



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.

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क फाइल संख्या : File No : V2(ST)51/EA-2 /North/Appeals/2018-19 12521 to 12524

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-87-18-19

दिनांक Date : 30/09/2019 जारी करने की तारीख Date of Issue 10/10/19

श्री गोपी नाथ, आयुक्त (अपील) द्वारा पारित

Passed by Shri Gopi Nath Commissioner (Appeals)

ग Arising out of Order-in-Original No CGST/A'bad-North/Div-VII/S.TAX-AC-04-18-19 Dated 02/11/2018 Issued by Assistant Commissioner, Central GST, Div-VII, Ahmedabad North.

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

## M/s Sharma Cars 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 :-

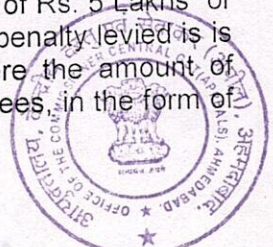
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

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 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 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

*as file*



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, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 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.



**ORDER-IN-APPEAL**

The Asstt. Commissioner of Central Tax, Division-VII, Ahmedabad North Comm'rate, (hereinafter referred to as the 'Department') in view of the Review Order No.67/2018-19 dated 28.02.2019 issued by the Principal Commissioner of CGST & Central Excise, Ahmedabad has filed this appeal against the Order-in-Original No.CGST/A'bad-North/Div-VII/S.Tax-AC-04-18-19 dated 02.11.2018 (hereinafter referred to as the "*impugned order*") passed by the Asstt. Commissioner of Central Tax, Division-VII, Ahmedabad North Comm'rate (hereinafter referred to as the "*adjudicating authority*") in case of M/s. Sharma Cars Pvt. Ltd., 'Florence', Near Mount Carmel Junction, Ashram Road, Ahmedabad-380009 (hereinafter referred to as the "*respondent*").

2(i). The facts of the case in brief are that the respondent is an authorized dealer for sale & service of Hyundai brand cars and sale of spares /accessories. The respondent is holding Service Tax Registration for providing taxable service. On the basis of prior information, it was learnt by the office of Directorate General of Goods & Service Tax Intelligence, Ahmedabad Zonal Unit, Ahmedabad (hereinafter referred to as the '*DGGI*') that the respondent are collecting 'Handling & Logistic Charges' from their customers viz. buyers of the vehicle over and above 'ex-showroom price' of the vehicle to meet miscellaneous post sale expenses for hassle free smooth delivery and to meet the expenses like cost of fuels, pre-sale stock godown charges, interest cost of inventory holding etc. on the vehicle. Therefore an investigation initiated against the respondent and a statement of Shri Prakashkumar H. Thakkar, Internal Auditor & Authorized Signatory (hereinafter referred to as the '*AS*') of the respondent was recorded in this respect, under which the AS stated that 'Ex-showroom Price' of the car is the price at which they sell a car to Retail Customers which includes their margin, transportation costs and applicable Excise, State Taxes and Octroi Charges. The AS also stated that 'On-road Price' is the Final Price payable by the customer to them which include State Registration Charges (by RTO), Life Time Road Tax payment (by Municipal Corpn.) Mandatory Insurance and their Handling & Logistic Charges. He further explained that the Handling Charges are recovered towards the expenses incurred by them on the motor vehicles from the date of its receipt from the manufacturer to the date on which the said vehicle is sold to the customer. These charges also cover the amount collected to facilitate customer for hassle free delivery, cost of fuels, pre-sale stock godown charges, interest cost of inventory holding etc. The AS submitted that the handling & logistic charges are not post sale service but are charged at the time of sale & delivery.



2(ii). The investigation ended up into the conclusion that the handling & logistic charges collected by the respondent from the customers over & above the ex-showroom price appears to be post-sale facility and fall under taxable service as it is not falling under the negative list defined under the Finance Act, 1994. Thus a Show Cause Notice dated 13.04.2018 (hereinafter referred to as the 'SCN') in this respect was issued by the Dy. Director of DGGI to the respondent proposing demand of Service Tax amounting to Rs.17,64,664/- under Section 73(1) by invoking extended period alongwith interest under Section 75 of the Finance Act, 1994 on the handling & logistic charges amounting Rs.1,35,68,000/- collected by the respondent during the period from 01.07.2012 to 30.09.2016. The SCN also proposed the penalty upon the respondent under Section 76, 77 and 78 of the Finance Act, 1994.

2(iii). In the adjudication, the adjudicating authority dropped the demand on the following grounds :

(a) that there is no service to buyers as these charges are pre-sale stage and VAT department collected the VAT on such handling charges and therefore the same are related with the sale of motor vehicle;

(b) that CBEC in the Circular No.96/7/2007-ST dated 23.08.2007 has clarified that the service tax is not leviable on a transaction treated as sale of goods and subjected to levy of sale tax/VAT; that this circular also stated that the payment of VAT/sales tax on a transaction indicates that the said transaction is treated as sale of goods;

(c) that Circular No.699/15/2003-CX dated 05.03.2003 states that any activity of sales dealer at the pre-sale stage or at the time of sale will not come under the purview of service tax.

(d) that he find force in the case law of M/s. Automotive Manufacturers Pvt. Ltd. v/s. CCE, Nagpur reported in 2015(38)STR 1191 (Tri-Mum.), relied upon by the respondent;

(e) that the handling charges collected by the respondent are pre-sale expenses in relation to sale of cars and duly certified by the Chartered Accountant of the respondent; that also the VAT authorities have recovered total 15% VAT on value of such handling charges by holding them as part of value of goods;

(f) that following case law relied upon (i) extended period can not be invoked on mere failure to pay duty as held [M/s. Prayagraj Dyeing & Printing Mill Pvt. Ltd. v/s. UOI (2013(290)ELT 61(Guj)]; (ii) information not required to be supplied under law if not supplied does not amount to suppression [M/s. Apex Electricals Pvt. Ltd. v/s. UOI (1992(61)ELT 413(Guj)]; (iii) mere omission to disclose the correct information not a suppression of facts unless it was deliberate to escape from payment of duty [M/s. Pushpam Pharmaceuticals Co. v/s. Collector of CE, Bombay (1995(78)ELT 401(SC)]

3. Aggrieved with the impugned order, Department preferred this appeal on the following grounds :

(a) that the respondent has paid VAT for the year 2012-13 to 2013-14 and upto 31.05.2014, however the period covered in the matter is from 01.07.2012 to 30.09.2016; that as such period from June, 2014 to 30.09.2016 is ignored in the impugned order;

(b) that the Chartered Accountant has issued Certificate for the period upto 31.05.2014 only;



(c) that the adjudicating authority has not quantified the period of payment of sales tax/VAT.

4. In response to the appeal filed by the Department, the respondent has submitted in his written submission as under :

(a) that 'handling charges' are nothing but the chargers collected towards various pre-sale expenses incurred by the respondent in relation to sale of cars and duly certified by their Chartered Accountant and accordingly service tax is not leviable on such charges;

(b) that the demand is barred on the ground of limitation;

(c) that the adjudicating authority has correctly held that the respondent have not provided any service to buyers against such handling charges and when no service is provided the question of levy of service tax does not arise;

(d) that trading of goods is clearly covered under the negative list and adjudicating authority has correctly held that the charges are related with the sale of motor vehicle;

(e) that though they have paid VAT upto the period of 31.05.2014 but they state that once the principal issue is decided that there is no element of service provided and when VAT authorities have recovered VAT, the view as applicable for the period upto 31.05.2014 would apply for the subsequent period also;

5. Hearing in this case was held on 20.08.2019 wherein Dr. Nilesh V. Suchak, Chartered Accountant represented the respondent and submitted the submission for consideration.

6. I have carefully gone through the facts of the case, grounds of appeal in the appeal memorandum and the various plea putforth in the appeal memorandum and during personal hearing. The issue to be decided in the present case is whether the handling & logistic charges are part of sale price liable to VAT or to be treated as service charges liable to service tax.

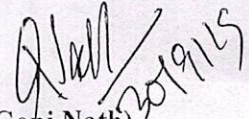
7. The facts of the case reveal that the respondent is selling cars to the buyers and also carrying out services of the cars. They receive the cars from the car manufacturer and incur some expenses towards maintenance of the car stock and then collect some charges towards it from the buyer when the buyer buy the car. I did not find any service in this activity of the respondent and the respondent even collect these charges at the time of sale. So at no stretch of imagination, this could be treated as a post-sale activity but the same is definitely a pre-sale activity. Not only the chartered accountant has certified that the VAT has been paid on such charges but the adjudicating authority has also held that the activity comes under the purview of sale. Even the department in its appeal at para 20 has stated that VAT authority has issued notice for payment of VAT. Thus, once the activity of the respondent is considered as sale the same can not be termed as service at a later stage. Whether the respondent has paid the VAT or not on such sale or charges later on, will not make the activity of the



respondent to be considered as service later on. So the question of demand of service tax on such charges does not arise.

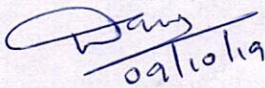
8. I find that the CBEC in the Circular No.96/7/2007-ST dated 23.08.2007 has clarified that the service tax is not leviable on a transaction treated as sale of goods and subjected to levy of sale tax/VAT. The same circular also stated that the payment of VAT/sales tax on a transaction indicates that the said transaction is treated as sale of goods. Circular No.699/15/2003-CX dated 05.03.2003 of the CBEC, in its last para has made it clear that any activity of sales dealer at the pre-sale stage or at the time of sale will not come under the purview of service tax. After this, there is no ambiguity in deciding that the activity of the respondent does not come under the purview of service. When the activity of respondent is not treated as service, the question of any levy of service tax on such activity does not arise. Therefore I uphold the impugned order in respect of drop of demand of service tax and reject the contention raised by the department. Since the demand has been set aside, the question of charging interest on such demand and imposition of penalties under Section 76, 77 and 78 of the Finance Act, 1994 does not arise.

9. I view of the above findings, I reject the appeal filed by the Department. The appeal filed by the Department stands disposed off in above terms.

  
( Gopi Nath )  
Commissioner (Appeals)

Date: .09.2019

Attested



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



**BY R.P.A.D. / SPEED POST TO :**

M/s. Sharma Cars Pvt. Ltd.,  
'Florence', Near Mount Carmel Junction,  
Ashram Road, Ahmedabad-380009

**Copy to :-**

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Principal Commissioner/Commissioner, CGST & Central Excise, Ahmedabad North Comm'rate.
3. The Addl./Joint Commissioner, (Systems), CGST & Central Excise, Ahmedabad North Comm'rate.
4. The Dy. / Asstt. Commissioner, CGST & Central Excise, Division-7, Ahmedabad North Comm'rate.
5. Guard file.
6. P.A. File.