


<b>केन्द्रीय कर आयुक्त (अपील)</b>		
<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b>		
केंद्रीय कर शुल्क भवन मातृमार्गमजिले पोलिटिकलिक के पास आम्बावाडी, अहमदाबाद-380015		Floor: Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
079-26305065		टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)0290/A-II/2016-17 / 1020 to 1024  
 ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-001-APP-117-17-18  
 दिनांक Date : 24-10-2017 जारी करने की तारीख Date of Issue 3-11-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No STC/21/KM/AC/D-III/16-17 Dated 16.02.2017  
 Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

**M/s. Shree Maruti Travels Pvt. Ltd**  
**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 :-

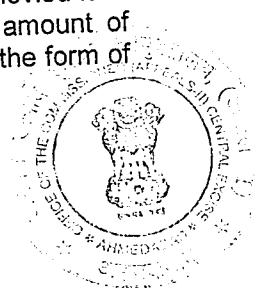
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, 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 और लगाया गया जुर्माना रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 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 A219k 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 39क 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,

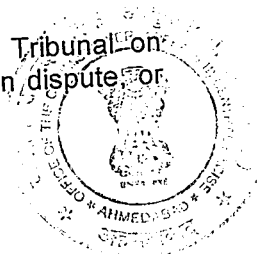
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

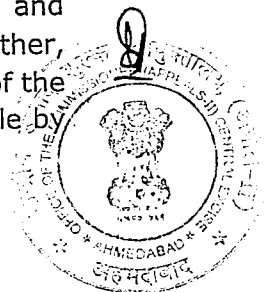


### ORDER IN APPEAL

M/s. Shree Maruti Travels, 28, Manglay Shopping Centre, nr. Anjali Char Rasta, Vasna, Paldi, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against Order-in-Original number STC/21/KM/AC/D-III/2016-17 dated 16.02.2017 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants are engaged in providing services under the categories of 'Rent-a-cab Scheme Operator Service, Maintenance or Repair Service and Business Support Service' and hold Service Tax registration number AAFFS9195PST001. During the course of audit, it was noticed that the appellants were providing Rent-a-cab service to M/s. Intas Pharma Ltd. by renting of buses for transportation of their employees. It was further noticed that the appellants had entered into an agreement with M/s. Intas Pharma Ltd. for running their buses for a consideration for transportation of the employees of M/s. Intas Pharma Ltd. by employing driver and conductor at their own. It was also the responsibility of the appellants to keep the buses in condition. Thus, the service provided by the appellants to M/s. Intas Pharma Ltd. in respect of the buses owned by the latter under the agreement falls under the category of 'management, Maintenance or Repair Service'. On further verification, it was also noticed that the appellants were raising a consolidated bill on monthly basis for providing both the services. For both the services, the appellants were raising the bills under Rent-a-cab service and availing abatement @ 60% on the gross value. Thus, it was alleged that the appellants were wrongly availing the benefits of Notification number 26/2012-ST dated 20.06.2012 and Notification number 30/2012-ST dated 20.06.2012 as both the notifications were applicable only to the Rent-a-cab service and not the management, maintenance or repair service. On being pointed out, the appellants agreed to the objection and paid Service Tax on 60% of the value of the said service (the abated value). However, they did not pay Service Tax on the balance 40% of the value of service. Thus, a show cause notice, dated 01.08.2016, was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax amounting to ₹ 18,32,871/- under Section 73 of the Finance Act, 1994 and ordered to appropriate the amount of ₹ 10,99,733/- already paid by the appellants. He further ordered for payment of interest under Section 75 of the Finance Act, 1994 and ordered for appropriation of ₹ 5,23,289/- already paid by the appellants. The adjudicating authority further imposed penalty under Sections 77 and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. They stated that the impugned order is a non-speaking one as the adjudicating authority has overlooked all the submissions made by the appellants. The appellants stated that the impugned order has held that the appellants were providing only management, maintenance or repair service whereas, actually they are providing rent-a-cab service alongwith the above service. They argued that as per Notification number 26/2012-ST dated 20.06.2012, abatement of 60% is granted to rent-a-cab service and the Service Tax is payable only on 40% of the taxable value. Further, Notification number 30/2012-ST dated 20.06.2012 provides that 100% of the Service Tax payable on the abated value on rent-a-cab service is payable by

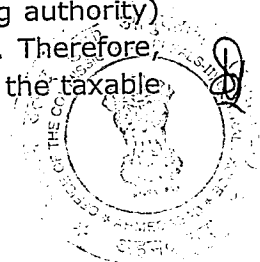


the service recipient under Reverse Charge Mechanism. Thus, as the client of the appellants has already paid Service Tax on 40% of taxable value of rent-a-cab service, the appellants were not liable for payment of Service Tax on the same.

4. Personal hearing in the matter was granted and held on 06.10.2017. Ms. Priyanka Kalwani, Advocate, appeared before me on behalf of the appellants and reiterated the contents of appeal memo. Additional submissions and various judgments were also tabled before me, by her, during the course of hearing.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that the appellants were engaged in providing services to M/s. Intas Pharma Ltd. under the categories of "Rent-a-cab Service" and "Management, Maintenance or Repair Services". This is made clear in paragraphs 2, 2.1 and 2.2 of the impugned order. In fact, in paragraph 2 of the impugned order, it is very categorically mentioned that on verification of records, the audit officers noticed that the appellants were providing rent-a-cab service to M/s. Intas Pharma Ltd. In paragraph 2.2 of the impugned order, it is clarified that the service provided by the appellants in respect of the buses owned by M/s. Intas Pharma Ltd., falls under the category of management, maintenance or repair service. As the appellants were issuing consolidated monthly bills showing rent-a-cab service, they were not paying Service Tax on 60% of the total value (considering it to be abated value) and on the rest 40%, M/s. Intas Pharma Ltd. were paying the Service Tax under Reverse Charge Mechanism as per Notification number 30/2012-ST dated 20.06.2012. Now, there remains one unanswered question which is, whether, the Service Tax on 60% of the total value, paid by the appellants, is the 100% Service Tax liability payable by them on 'Management, Maintenance or Repair Services' or otherwise. It is possible that the remaining 40% may be having some amount of Service Tax pertaining to Management, Maintenance or Repair Services. The adjudicating authority, in the Discussion and Finding part, has totally ignored the service of rent-a-cab and demanded the remaining Service Tax considering the service to be Management, Maintenance or Repair Services. Whereas, the appellants have argued that the remaining 40% exclusively is the rent-a-cab value. Neither the appellants have submitted any evidence in support of their claim nor has the adjudicating authority shown any quantification to prove that the appellants have not paid the entire Service Tax due. The appellants have definitely opted the modus with intention to suppress the facts by preparing consolidated bill under the category of Rent-a-cab service. By doing so, they have tried to evade payment of Service Tax and if the modus was not detected by the audit team, the appellants would have continued with the activity of evasion of duty.

6. In view of the above, I consider that the adjudicating authority has rightly demanded Service Tax on the remaining 40% of the total value of service provided by the appellants. However, it is not clear as to how much of the above 40% is part of the management, maintenance or repair service as neither of the party (the appellants as well as the adjudicating authority) could provide any convincing evidence in support of their claim. Therefore, the case is fit to be remanded back for a proper quantification of the taxable value.



7. In light of the above discussion, I remand back the matter to the present adjudicating authority to decide the case afresh. The adjudicating authority should issue a speaking order which should clearly quantify the dutiable value, on the part of the appellants, out of the total value. The appellants are hereby directed to provide, before the adjudicating authority, all the documents, they want to rely upon, to prove that they are no longer further liable for payment of Service Tax once they have already paid ₹ 10,99,733/-. The appeal filed by the appellants stands disposed off on the above terms.

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

8. The appeal filed by the appellants stands disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

CENTRAL TAX (Appeals),  
AHMEDABAD.

ATTESTED

*S. DUTTA*  
(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.

To,

M/s. Shree Maruti Travels,

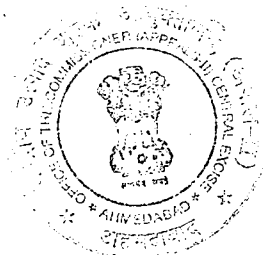
28, Manglay Shopping Centre,

Nr. Anjali Char Rasta, Vasna, Paldi,

Ahmedabad-380 007.

**Copy to:**

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Ahmedabad (South).
- 3) The Dy./Asst. Commissioner, Central Tax, Division-VII (Satellite), Ahmedabad.
- 4) The Asst. Commissioner (System), Central Tax, Hq., Ahmedabad (South).
- 5) Guard File.
- 6) P. A. File.



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