


केन्द्रीय कर आयुक्त (अपील)		
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
केन्द्रीय कर शुल्क भवन		Floor: Central Excise Building
सातवीं मंजिला पॉलिटेक्निक के पास		Near Polytechnic
आम्बावाडी, अहमदाबाद-380015		Ambavadi, Ahmedabad-380015
079-26305065		टेलिफैक्स: 079-26305136

क फाइल संख्या : File No : **V2(ST)040/A-II/2017-18** / 10/01 to 10/07
 ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-001-APP-186-17-18**
 दिनांक Date : 23-11-2017 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 **02/Supdt/AR-V/Venus/15-16** Dated **29.02.2016** Issued by Supdt. **SVTAX**, Service Tax, Ahmedabad

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

M/s. Venus Expeditions

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 **₹ 1000/-** where the amount of service tax & interest demanded & penalty levied is less, **₹ 5000/-** where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding **₹ 50 Lakhs**, **₹ 10,000/-** where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form



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 A2I9K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजी 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 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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 होंगे।

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, where penalty alone is in dispute.



ORDER IN APPEAL

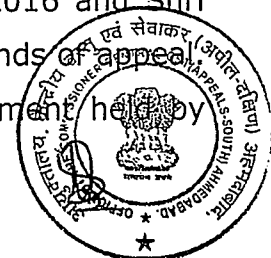
M/s. Venus Expeditions, Pushpam Mall, G/24, Opp. Seema Hall, Anandnagar road, Satellite, Ahmedabad- 380 015 (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number 02/ Supdt/AR-V/ Venus/2015-16 dated 29.02.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Superintendent AR-V, Service Tax Div-III, APM Mall, Satellite, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants were engaged in providing taxable service and were holding Service Tax registration number-ASZP P4512F SD005. It was noticed from ACES that Appellant had not filled five statutory ST-3 returns as provided under section 70 of FA, 1994 read with Rules 7(1), 7(2) and 7(3) of Service tax rules 1994, for the period from 2013-14, 2014-15, 2015-16(April to Sept.). Show cause notice dated 28.12.2015 demanding late fees under section 70(1) r/w rule 7 of Service tax Rule, 1994 and proposing penalty under section 77(2) was issued.

3. Adjudicating Authority vide impugned OIO imposed penalty of Rs. 2000/- under Section 77(2) for contravention of section 70 read with rule 7 of service tax rules, 1994 and also ordered to pay late fees of Rs. 80,000/- (Rs.20,000/- x 4 = 80,000/-) under rule 7(c) of Service tax rules, 1944 for period 2013-14 and 2014-15. For return for period of April-2015 to September-2015, late fees applicable u/r 7C, subject to maximum of Rs. 20,000/- was ordered to be recovered

4. Being aggrieved with the impugned order, the appellants preferred an appeal on 02.05.2017 before the Commissioner (Appeals), Ahmedabad wherein it is contended that no taxable service was rendered for period 2013-14, 2014-15, 2015-16(April to Sept.) and they were under bonafied belief that as per circular No. 97/08/2007-ST dated 23.08.2007, they were not required to file the NIL return. Moreover registered address was also surrendered therefore no notices, reminders were received for proper reply to show cause notice.

5. Personal hearing in the case was granted on 14.11.2016 and Shri Deep Shah, CA, appeared before me and reiterated the grounds of appeal. He submitted copy of Bank A/c No. 092510000169 statement in help of



appellant at Punjab and Sindh Bank, Satellite (IFC Code PSIB0000925) for period 01.03.2013 to 20.02.2017

DISUSSION AND FINDINGS

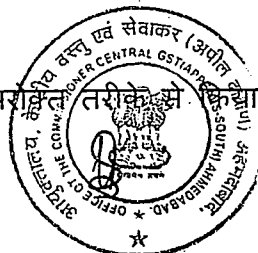
6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing.

7. I am surprised to see that OIO dated 29.02.2016 has been received after almost one year i.e. on 10.02.2017. In statement of facts it is stated that registered address was surrendered, therefore no notices, reminders were received for proper reply to SCN. Appellant has not produced any documentary evidence to substantiate that registered address premises was surrendered.

8. Further, I find that the appeal has been filed on 02.05.2017 after 82 days of receipt of the impugned order on 10.02.2017. As per the provisions of Section-85 (3) of the Finance Act, 1994 as amended vide the Finance Act, 2012 made effective from 28.05.2012, an appeal was required to be presented before the Commissioner, Central Excise (Appeals) within two months from the date of receipt of the impugned order. The appeal should have been filed before 10.04.2017 but the same was filed on 02.05.2017 and thus, there is a delay of 22 days in filing the appeal. Further, the Proviso to Section-85 (3) of the Finance Act, 1994 empowers the Commissioner, Central Excise (Appeals) to allow the appeal to be presented within a further period of one month if the appellate authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within aforesaid period of two months. I find that for the said delay in filing appeal, the appellant had neither filed any Condonation of Delay Application nor pleaded during the personal hearing held before me. Further, the appellant had also not mentioned any thing about the said delay neither in the appeal memorandum nor in the written submission filed before me. Thus, without going into merit of the case and in view of the above facts, I find that the appeal filed by the appellant is time barred.

9. Accordingly, the appeal filed by the appellant is rejected being time barred.

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



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

उमा शंकर
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

(R.R. PATEL)

SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

To,

1.

M/s. Venus Expeditions,

Pushpam Mall, G/24,

Opp. Seema Hall,

Anandnagar road, Satellite,

Ahmedabad- 380 015

2.

M/s. Venus Expeditions,

1006, Parshwanath Business Park,

Nr. Auda Garden, Prahladnagar,

Ahmedabad-15.

Copy to:

- 1) The Chief Commissioner, Central TAX, Ahmedabad.
- 2) The Commissioner, Central tax ,Ahmedabad South-
- 3) The Additional Commissioner, Central tax, Ahmedabad South
- 4) The Asst. Commissioner, Service Tax Div-VII, Ahmedabad South.
- 5) The Asst. Commissioner(System), Central tax. Hq, Ahmedabad South.
- 6) Guard File.
- 7) P.A. File.

