

 केन्द्रीय कर आयुक्त (अपील)	 भारतीय आयुक्त (अपील)
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केन्द्रीय कर शुल्क भवन, सातवां मजिल, पॉलिटेक्निक पास, आम्बावाडी, अहमदाबाद-380015	
7-Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015	
079-26305065	
टेलफ़ोन 079-26305136	

क फाइल संख्या : File No : V2(ST)0193/A-II/2016-17 / 10465 to 10469
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-001-APP-150-17-18
दिनांक Date : 17-11-2017 जारी करने की तारीख Date of Issue 06-12-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No STC/113/N-Ram/AC/D-III/11-12 Dated
24.03.2012 Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

M/s. Chetak Umakant Kaku

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 :-

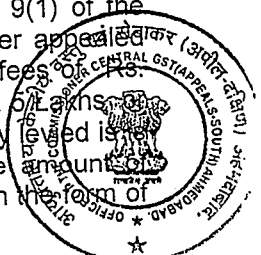
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, 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 is less, Rs.5000/- where the amount of service tax & interest demanded & penalty 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 (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 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,

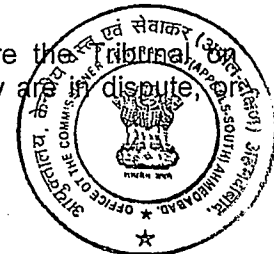
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 the condition of payment of 10% of the duty demanded where duty or duty and penalty are in dispute, where penalty alone is in dispute.



ORDER-IN-APPEAL

M/s. Chetak Umakant Kaku, C-602, Swaminarayan Avenue, Anjali Cinema Char Rasta, Vasna, Ahmedabad (*hereinafter referred to as 'the appellants'*) has filed the present appeal against Order-in-Original No. STC/113/N-Ram/AC/D-III/11-12 dated 24.03.2012 (*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 were engaged in the activity of helping the prospective customers to get personal loans and credit cards from the Banks (Private/nationalized Banks) through M/s Suram Finance but worked independently. During audit of the appellants by the CERA, it was found that they had shown commission income of Rs. 16,06,955/- in their income tax return for the year 2006-07 but neither they had obtained registration with Service Tax nor had paid service tax of Rs. 1,96,691/- on the commission income. Accordingly, a show cause notice was issued to the said applicant demanding service tax totaling to Rs. 1,96,691/- with interest and penalty was also proposed. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax amounting to Rs. 1,96,691/- under Section 73 (1) of the Finance Act, 1994 alongwith interest and imposed penalty of equal amount of demand under Section 78 of the Finance Act, 1994 and imposed separate penalties under various Sections of the Finance Act, 1994 as detailed in the impugned order.

3. Being aggrieved with the impugned order, the appellants filed the present appeal on the following grounds:

- (a) That it was wrong to include amount of remuneration received for distribution to the team members;
- (b) That it was wrong to deny them the benefit of threshold exemption available up to Rs. 10,00,000/-;
- (c) That it was not proper to invoke larger period of five years;
- (d) That they were not given sufficient opportunity of being heard;
- (e) That it was wrong to demand interest and impose penalties;
- (f) That it was wrong to ignore provisions of Section 80 for waiver of penalties;

4. Personal hearing in the case was granted on 19.07.2017, 18.08.2017, 06.09.2017 and the last opportunity for personal hearing was given on 06.10.2017 but the appellants have not appeared for personal hearing and therefore I am of the view that the appellants are not interested in



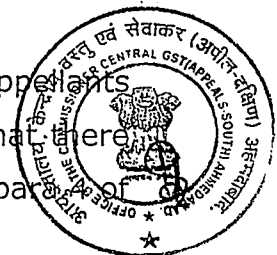
opportunity for personal hearing provided to them and proceed to decide the case on the basis of available records and contentions given in their appeal memorandum.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum. I find that the appellants have been provided many opportunities to present their case in person but they have chosen not to avail of it and therefore there is no other option but to decide the case. While perusing the documents related to the case, I find that during the initial enquiry before issuance of show cause notice, the appellants had never responded to the communications sent by the department and it was only after summons under Section 14 of the Central Excise Act, 1944 that they appeared once for recording their statement. Even they did not appear for personal hearing before the adjudicating authority in spite of many letters so I do not agree with the contention of the appellants that they were not given any opportunity of personal hearing and natural justice has been denied to them.

6. Now, in this appeal, I find that the main issue to be decided is whether it was right to demand service tax on the commission received by the appellants which they received and did not obtain registration with the Service Tax department. I have carefully gone through the definition of Business Auxiliary Service given in Section 65 (19) of the Finance Act, 1994 and there is no doubt that they were engaged in the service on behalf of others and they have received commission for the service provided by them but have chosen not to obtain registration and have not paid the applicable service tax thereon. I find support from the case cited in 2016 (44) S.T.R. 140 (Tri. - All.) in the case of Ved Automotives Vs. Commissioner Of Central Excise, Kanpur.

7. Now I consider the argument raised by the appellant that they were denied benefit of provisions of Section 80 of the Finance Act, 1994 for waiver of penalties. I have gone through the case records right from the show cause notice stage and I am unable to find any reason put forth by the appellants supported by documentary evidences which supports their claim for waiver of penalty under Section 80 of the Finance Act, 1994. I therefore find no reason to interfere with the impugned order.

8. Now as far as the defence arguments given by the appellants regarding invoking larger period and imposition of penalty, I find that there is mention of correspondence with the appellants in the para 3 and para



the show cause notice dtd. 24.09.2012 which has culminated into the impugned order. From the observations and the details of correspondence with the appellants, it is obvious that they were frequently intimated about their service tax liability and obligation to fulfill statutory requirements but they have chosen not to follow any statutory obligations cast upon them by the Finance Act, 1994 and therefore their contentions about larger period and imposition of penalties cannot be accepted. It is a willful act on the part of the appellants not to follow the statutory requirements.

8. in view of the above facts and evidences, I am unable to find any reason to interfere with the impugned order and accordingly I reject the appeal.

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

The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर
(उमा शंकर)

आयुक्त (अपील्स)
केन्द्रीय कर, अहमदाबाद.

ATTESTED

धर्मेन्द्र उपाध्याय
(धर्मेन्द्र उपाध्याय)
अधीक्षक (अपील्स),
केन्द्रीय कर, अहमदाबाद.

BY R.P.A.D.

To,

M/s. Chetak Umakant Kaku,
C-602,
Swaminarayan Avenue,
Anjali Cinema Char Rasta,
Vasna, Ahmedabad

Copy To:-

1. The Chief Commissioner, CGST, Ahmedabad zone, Ahmedabad.
2. The Commissioner, CGST, Ahmedabad (South).
3. The Aast./Dy Commissioner, CGST, Div-VII(Satellite), Ahmedabad (South).
4. The Assistant Commissioner (systems), CGST, Ahmedabad (South).
5. Guard File.
6. P.A. File.



