

<b>केन्द्रीय कर आयुक्त (अपील)</b>	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX	7 <sup>th</sup> Floor, Central Excise Building
केन्द्रीय कर शुल्क भवन	Near Polytechnic
सातवीं मंजिल, पॉलिटेक्निक के पास	Ambavadi, Ahmedabad-380015
आम्बावाडी, अहमदाबाद-380015	टेलफोन नं. 079-26305136
079-26305065	टेलफैक्स नं. 079-26305136

क फाइल संख्या : File No : **V2(ST)0289/A-II/2016-17 / 10576 to 10581**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-166-17-18**

दिनांक Date : 20-11-2017 जारी करने की तारीख Date of Issue 08-12-17

**श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित**

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

ग Arising out of Order-in-Original No **STC/13/KM/AC/D-III/16-17** Dated **10.01.2017**  
Issued by Assistant Commr **STC**, Service Tax, Ahmedabad

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

**M/s. Paavan Remeshbhai Trivedi**

**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 मेंटल 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 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 फॉर्म 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 43 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्त 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 बशर्त 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,

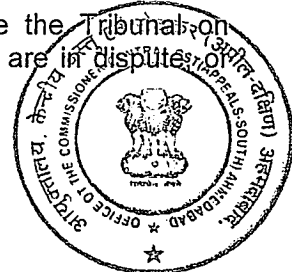
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

This order arises out of an appeal filed by Shri Pavaan Rameshbhai Trivedi, Pritam Nagar First Slope, Opp. UCO Bank, Ellisbridge, Ahmedabad-380006 (in short 'appellant') against Order – in - Original No. STC/13/KM/AC/D-III/16-17 dated 10.01.2017 (in short 'impugned order') passed by the then Assistant Commissioner, Service Tax Division-III, Ahmedabad (in short 'adjudicating authority').

2. Briefly stated that on the basis of intelligence gathered, premises of the appellant was searched on 31.01.2007 and 20 summons were issued to during the span of two years to provide documents such as ST-3 returns, Challans, Profit & Loss Accounts, Balance Sheets, Bank Statement etc. for the period 2003-04 to 2007-08 and found that they had provided services of 'Tour Operator', 'Rent-a-cab' and 'Business Auxiliary Service' but failed to file ST-3 return and pay service tax. Hence, a show cause notice dtd.20.04.2009 was issued which was adjudicated by the adjudicating authority vide impugned order under which demand of service tax of Rs.32,122/- (Rent-a-cab Rs.28,785/- + Business Auxiliary Service Rs.3,337/-) along with interest was confirmed under Section 73(1) and 75 of the Finance Act, 1994 respectively; imposed penalty of Rs.5000/- under Section 77ibid; imposed penalty of Rs.32,122/- under Section 78ibid with a option to pay equal to 25% of demand confirmed if the same is paid along with interest within 30 days of receipt of the impugned order..

3. Aggrieved with the impugned order, the appellant filed the present appeal wherein, *inter alia*, they submitted that:

- (a) they have completely paid demand along with interest prior to issue of SCN. Therefore, demand under section 73(1) and penalties under Section 77 and 78 of the Finance Act, 1994 do not survive and deserve to be quashed.
- (b) the adjudicating authority has failed to adjust the amount paid on 31.03.2009 against confirmed demand.
- (c) SCN is bad in law under Section 73(3) which expressly bars the issuance of SCN if the duty along with interest is paid and informed to appropriate officer of central excise.
- (d) benefit of section 80 could have been provided as they were under bonafide belief that they are not liable to pay service tax under the head 'Rent-a-Cab Service' and 'Business Auxiliary Service'.
- (e) they do not have any business of rent-a-cab. There may be one or two incidents where a cab is given on rent to a friend or relative with whom they share personal relation.
- (f) they do not have any business auxiliary service. They merely used to purchase air tickets from IATA members and sell the same to the customers. The difference between purchase and sale price is their earnings.

*[Handwritten Signature]*



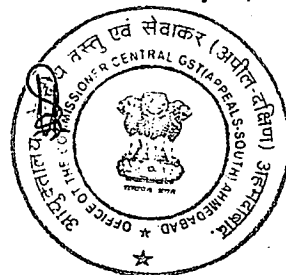
4. Personal hearing in the matter was held on 06.10.2017. Shri HIRAK GANGULY, Advocate, appeared on behalf of the appellant and re-iterated the grounds of appeal and pleaded that SCN is time-bar and not very clear.

5. I have carefully gone through the appeal memorandum, submissions made at the time of personal hearing, relevant provisions of law and evidences available on records. I find that main issue to be decided is whether the SCN dtd.20.04.2009 issued to the appellant is time-bar and deserves to be quashed or otherwise. Accordingly, I proceed to decide the case on merits.

6. At the out-set, I find that the appellant has contested they have paid demand alongwith interest prior to issue of SCN and therefore demand under section 73(1) and penalties imposed under Section 77 and 78 of the Finance Act, 1994 do not survive and deserve to be quashed. In this regard, I find that that appellant has paid confirmed demand alongwith interest on 31.03.2009 whereas the SCN is issued on 20.04.2009, however, I do not find any documentary evidences on records having informed to the adjudicating authority in this regard as required under Section 73(3)ibid. Hence, plea of the appellant is not tenable. Moreover, when there are suppression and mis-statement of facts such benefits are not available.

6.1 As regards plea of the appellant for issue of SCN being time-bar, I find that though they had obtained service tax registration on 08.02.2006 as 'Tour Operator', undertook services of providing 'Rent-a-cab' and earned commission from selling air-tickets, failed to ascertain correct value of services provided, failed to file ST-3 returns and pay appropriate service tax to govt. ex-chequer. There is hardly any misconduct and suppression and violation of statute under the Finance Act, 1944 which they have not done. This act on the part of appellant is violation of provisions contained in Section 70ibid. This fact is admitted by the appellant in his statement dated 31.01.2007 and 17.12.2008 given under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. Hence, because of suppression of this material fact, extended period under the provisions of Section 73(2)ibid is invocable. As such, SCN issued on 20.04.2009 covering the period from October-2003 to March-2008. is well within the frame wok of law and not hit by limitation.

6.2 As regards imposition of penalties under Section 77 and 78ibid, I find that the appellant has affirmed in his statements recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 on 31.01.2007 and 17.12.2008 regarding non-payment of service tax under 'Rent-a-cab service' and 'Business Auxiliary Service' and not retracted till payment of confirmed demand and before issue of subject SCN at any point of time. This act on their part clearly indicates their intention to evade the service tax. Hence, I find that penalty imposed under Section 77 and 78ibid is just, legal and proper.



6.3 As regards plea of the appellant regarding adjustment of amount paid on 31.03.2009 against the confirmed demand against said 'Rent-a-cab service' and 'Business Auxiliary Service' vide impugned order, I find that there is no evidences on records having intimation given by the appellant to the adjudicating authority in this regard. I find that if had it been intimated, it should have been appropriated against the confirmed dues. However, since the said confirmed dues are already paid, it is deemed to have been appropriated.

6.4 As regards claim of benefit of section 80 by the appellant, I find that under provisions of section 80ibid, onus lies on the appellant to prove that they had reasonable cause for short/non payment of service tax under the category of 'Rent-a-cab' and 'Business Auxiliary Service' at the relevant time. I find that there is no evidence on records in this regard so as to extend the benefit of section 80ibid to the appellant. On the contrary, I find that the appellant have repeatedly created hindrance in the investigation by not co-operating with the deptt. In the paragraph 4 of the impugned SCN, it is mentioned that 20 summons had to be issued over a period of 22 months (from 07.02.2007 to 05.11.2008) just to obtain documents.

7. In view of the above discussion and findings, I reject the appeal filed by the appellant and uphold the impugned order.

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

*(Handwritten Signature)*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested:

*(Handwritten Signature)*  
30/11/17

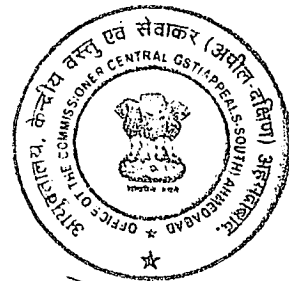
(B.A. Patel)  
Superintendent(Appeals)  
Central Tax, Ahmedabad.

**BY SPEED POST TO:**

Shri Pavaan Rameshbhai Trivedi,  
Pritam Nagar First Slope, Opp. UCO Bank,  
Ellisbridge, Ahmedabad-380006.

**Copy to:**

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Principal Commissioner, Central Tax, Ahmedabad-South.(RRA Sec.).
- (3) The Asstt. Commr, Central Tax Division-VII(Satellite), Ahmedabad-South.
- (4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad-South.  
(for uploading the OIA on website)
- (5) Guard file
- (6) P.A. file.



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