



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)10/North/Appeals/2019-20/12892 T012897**
ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP- 95 -19-20**
दिनांक Date : **29/10/2019** जारी करने की तारीख Date of Issue **04/11/2019**

श्री गोपी नाथ, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Gopi Nath** Commissioner (Appeals)

ग Arising out of Order-in-Original No. **AHM-SVTAX-000-JC-036-16-17** 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 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 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 accompanied 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 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 भेजी 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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 है -

- (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.

By Speed Post

दूरभाष : 26305065



ORDER-IN-APPEAL

This appeal has been filed by M/s Ahmedabad Municipal Corporation, Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No.AHM-SVTAX-000-JC-036-16-17 dated 21.03.2017 [hereinafter referred to as "impugned order"] passed by the Joint Commissioner of Service Tax, Ahmedabad [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant are engaged in providing taxable service viz Selling of Space or Time slots for advertisement; Renting of immovable Property service; etc. Based on CERA audit, a show cause notice dated 18.10.2013 was issued to the appellant, alleging that they had shown Rs.3,02,66,099/- in their ST-3 Return under the head of 'Rent from immovable property service' as against Rs. 7,64,72,327/- in books of account , during the period from 2008-09 to 2012-13 which resulted short payment of service tax of Rs.51,79,281/-. The show cause, therefore, proposes recovery of short payment of service tax with interest and imposition of penalty under Section 76, 77 and 78 of Finance Act, 1994 (FA). The adjudicating authority, vide impugned order, has confirmed the recovery of short payment of service tax with interest and imposed penalty of Rs.51,79,281/- under Section 78 and Rs.10,000/- under Section 77(2) of FA and refrained from imposing penalty under Section 76 of FA.

3. Aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- the department cannot invoke extended period in the instant case as all the information were available with them while issuing first show cause notice on the basis of audit.
- Extended period also cannot be invoked as there is no fraud, collusion, willful mis-statement, suppression of facts; that they are an entity under the control of Government of Gujarat and not an individual. Therefore, it cannot be imagined that the Government itself involved in suppression of fact etc.
- They relied on various case laws in support of their above arguments.
- the value service considered in the instant case includes service to a religious body, educational body, residential property/accommodation which are out of ambit of service tax; that it also includes deposit amount which was received from tenants and it is over and above the amount of rent received and should not be considered as rent income chargeable to service tax.

4. Hearing in the matter was held on 20.08.2019. Shri Tushar Shah, Chartered Accountant appeared for hearing and reiterated the submissions of appeal memo and submitted ledger accounts of service tax in respect of renting of immovable property and chellan in proof of service tax.



5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The limited issue to be decided in the matter is relating

[i] short payment of service tax in respect of service viz "Renting of Immovable Property" rendered by the appellant to various customers during 2008-09 to 2012-13; and

[ii] whether extended period is invocable in the instant case.

6. Before going into the merit of the case, I find that the appellant has filed the instant appeal on 18.04.2019 against the impugned order dated 21.03.2017, stating that they have only received the impugned order on 20.02.2019 vide letter No.V/Misc/15-121/OA-1/2016. From the correspondence made between the department and appellant, I find that the department could not furnish evidence of delivery of impugned order to the appellant. Accordingly, the date of receipt of order as claimed by the appellant is accepted as date of communication and there is no delay in filing of appeal.

7. As regards [i] above, I find that there is no dispute regarding taxability in respect of the service rendered by the appellant. The appellant disputed that they collected only Rs.45,54,55/- towards the service in question during the relevant periods and not collected service tax in respect of service rendered to religious body, educational body, residential property/accommodation and deposit amount received from tenants as the services rendered to such body are out of ambit of service tax; that the department has included all such value in the taxable value, hence short payment of service tax amounting to Rs.51,79,281/- demanded. They also contended that extended period cannot be invoked in this case.

8. I find that the adjudicating authority has also not disputed that the service rendered to religious body, educational body, residential property/accommodation and deposit amount received from tenants are taxable. As regards short payment of service tax in question, the adjudicating authority has stated that the appellant has not given any evidence to claim that they have rendered services to religious body, educational body, residential property/accommodation etc, till the adjudication of the case, though the show cause notice was issued on 18.10.2013. I find that the adjudicating authority has considered the income of Rs.7,64,72,327/- shown in the ledgers as actual income received against the service in question and confirmed the short payment of Rs.51,79,281/-, in absence of any such evidence to support the claim of appellant regarding non-taxable income. In such circumstances, I do not find any error in the action of adjudicating authority. I find that even after three years from issuing show cause notice, the appellant is not able to give any details, evidence or bifurcation of value of service rendered to religious body, educational



body, residential property/accommodation etc. For claiming any exemption from tax, it is the responsibility of the appellant to furnish details of such exemption availed. In the absence of such particular documents/details, which is required for the satisfaction of the adjudicating authority, exemption from payment of service tax cannot be granted. Further, the appellant is also not in position to furnish such details before Appellate Authority either while filing the appeal memo or at the time of personal hearing. I find that as the appellant has failed to prove that they have rendered service to educational body etc. supra. Therefore, the appellant is liable to pay service tax in respect of value mentioned in their ledger account as confirmed by the adjudicating authority. Therefore, I uphold the impugned order of the adjudicating authority so far as the merit of the case concerned.

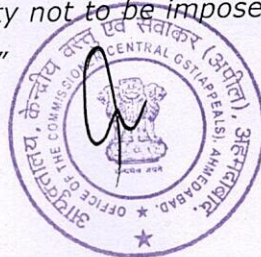
9. As regards [ii] above, the appellant vehemently argued that no extended period is invocable in their case as they are under the control of Government of Gujarat and not an individual. They relied on following cases:

1. Municipal Corpn. Rajajmunday [2017 (5) GSTL 78-Tr. Hyd]
2. Brihammumbai Municipal Corporation [2017 -TIOL-1846-CESTAT-Mum]
3. Karad Nagar Parishad [2019 (20) GSTL 288-Tri Mumbai]

10. The appellant is a Municipal Corporation under the control of Government of Gujarat. As contended by the appellant, the Government would not evade any tax to corner profit in its business activity. In the case of Municipal Corpn. Rajajmunday supra, I find that the Hon'ble Tribunal held that the appellants being statutory bodies, they cannot be held to have suppressed facts with any intent to evade payment of tax. The relevant para is as under:

"With regard to dispute of renting of immovable property service, the learned advocates for the appellants have conceded the tax liability for the normal period. In any case, there cannot be any dispute on taxability on this score when the said activity is not being shown to be covered by any exclusion or exemption from service tax thereof. We therefore hold that this activity will definitely be leviable to service tax but only for the normal period of limitation. However for the periods beyond the period of limitation in all these cases, notwithstanding the protestations of the learned ARs to the contrary, we are of the opinion that appellants being statutory bodies, they cannot be held to have suppressed facts with any intent to evade payment of tax. At the most, there would be some confusion or delay in understanding their liability to discharge service tax on that matter where a particular activity would be liable for service tax but certainly not accusations of suppression or wilful misstatement with intent to evade tax. In arriving at this conclusion, we are fortified by the decision of this Tribunal in Birhanmumbai Municipal Corporation v. CST, Mumbai-I [2017-TIOL-1846-CESTAT-MUM], in which decision one of us was a Member."

In Karad Nagar Parishad's case supra, the Hon'ble Tribunal of Mumbai held that- Assessee, Government Municipal Corporation and not individual " Government not to be involved in suppression of fact with intent to evade Service Tax - Being non-existence of mala fide intention, penalty not to be imposed - Penalties imposed set aside - Section 78 of Finance Act, 1994."



11. I find that there are catenas of decisions, apart from above, holds that extended period cannot be invoked in respect of non-payment of Service Tax on service rendered by Government statutory body. I rely on following decisions.

1. KARAD NAGAR PARISHAD [2019 (20) G.S.T.L. 288 (Tri. - Mumbai)]
2. RAJDHANI KRISHI UPAJ MANDI SAMITI [2019 (24) G.S.T.L. 623 (Tri. - Del.)]
3. KRISHI UPAJ MANDI SAMITI [2017 (4) G.S.T.L. 346 (Tri. - Del.)]

12. Looking into the decisions supra, I find merit consideration in the contention of the appellant. Government cannot be involved itself in suppression of fact with intent to evade any service tax. Being non-existence of *mala fide* intention extended period involved in the instant case is not sustainable and not correct. Considering these backgrounds and the status of the appellant as a Government organization, I find that the ingredients for invoking demand for extended period are not present in the instant case. Accordingly, the demands raised shall be restricted to normal period only. I find that the period involved in the instant case is from 2008-09 to 2012-13. Period of 18 months is applicable for raising demand under normal period during relevant period.

13. In view of above discussion, I set aside the demand raised for extended period and restrict the demand with interest and imposition of penalty thereof to normal period only. Since the demand with interest and penalty is to be determined for normal period, I find appropriate to remand the matter for doing so.

14. The appeal stands disposed of in above terms.

(Gopi Nath)

Commissioner (Appeals)

Date : .10.2019

Attested

(Mohan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.

By RPAD.

To,
M/s Ahmedabad Municipal Corporation,
Sardar Patel Bhavan, Danapith
Ahmedabad

Copy to:-

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone .
2. The Commissioner, CGST, Ahmedabad North.
3. The Joint Commissioner of CGST, Ahmedabad North
4. The Assistant Commissioner, System, CGST, Ahmedabad North
4. The Assistant Commissioner, CGST, Division I, Ahmedabad North
5. Guard File.
6. P.A.

