



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)11/North/Appeals/2019-20 / 10994 to 10998

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-002-APP-23-19-20

दिनांक Date : 23/05/2019 जारी करने की तारीख Date of Issue 04/06/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No. AHM-SVTAX-000-JC-035-16-17 Dated 21/03/2017 Issued by Joint Commissioner , Central GST , Div-Now I , Ahmedabad North.

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

M/s Ahmedabad Municipal Corporation

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 :-

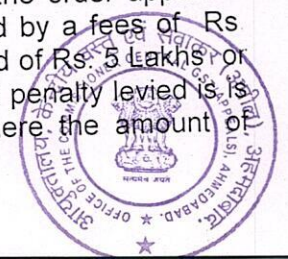
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघानी 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34फ 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 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

M/s. Ahmedabad Municipal Corporation (AMC), Sardar Patel Bhavan, Danapith, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against the Order-in-Original number AHM-SVTAX-000-JC-035-16-17 dated 21.03.2017 (*hereinafter referred to as 'impugned order'*) passed by the then Joint Commissioner, Service Tax, Hqrs., Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants are engaged in providing various taxable services like Selling of Space or Time Slots for Advertisement, Renting of Immovable Property Services, Mandap Keeper Service and were holding Service Tax Registration number AAALA0024CST005. In the course of CERA audit, it was noticed that the appellants had collected and shown Service Tax, in their books of account, under the above mentioned service categories but failed to pay the said amount for the year 2008-09 to 2012-13. On further scrutiny of documents it appeared that the appellants had collected an excess amount of Service Tax during the above mentioned period. Therefore, a show cause notice dated 18.10.2013 were issued to them which was adjudicated vide the above mentioned impugned order by the adjudicating authority. The adjudicating authority confirmed demand of ₹ 87,75,095/- under Section 73 of the erstwhile Finance Act, 1994. He also ordered to pay interest under Section 75 and imposed penalties under Sections 77(2) and 78 of the erstwhile Finance Act, 1994.

3. Being aggrieved with the impugned orders the appellants have preferred the present appeal. The appellants have submitted that the allegation of excess collection of Service Tax is not correct. They stated that the actual collection as per books of accounts was ₹ 8,69,23,030/- against the alleged ₹ 10,48,43,908/-. In support of their claim, they have enclosed Service Tax ledger accounts of various services. They further pleaded that AMC is an entity under the control of Government of Gujarat and does not belong to any individual who would like to evade tax to earn profit.



4. Personal hearing in the matter was granted and held on 17.05.2019. Shri Tushar Shah, Chartered Accountant, appeared before me and reiterated the contents of appeal memo. He stated that the submission of the appellants has not been considered and hence, requested to remand back the case to the original adjudicating authority.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellant. To begin with, I find that there has been a delay occurred in filing the appeal by the appellants. The impugned order was issued on 21.03.2017 and the appellants have filed the claim on 18.04.2019. Thus, I find that the appellants have filed the appeal after a lapse of more than two years. The Government has provided certain facilities, time to time, for the convenience of the assessee. Knowingly or unknowingly, if one fails to comply with the Service Tax provisions, then there are rules to facilitate the assessee under certain terms and conditions. Assessee, if not satisfied with the demand, may prefer appeal to the higher authorities [in this case, the Commissioner/Principal Commissioner (Appeals)] **within 2 months** from the date of receipt of order from such adjudicating authority. The Commissioner/Principal Commissioner (Appeals) **may** allow a further period of only **1 month**, if sufficient cause for late filing of appeal is shown and proved to him. In the present case, the appellants have claimed to have received the impugned order on 20.02.2019 and have claimed, in their statement of facts, that since they had not received the impugned order on time, they had submitted a request before the concerned authority to deliver the same. They claimed that they had filed the appeal only after they received a copy of the impugned order and that is why the delay has occurred. However, I have found a letter (issued from F. No. V/Misc/15-21/OA-I/2016 dated 20.02.2019) from the Additional Commissioner, CGST, Ahmedabad-South addressed to the appellants. In the said letter it has been categorically informed to the appellants that the impugned order was dispatched to them on 21.03.2017. Further, they had paid the amount confirmed, on 17.07.2018 and, the Additional Commissioner asked the appellants that when they had



not received the impugned order, how they have paid the said amount without any kind of verification. I also agree with the Additional Commissioner because, the appellants, being a state government entity, would not have paid the amount demanded in absence of the impugned order.

6. Thus, I find that there has been a considerable delay, on the part of the appellants, to file the appeal and the said time gap is outside my purview to condone. In view of the above, I reject the appeal on the ground of limitation itself without going to the merit of the case.

7. In view of above, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.

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.

उमाशंकर
(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

(S. DUTTA) 27/05/19
(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.

To,

M/s. Ahmedabad Municipal Corporation (AMC),
Sardar Patel Bhavan, Danapith,
Ahmedabad- 380 001

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-North.
3. The Dy./Asst. Commissioner, Central Tax, Div-I, Ahmedabad-North.
4. The Assistant Commissioner (System), HQ, Ahmedabad-North.
- ✓ 5. Guard file.
6. P.A file.





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