



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

टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)208 /North/Appeals/2018-19 | 10940 to 10944
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-002-APP-30-19-20
दिनांक Date : 28/05/2019 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. GST/D-VI/O&A/07/Sankalp/AC/RJ/18-19
Dated 25/01/2019 Issued by **Assistant Commissioner** , Central GST , Div-VI ,
Ahmedabad North.

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

M/s Sankalp Organisers 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:-

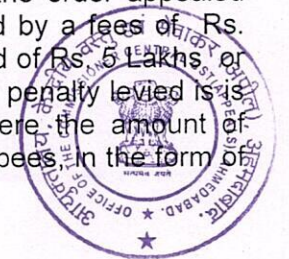
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 39F 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 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.

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065



ORDER IN APPEAL

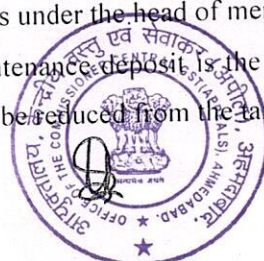
This appeal has been filed by M/s. Sankalp Organisers Pvt. Ltd. Sankalp House, Behind Rajpath Club, Opp. Satyam House, Off. S.G. Road, Ahmedabad - 380054 [for short – ‘appellant’] against OIO No. GST/D-VI/O&A/Sankalp/AC/RJ/18-19 dated 25.01.2019 [for short – impugned OIO], passed by the Assistant Commissioner, CGST, Division VI, Ahmedabad North Commissionerate [for short – ‘adjudicating authority’].

2. The brief facts of the case are that the appellants was engaged in providing Residential Construction services defined under Section 65(105)(zzzh) of the Finance Act, 1994 and were receiving advances from their customers and in some cases, the appellant sold the flats to their customers without receiving full consideration of the flats and had received the consideration after the sale of flats. During the course of audit it was found that the appellant failed to pay the Service Tax at the prescribed rate on the amount received by them, consequently a show cause notice was issued proposing a demand of Service Tax of Rs. 38,42,770/- on amount of Rs. 3,27,89,546/- for the period 2010-11 to 2013-14, April-2014 and July – 2014, alongwith interest and penalty. The said notice was adjudicated by the Assistant Commissioner vide OIO No. STC/22/KM/AC/D-III/16-17 dated 23.02.2017 in which demand of Rs. 33,26,569/- was confirmed alongwith interest and penalty and the demand for the rest of amount was dropped as the B.U. permission for a flat received on 24.06.2014 wef 10.04.2014, therefore payment of Rs. 42,00,000/- received on 17.04.2014 was entitled for exemption from the payment of service tax and the appellant was eligible for deduction of the income shown in the head VAT, Stamping Fee and refund made to party received from the flat owners. The said OIO was challenged before the Commissioner (Appeals) and the matter was remanded back vide OIA No. AHM-EXCUS-002-APP-119-17-18 dated 30.10.2017 for consideration of service tax liability of the amount claimed by the appellant as being unsecured loan amounting of Rs. 5,71,20,202/-.

3. The adjudicating authority passed the impugned order confirming the demand confirmed vide the OIO No. STC/22/KM/AC/D-III/16-17 dated 23.02.2017 on the ground that despite giving sufficient opportunity to the appellant, they failed to give their submissions.

4. Feeling aggrieved, the appellant has filed the present appeal on the following grounds:

- The department has not taken factual fact in to account and added the member receipts received after B.U. permission, on which service tax is not liable and the demand was raised by the department without looking to the factual data & details, so demand on the basis of the reconciliation is not sustainable, for which they relied upon various case laws;
- The appellant had taken unsecured loans of Rs. 5,71,20,202/- during the impugned period but by mistake the accountant had shown such receipts under the head of member;
- The appellant further contended that the maintenance deposit is the reimbursement of expenses received from the members and same needs to be reduced from the taxable value; and



- V2(S1)208/NORTH/APP/19/20
- As there is no suppression, willful misstatement on the part of the appellant penalty cannot be imposed on the appellant and also the entire demand is time barred.

5. A personal hearing was conducted on 08.05.2019 in the present appeal wherein Shri Vipul Kandhar appeared on behalf of the appellant and reiterated the grounds of appeal and requested for remanding back the matter to the adjudicating authority as they were not given natural justice.

6. On going through the facts of the present appeal, I find that the impugned order was passed without giving sufficient opportunity to the appellant.

7. In view of the foregoing, without going into the details of the appeal, I remand back the matter to the adjudicating authority with a direction to pass a fresh order considering the grounds mentioned above and giving sufficient opportunity in view of the natural justice. The appellant is directed to submit their submission before the adjudicating authority within 15 days of the receipt of this order.

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

उमा शंकर
(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : 28.05.2019

Attested

Vinod
(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

By RPAD.

To,

M/s. Sankalp Organisers Pvt. Ltd.
Sankalp House,
Behind Rajpath Club,
Opp. Satyam House, Off. S.G. Road,
Ahmedabad – 380054

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad North Commissionerate.
3. The Assistant Commissioner, Central Tax Division- VI, Ahmedabad North Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
5. Guard File.
6. P.A.

