
	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,	7 th Floor, Central Excise Building,	
केंद्रीय कर शुल्क अंकन	Near Polytechnic,	
सातवीं मंजिल, पॉलिटेक्निक के पास,	Ambavadi, Ahmedabad-380015	
आम्बावाडी, अहमदाबाद-380015		
☎ 079-26305065		टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)0216/A-II/2016-17 / 1475 to 1479

ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-001-APP-102-17-18**

दिनांक Date : 29-09-2017 जारी करने की तारीख Date of Issue 10-10-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No **STC/06/KM/AC/D-III/15-16** Dated **16.11.2016**
Issued by Assistant Commr **STC**, Service Tax, Ahmedabad

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

M/s. Surya Construction Co.
Ahmedabad

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 मैन्टल 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 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 A2I9K 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 (सीस्तेत) 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 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.



ORDER-IN-APPEAL

M/s Surya Construction Company, 2/C, Hasubhai Park, Nr. Jodhpur Village, Satellite, Ahmedabad (hereinafter referred to as 'the appellant') has filed this appeal, against OIO No. STC/06/KM/AC/D-III/15-16 dated 16.11.2016 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Division-III, of the erstwhile Service Tax Commissionerate, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

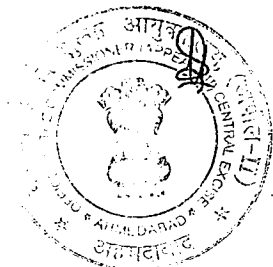
2. Based on an audit objection, two show cause notices dated 22.10.2012 and 17.4.2013, were previously issued to the appellant, demanding duty under Goods Transport Agency. Thereafter, based on verification of records i.e. ST-3 returns filed with the department and scrutiny of the balance sheet, it was observed that though the appellant had declared nil value for Goods Transport service in the returns, they had shown expenditure of an amount of Rs. 30,79,010/- under the head transportation charges on which no service tax was paid. Therefore, in terms of Section 73(1A), of the Finance Act, 1994, a show cause notice was issued demanding service tax of Rs. 95,111/- for GTA service for the period from April 2014 to March 2015, under Section 73(1) of the Finance Act, 1994 along with interest. The notice further proposed penalty on the appellant under sections 76.77 and 78 of the Finance Act, 1994. This show cause notice was adjudicated vide impugned OIO dated 16.11.2016, wherein the adjudicating authority confirmed the demand along with interest and further imposed penalty under sections 76 and 77 of the Finance Act, 1994.

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

- that the appellant was purchasing material from supplier on FDR basis; that while transporting such material suppliers were availing service of individual owner tanker holder;
- that if the truck is provided by a goods transport operator or owner himself, there would be no service tax;
- that they would like to rely on the case of Hemraj Gordhandas [1978(2) ELT J.350(SC)];
- that agency in GTA should be construed as an agent; that agency being absent when a truck owner or operator gives a truck without an agent being a go between, there can be no tax;
- that the appellant has never availed any service from GTA;
- that in none of the bill the details of transportation charges, kilometer to be transported and place of origin to destination is mentioned;
- there were no ingredients of transportation but only supply of material during the course of trade;
- that the matter is revenue neutral since if the appellant would have paid tax he is eligible for CENVAT;
- that they would like to rely on the case of Popular Vehicles and Services Limited [2010(18) STR 493], D R Agarwal Infracon [2010(18) STR 39] and Sakthi Auto Components [2009(14) STR 694];
- that penalty cannot be imposed under section 76 and 77 as there is no short payment of service tax;

4. Personal hearing in the matter was held on 7.9.2017 wherein Shri Vipul Kandhar, CA, appeared on behalf of the appellant and reiterated the grounds of appeal. He further stated that the earlier OIA was in their favour and that he would submit its copy within seven days. However, till date the copy of the said OIA has not been submitted.

5. I have carefully gone through the facts of the case on records and submissions made by the appellant. The issue to be decided in the present appeal is whether the appellant is liable for service tax under GTA in respect of the expenditure shown towards *transportation charges* in the books of account for the FY 2014-2015.

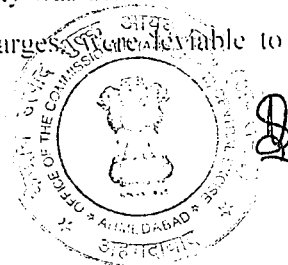


6. As per Section 65(50(b)) of the Finance Act, 1994, a *goods transport agency* means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. The taxable service as per Section 105(zzp) is any service provided or to be provided to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage. Further Rule 4B of the Service Tax Rules, 1994, states that any goods transport agency which provides service in relation to transport of goods by road in a goods carriage, shall issue a consignment note to the recipient of service. Hence, for any transaction to be liable to tax, it should be taxable service as defined above. However, the essential requirements for taxability are:

- (i) the transaction should amount to service;
- (ii) that the service should be provided or to be provided to any persons by a GTA;
- (iii) it should be in relation to transportation of goods by road;
- (iv) it should be in a good carriage.

7. Now moving on to the dispute, the appellants contention is that that they were purchasing material from supplier on FOR basis: that while transporting such material suppliers were availing service of individual owner: that since the trucks were provided by a goods transport operator or owner himself there would be no service tax: that the appellant has never availed any service from GTA: that in none of the bill the details of transportation charges, kilometer to be transported and place of origin/destination is mentioned: there were no ingredients of transportation but only supply of material during the course of trade. I find that the adjudicating authority has based his findings on the ledger accounts with some sample invoices submitted by the appellant. The observations as listed in respect of certain sample accounts and invoices reveal that the invoices in certain cases were from transport company; that in certain cases the gross amount charged was less than rupees seven hundred fifty and hence was exempted from service tax under notification No. 34/2004-ST dated 3.12.2004. Based on this sample, I find that the adjudicating authority has curtailed the demand from Rs. 95,111/- to Rs. 58,241/-, without any detailed explanation for the curtailment. No reasons are provided in the impugned OIO as to why penalty proposed under Section 78 was not imposed. The case laws relied upon by the appellant have also not been discussed.

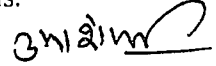
8. Since this notice was issued in terms of Section 73(1A) of the Finance Act, 1994, it would have been prudent if the adjudicating authority had discussed the fate of the earlier show cause notices. While nothing is known in respect of the notice issued on 17.4.2013, as far as the notice dated 22.10.2012 is concerned, after delving into the records, I find that the notice dated 22.10.2012 was adjudicated vide OIO No. 6/STC-AIID(AS)/2013-14 dated 13.6.2013, which was set aside vide OIA No. AHM-SVTAX-000-APP-352-13-14 dated 19.2.2014. The adjudicating authority instead of basing his findings merely on samples, should have undertaken a detailed exercise of verification of each and every invoices on which duty was demanded under GTA and then given his findings as to whether the transportation charges were liable to service tax under GTA.



9. Since facts are not clear, and a detailed exercise leading to quantification of the revised demand which stands confirmed, is not clear. I have no option but to remand it back to the original adjudicating authority, to pass a detailed order taking into consideration my findings above. Needless to state the adjudicating authority will also examine as to why periodical notice was issued although the demand was set aside by the OIA dated 19.2.2014. Further, the adjudicating authority is directed to give detailed findings on [a] whether the transportation expenses are taxable in terms of my observations in para 6. supra; [b] examine the expenses, invoice wise, so as to arrive at a conclusion that the expenses are taxable or otherwise; [c] discuss the citations relied upon by the appellants and [d] pass a detailed speaking order after adhering to the principles of natural justice.

10. In view of the foregoing, the OIO is set aside and the matter is remanded back to the original adjudicating authority to pass an order in terms of para 9. supra.

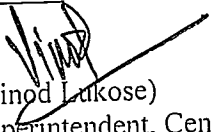
11. अपीलकर्ता द्वारा दर्ज अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in the above terms.


(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date: 29/09/2017

Attested


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

By R.P.A.D.

To,
M/s Surya Construction Company,
2/C, Hasubhai Park. Nr. Jodhpur Village,
Satellite. Ahmedabad

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad.
2. The Principal Commissioner of Central Tax, Ahmedabad-I.
3. The Additional Commissioner, Central Tax (System), Ahmedabad-I.
4. The Assistant Commissioner, Central Tax, Division-VII, Ahmedabad-I.
5. Guard File.
6. P.A.

