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



कंद्रीय 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)235 /North/Appeals/2018-19 / 10930 to 10939

ख अपील आदेश संख्या : Order-In-Appeal No..<u>AHM-EXCUS-002-APP-17-19-20</u>

दिनाँक Date : <u>22/05/2019</u> जारी करने की तारीख Date of Issue <u>04/06/2</u>0/9

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

Arising out of Order-in-Original No. AHM-SVTAX-000-ADC-019-15-16 Dated 08/03/2016 Issued by Additional Commissioner , Central GST , Div-VII (AR-V) , Ahmedabad North.

अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

M/s Commandant, CISF (ONGC)

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर

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 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 विरूद्ध 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 सार्वजिनक क्षेत्र बैंक के न्यायपीठ के सहायक रिजस्ट्रार के नाम से रेखांकित बैंक ट्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/— फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या जुर्माना रूपए 5 लाख या उससे ज्यादा है वहां 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 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 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 service tax & interest demanded & penalty levied is more than fifty Lakhs rupees in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees in the form of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees in the form 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. 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)(

आयुक्त, सहायक / उप आयुक्त अथवा अधिक्षिक केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

उसमें से प्रमाणित प्रति होगी) और अपर

(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 शर्तो पर अनुसूची—1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 6.50/— पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।
- 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.
- 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।
- 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.
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 —

- धारा 11 डी के अंतर्गत निर्धारित रकम
- सेनवैट जमा की ली गई गलत राशि (ii)
- 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 होगे।
- 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:

- amount determined under Section 11 D; (i)
- amount of erroneous Cenvat Credit taken; (ii)
- 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.
- 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।
- 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.

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष: 26305065

ORDER-IN APPEAL

This appeal has been filed by The Commandant, CISF (ONGC), Sabarmati, Ahmedabad-380005 (hereinafter referred to as "the appellant") against the Order-In-Original No. AHM-SVTAX-000-ADC-019-15-16 dated 08.03.2016 (hereinafter referred to as the "impugned order") passed by the Additional Commissioner, Central Excise, Ahmedabad (hereinafter referred to as the 'Adjudicating Authority").

- 2. Briefly stated the facts of the case are that during the audit of the appellant, it was found that they had short paid service tax by not including medical expenses reimbursement, telephone expenses, reimbursement of miscellaneous expenses, facility of vehicle and maintenance, residential /office accommodation to the appellant and on account of reconciliation of accounts between ONGC and the appellant amounting to Rs. 26,04,159/-. Accordingly a show cause notice dtd. 10.10.2014 was issued to the appellant. The Adjudicating Authority, vide the impugned order confirmed the demand of service tax with interest and also imposed penalty of equal amount under Section 78 of the Finance Act, 1994 (for brevity "the Act").
- 3. Being aggrieved by the impugned order, the appellants have filed this appeal and have contended that;
 - a) The adjudicating authority has failed to appreciate the provisions of Section 66 and 67 of the Act as in the valuation of the taxable service, only the service actually provided by the service provider can be valued and assessed to service tax and not in any case expenditure and costs would be included in the valuation of taxable services;
 - b) That the validity of Rule 5 (1) of the Service Tax (Determination of Value) Rules, 2006 have been held ultra vires to the Sections 66 and 67 of the Act by the Delhi High Court in the case of Continental Consultants and Technocrats Pvt. Ltd. vs. Union of India on the ground that such inclusion travels beyond the scope of such sections. This case has been upheld by the Hon'ble Supreme Court cited at 2018 (10) bGSTL-401;
 - c) That the CESTAT in their own case in final order No. 70053/2019 dtd. 09.01.2019 has held in favour of the appellant;
- 4. Personal hearing in the case was held on 09.05.2019 wherein Shri Uday Joshi and Prabha Prasad, both advocates, appeared on behalf of the appellants and reiterated the grounds of appeal and submitted that the appeal is delayed by 1039 days.

- 5. I have carefully perused the documents pertaining to the case and the arguments and evidences submitted by the appellants along with the appeal.

 I have also considered the arguments made by the appellants during personal hearing and seen the documents submitted by the appellants.
- 6. I find that while perusing the appeal memorandum in prescribed form, the appellant have stated in their application for condonation of delay that there is a delay in filing of appeal due to reasons beyond control of the applicant and it is not intentional. I find that as per sub-Sections (3) of Section 85 of the Act relating to Service Tax, an appeal before Commissioner (Appeals) shall be filed within 2 months. But the proviso under these sub sections (3) carves out an exception whereby the Commissioner (Appeals) can condone a delay upto a further period of one month, if sufficient cause is shown. In the instant case as evident from the appeal memorandum, I find that the appeal has been filed with a delay of 1039 days which is far beyond the time limits prescribed in sub-Sections (3) and provision thereof of Section 85 of the Act. I therefore find that this appeal cannot be entertained and is accordingly rejected for contravention of provisions of Section 85 of the Act without going into merits of the case.
- 7. The appeal is disposed off accordingly.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है!

(उमा शंकर)

3018) m

केंद्रीय कर आयुक्त (अपील्स) अहमदाबाद

दिनांक:

सत्यापित

(धर्मेंद्र उपाध्याय) अधीक्षक (अपील्स), केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To:

The Commandant,
CISF (ONGC), ONGC Head Quarters,
Chandkheda Road,
Kalpananagar-Nigamnagar,
Chandkheda,
Ahmedabad-382424

Copy To:-

- 1. The Chief Commissioner, Central Excise, Ahmedabad zone.
- 2. The Commissioner, CGST, Ahmedabad (North).
- 3. The Dy./Asst. Comm'r, CGST, Division- VII, Ahmedabad (North).
- 4. The Assistant Commissioner, System- Ahmedabad (North)
- 5. Guard File.
 - 6. P.A. File.

