-007-18-19 dated 29.06.2018 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, Central GST, Division-VII, Ahmedabad-North (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants are engaged in providing service that falls under the category of Architect Service and were holding Service Tax Registration number AABCH1843AST002. During the course of audit, it was noticed that the appellants had short paid Service Tax during the years 2011-12, 2012-13 and 2013-14. Accordingly, a show cause notice dated 21.07.2016 was issued to the appellants which was adjudicated by the adjudicating authority. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax amounting to ₹49,80,098/-, under Section 73(1) read with Section 68 of the Finance Act, 1994. The adjudicating authority further, demanded interest under Section 75 at appropriate rate and imposed penalty under Section 78 of the Finance Act, 1994 amounting to ₹49,80,098/-.

3. Being aggrieved with the impugned order, the appellants preferred the present appeal before me. The appellants argued that regarding adjustment in service value due to credit note, as per Rule 6(4A) of the Service Tax Rules, 2002, is allowable even if it has not been shown in the ST-3 return of the impugned period. The appellants further argued that they had followed the practice of showing the net income of the particular month in the ST-3 return i.e. gross billing during the month less credit note issued during the relevant month, taking credit i.e., total Service Tax payable by the appellants less Service Tax recredit available vide Rule 6(4A) of the Service Tax Rule, in the ST-3 return. Regarding the demand of Service Tax on the basis of reconciliation of income with the books of account, the appellants argue that same was done without taking facts. They contended that the reconciliation was not done correctly as the departmental authority did not consider the value of credit note adjusted in service value.

4. Personal hearing in the case was granted on 26.07.2018 wherein Shri Vipul Khandhar, Chartered Accountant, appeared before me, on behalf of the appellants, and reiterated the contents of the grounds of appeal. Shri Khandhar stated that he would submit CA certificate within 2 days which he has done.



5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that the appellants have, in their grounds of appeal, time and again alleged that the adjudicating authority did not consider their submission and the department has grossly erred while quantifying the taxable amount. In this regard, I find that the appellants have failed to submit several required documents before the adjudicating authority. In paragraph 22.4 of the impugned order, it is very clearly mentioned that they had not furnished any documentary evidence in support of their claim. In the same paragraph, the adjudicating authority has quoted the contents of the report submitted by the jurisdictional Range Superintendent wherein it is mentioned that the annexure submitted by the appellants, as calculation sheet, does not match with their own audited books of account and hence could not be correlated. The appellants have not countered this issue in their grounds of appeal. In paragraph 22.6 of the impugned order, the adjudicating authority has quoted that the supporting documents are devoid of signature of the Chartered Accountant except one worksheet. However, the appellants have submitted before me all the documents signed and endorsed by Mehta Shah & Associates, Chartered Accountant (that includes balance sheet, ledgers, payment particulars etc.). The said signed documents need to be verified once again for the sake of justice. Further, I find that the appellants gave a very vague reply on the allegation that the taxable value self declared by the appellants in the ST-3 return was much less than the actual income shown in the books of account, which resulted in the short payment (paragraph 22.7 of the impugned order). This again needs to be verified in light of the signed documents.

6. In view of above, I find that there are lots of ambiguity in the argument of the appellants. Further, whatever contentions they have submitted, are all too away from the actual fact. The appellants have very astutely avoided all those issues that could expose their mala fide. However, the appellants have submitted certain supporting documents which the adjudicating authority rightly rejected without going to their merit. These documents need to be verified once again and the adjudicating authority, along with the JRO, is the best suited person to do justice to the claim of the appellants. Accordingly, I remand the case back to the adjudicating authority for scrutiny of the defense reply of the appellants, once again. The appellants are also hereby directed to present all sort of assistance to the adjudicating authority by providing all the genuine documents, which are presently available with them, during the proceeding for which the case is remanded back.

7. The appeal is disposed off as per the discussion held above.



8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeals filed by the appellant stand disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

CENTRAL TAX (Appeals),  
AHMEDABAD.

ATTESTED

*06/12/18*  
(S. DUTTA)

SUPERINTENDENT,  
CENTRAL TAX (APPEALS),  
AHMEDABAD.



To,  
M/s. HCP Design Planning & Management Pvt. Ltd.,  
Paritosh,  
Usmanpura,  
Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad (North).
- 3) The Dy./Asst. Commissioner, Central Tax, Div-VII, Ahmedabad (North).
- 4) The Asst. Commissioner (System), Central Tax, Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.



11/11/11

