

<b>केंद्रीय कर आयुक्त (अपील)</b>	
<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX</b>	
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क फाइल संख्या : File No : V2(ST)0305/A-II/2016-17 / 10918 to 10922  
 ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-001-APP-180-17-18**  
 दिनांक Date : 22-11-2017 जारी करने की तारीख Date of Issue 12-12-17

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

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

ग Arising out of Order-in-Original No **SD-04/20/AC/16-17** Dated **27.01.2017** Issued  
 by Assistant Commr **STC**, Service Tax, Ahmedabad

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

**M/s. Hasmukhlal Jayantilal 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 :-

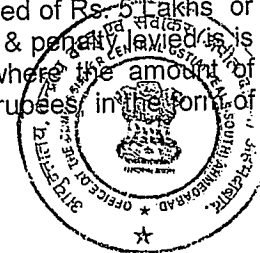
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, 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 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 (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**

1. This order arises out of the appeal filed by M/s. Hasmukhlal Jayantilal & Co., 28, Shivam Estate, Nr. Ujala Circle, Sarkhej, Ahmedabad (hereinafter referred to as the "said appellants"), against the Order-In-Original No. SD-04/20/AC/2016-17 dated 27.01.2017 (hereinafter referred to as the "impugned order") passed by the then Assistant Commissioner of Service Tax, Division-IV, Ahmedabad (hereinafter referred to as the "adjudicating authority").

2. The facts of the case, in brief, are that the appellants are engaged in providing taxable services under the category of 'Maintenance or Repair Services and GTA Service' and hold a valid Service Tax Registration number AAAFH9452KST001. During the course of audit, it was observed that the appellants were providing the services of tangible goods as well as 'Renting of Immovable Property', besides the services mentioned above. It was also noticed that they had not discharged their Service Tax liability on the income from these services. However, the income earned under the said heads was included in the total income of the appellants in the books of account of the relevant period. On reconciliation of the amount of taxable income in their books of account viz. Balance Sheets/ Income Ledgers *vis-à-vis* the taxable value declared in the ST-3 returns, it was revealed that the appellants had short paid Service Tax to the tune of ₹ 6,37,802/- during the period from 2011-12 to 2014-15. 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 confirmed the demand of Service Tax of ₹ 6,37,802/- under the proviso to Section 73 of the Finance Act, 1994. He also ordered the appellants to pay interest under Section 75 and imposed penalty under Sections 77 and 78 of the Finance Act, 1994.

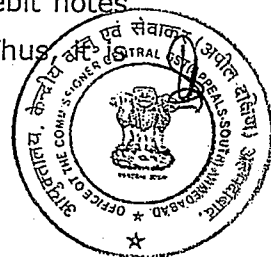
3. Being aggrieved with the said order, the appellants preferred the present appeal before me. The appellants argued that M/s. ABCTCL was providing the service of renting of vending machines to their clients on which they were charging Service Tax and the appellants had merely collected the payment on behalf of M/s. Amalgamated Bean Coffee Trading Company Ltd. (hereinafter referred to as "M/s. ABCTCL"). Thus, the appellants had only acted as mediator to collect and reimburse the same to M/s. ABCTCL. The appellants further informed that they



authorized distributors of M/s. ABCTCL for the supply of tea/coffee and other beverages. They purchased goods such as sugar, coffee bean etc. from M/s. ABCTCL and sold such goods to other parties by discharging the applicable VAT. The appellants argued that they were acting as pure agents and had a contractual agreement with M/s. ABCTCL and therefore, the amount received was not included in the taxable value of the appellants. Further, the appellants argued that M/s. ABCTCL had charged Service Tax and deposited the same in the government exchequer. The said amount used to be collected by the appellants from the customers of M/s. ABCTCL on behalf of the latter. Therefore, if the said amount was already subjected to Service Tax and included in the bill, charging Service Tax again on the same would certainly amount to double taxation. They further claimed that the departmental audit is *ultra vires* the provisions of the Finance Act, 1994. This is because an audit can be conducted only by a Chartered Accountant or Cost Accountant in terms of Section 14A and 14AA of the Central Excise Act, 1944.

4. Personal hearing in the case was granted on 11. 10.2017, and Shri Bishan Shah, Chartered Accountant, appeared before me on behalf of the appellants. Shri Shah reiterated the contents of the grounds of appeal already submitted before me. He submitted before me a letter dated 28.01.2017 received from M/s. Coffee Day (formerly M/s. ABCTCL) which points out that no consideration has been paid to the appellants for this service and the amount collected by them on behalf of M/s. ABCTCL is without consideration and included Service Tax. Shri Shah requested me to grant some time to him to enable him to submit a CA certificate in this regard.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum and written submissions made by the appellants. I find that the appellants are authorized distributor of M/s. ABCTCL (now M/s. Coffee Day) for supply of tea/coffee and other beverages. The appellants have pleaded before me that they were collecting rent from the respective clients (users of the vending machines) on behalf of M/s. ABCTCL. In support of their claim the appellants have submitted before me copies of some of the contracts between M/s. ABCTCL and the users of the vending machines. Further, they have submitted copies of some debit notes addressed to certain users of vending machines for rent of the vending machines. The said debit notes reflect that the rent was collected on behalf of M/s. ABCTCL. Thus

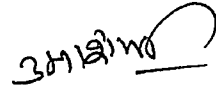


quite evident from the above documents that the appellants were only collecting the rent of the vending machines on behalf of M/s. ABCTCL. The appellants have further submitted, before me, a letter from M/s. Coffee Day (formerly M/s. ABCTCL) stating very clearly that the appellants were collecting the said rent on behalf of M/s. Coffee Day. It is further mentioned in the said letter that M/s. Coffee Day were paying Service Tax on such rent charges. This manifests the fact that the rent collected by the appellants was straightway transferred to the account of M/s. ABCTCL who in turn, being the beneficiary of the said rent, paid Service Tax on the same. Therefore, once Service Tax has already been paid on the rent, same cannot be demanded on it as this would result to double payment of Tax which is quite uncalled for.

6. In view of my foregoing conclusions, I set aside the impugned order and allow the appeal in above terms.

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

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

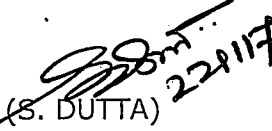


(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

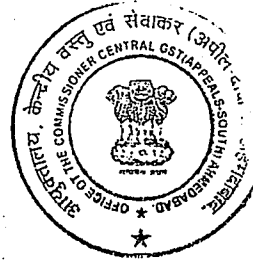
ATTESTED

  
(S. DUTTA) 22/11/17

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.



To,  
M/s. Hasmukhlal Jayantilal & Co.,  
28, Shivam Estate,  
Nr. Ujala Circle, Sarkhej,  
Ahmedabad-382 210.

**Copy to:**

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

