



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

☎: 079-26305065

☎फैक्स: 079 - 26305136



क फाइल संख्या : File No : V2(ST)63/North/Appeals/2019-20 / 11407 to 11411

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP- 75 -19-20

दिनांक Date : 08/07/2019 जारी करने की तारीख Date of Issue 10/07/2019

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/02/satyam/AC/AMP/17-18
Dated 13/05/2019 Issued by Assistant Commissioner , Central GST , Div-VI ,
Ahmedabad North.

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

M/s Satyam Developers Limited

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 :-

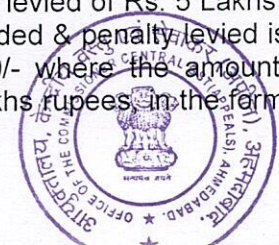
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, 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 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



- (b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल है ।
- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (न.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो ।
- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (१) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए । उसके साथ खाता इ. के मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए ।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (२) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए ।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-
Appeal to Customs, Excise & Service Tax Appellate Tribunal:-

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/35E of CEA, 1944 an appeal lies to:-

- (क) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and



ORDER IN APPEAL

This appeal has been filed by M/s. Satyam Developers Ltd., 1, Satyam House, Behind Rajpath Club, S.G. Highway, Ahmedabad-380 059 [for short – ‘appellant’] against OIO No. GST/D-VI/O&A/02/Satyam/AC/AMP/19-20 dated 13.05.2019, passed by the Assistant Commissioner of Goods & Service Tax, Division-VI, Ahmedabad-North Comm’rate, Ahmedabad [for short – ‘adjudicating authority’].

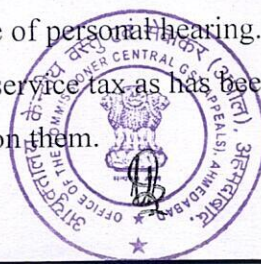
2. A show cause notice dated 31.03.2017 was issued by the Assistant Commissioner, GST, Ahmedabad *inter alia*, proposing to demand total service tax amount of Rs.1,19,844/- (Rs.52,450/- on GTA Service + Rs.67,394/- on Security Service) under Reverse Charge Mechanism for the period 2012-13 to 2013-14 along with interest and further proposing penalty under sections 76, 77 and 78 of the Finance Act, 1994. The said notice was adjudicated vide OIO No. GST/D-VI/O&A/AC/04/KM/17-18 dated 28.12.2017 and the demand was confirmed alongwith interest and imposition of penalty. Being aggrieved with the OIO, the appellant filed an appeal before this authority which was decided by this authority vide OIA No.Ahm-Excus-002-407-17-18 dated 23.04.2018 by remanding it back to the adjudicating authority for a fresh speaking order. The adjudicating authority passed the OIO dated 13.5.2019 afresh, and confirmed the demand along with interest and further imposed penalty under Section 77 and 78 of the Finance Act, 1994 upon the appellant.

3. Feeling aggrieved the appellant has filed this appeal on the grounds :

- that they have already submitted the reconciliation of the same [a table provided by the appellant in their appeal on page-16 & 17];
- that they relied upon certain case laws;
- that if service tax is paid under RCM, the same is eligible for cenvat, so there is revenue neutral situation;
- that SCN covers the period of 01.04.2012 to 31.03.2014 and SCN is issued on 31.03.2017 which is time-barred as there is no suppression;
- that there is no suppression or wilfull mis-statement on their part and hence penalty under Section 78 is not imposable;
- that no reason has been shown for imposition of penalty under Section 78;
- that the penalty is not imposable under Section 77;
- that no case has been made out that the demand of service tax is on account of fraud, collusion, wilfull mis-statement, suppression of facts or contravention of any of the provisions of act or rules, hence no interest or penalty under Section 76 & 78 can be imposed;

4. Personal hearing in the case was held on 03.07.2019 wherein Shri Vipul Khandhar, Chartered Accountant appeared on behalf of the appellant. He reiterated the grounds of appeal and submitted that tax has been paid and they are not contesting for that. He further stated that the demand is on reconciliation basis and RCM, which is revenue neutral hence penalty should not be imposed.

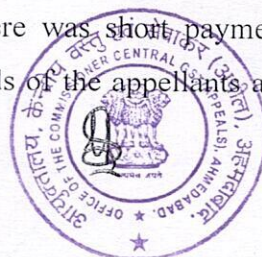
5. I have gone through the facts of the case, the grounds raised in the appeal, and the oral submissions made during the course of personal hearing. I find that the issue to be decided is whether the appellant is liable to pay service tax as has been held by the adjudicating authority and whether penalty can be imposed upon them.



6. The facts of the case clearly revealed that the demand of service tax has been made on the basis of the figures appearing in the financial records of the appellant and the figures shown by the appellant in its ST-3 returns. Since the figures shown in financial records of the appellant was higher in comparison to the figures shown in its ST-3 returns, demand was raised on the differential net taxable amount which left service tax payment after due reconciliation. The Annexure-I and Annexure-II of the SCN shows the calculation for that. At page-16 and 17 of the appeal memorandum, the appellant has provided the calculation made by them regarding their service tax liability in this respect and has contended that the appellant has submitted the reconciliation. However, no documents were produced by the appellant which substantiate their claim of correctness of the figures shown in such calculation. Further the appellant has not produced anything regarding the calculation that has been produced by them before the adjudicating authority when the case was remanded back to the adjudicating authority. The appellant also failed to show how the calculation of the department is wrong/incorrect and the calculation made by them is correct. The appellant is in the service tax regime since 2011, and also paying service tax under RCM. So they are well aware with the service tax payment towards service under RCM. If the audit team arrived at some point that there is some service tax liability under RCM which is left for compliance, the appellant had the opportunity to get some clarity from the audit team and then get more clarity from their consultant/CA. However, the appellant has just put a calculation sheet regarding the reconciliation of their service tax liability under RCM but did not bring out specifically how the reconciliation made by them is correct and the reconciliation made by the Department/Audit Team is incorrect. Therefore I am not convinced with the stand raised by the appellant that the service tax liability does not exist.

7. A system has been incorporate in the law regarding the RCM wherein the recipient of the service is liable to pay the service tax and then they are allowed to take the cenvat credit for such amount of service tax paid by them under RCM. Therefore, the revenue neutrality as availment of cenvat credit on payment of service tax under RCM, cannot become the ground for the appellant to avoid payment of service tax under RCM. Had it been so, the Government would not have introduced the mechanism of service tax payment under RCM and its cenvat availment. It is there to help any assessee to first pay the due service tax under RCM and then avail the cenvat credit so as to enable the assessee to utilize the same towards its service tax liability. Therefore revenue neutrality cannot become the ground in general. It can be accepted in a peculiar set of circumstances as accepted by the Hon'ble Tribunals / High Court or the Apex Court in various cases. But this does not mean that appellant can take a plea on this basis. As I have already cleared that had it been so, there was no need to incorporate the system of service tax payment under RCM and then allowing the same as credit in the law. However, the amount has already been paid by the appellant and they have also not pressed for it in the present case. Therefore I refrain from any further discussion in the matter.

8. The facts of the case reveals that there was short payment of service tax on account of the figures reflected in the financial records of the appellants and the figures shown



by them in their ST-3 returns. The things came to the knowledge of the Department only when the audit of the financial records of the appellant was carried out. Had the appellant been genuine, he could have done the reconciliation, and could have paid the service tax on such differential amount (if any) by its own. However, the appellant remain silent till the audit took place. Since the service tax liability has been arised after reconciliation by the audit team, it is clear that the amount has not been reflected correctly in the ST-3 returns. Over and above, the resulted short payment continued for a long period of time as even after a period of more than 4 years, the service tax payment was not made and was made only after the point raised by the audit team. It clearly shows that concealment of facts exist in this case. When there is any concealment / mis-statement / wilfull suppression / fraud, there is provision in the law which makes the Department eligible to invoke extended period and cover the period upto 5 years. Therefore the appellants stand that the period covered under SCN from 01.04.2012 is time barred as the SCN has been issued on 31.03.2017 is not correct as the SCN has been issued on 31.03.2017 by invoking extended period of 5 years which is well within the time-limit.

9. The issue regarding the service tax liability of the appellant is confirmed in view of the discussion in para-6 and 7 supra. Since the demand is upheld, the recovery of interest is also upheld in view of the Section 75 of the Finance Act, 1994.

10. Now regarding the second issue of penalty under Section 77 and 78, I find that penalty under Section 77 can be imposed only when there is contravention of rules and provisions of Act for which no penalty is specified elsewhere. In the instant case the appellant failed to assess their service tax liability correctly and also failed to show the correct figures in their service tax return. Therefore, the adjudicating authority has correctly imposed penalty under Section 77 of the Finance Act, 1994. The penalty under Section 78 can be imposed on account of fraud / mis-statement / suppression of facts / concealment etc. Since the demand is upheld under extended period, the adjudicating authority has rightly imposed the penalty under Section 78 of the Finance Act, 1994.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeal filed by the appellant stands disposed of in above terms.

Uma Shankar

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Attested

Jitendra Dave
10/07/19

(Jitendra Dave)
Superintendent (Appeals),
CGST, Ahmedabad.



BY R.P.A.D.

To,

M/s. Satyam Developers Ltd.,
1, Satyam House, Behind Rajpath Club,
S.G. Highway, Ahmedabad-380 059

Copy To:-

1. The Chief Commissioner, CGST, Ahmedabad Zone .
2. The Commissioner, CGST, Ahmedabad North Comm'rate, Ahmedabad.
3. The Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad North, Ahmedabad.
4. The Assistant Commissioner(Systems), CGST, Ahmedabad.
- ✓ 5. Guard File.
6. P.A. File

