

केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX	
केंद्रीय कर शुल्क भवन सातवीं मंजिल, पॉलिटेक्निक के पास आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building Near Polytechnic Ambavadi, Ahmedabad-380015
079-26305065	टेलीफैक्स : 079-26305136

क फाइल संख्या : File No : **V2(ST)0276/A-II/2016-17** / 10429 to 10433
 ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-001-APP-190-17-18**
 दिनांक Date : 23-11-2017 जारी करने की तारीख Date of Issue 05-12-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **SD-04/17/AC/2016-17** Dated **05.01.2017**
 Issued by Assistant Commr **STC**, Service Tax, Ahmedabad

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

M/s. P.P Patel

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 :-

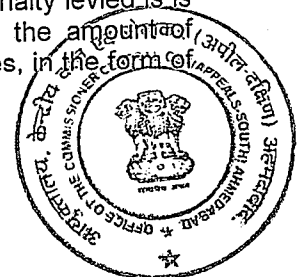
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल 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 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 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 A2I9k 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, 1988 की धारा 39फ के अंतर्गत वित्तीय (संख्या-2) अधिनियम 2014 (2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1988 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,

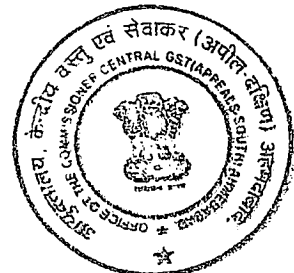
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



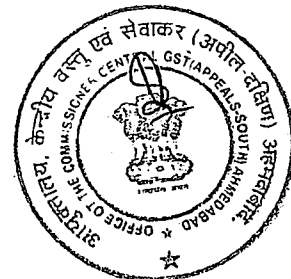
ORDER IN APPEAL

This is an appeal filed by M/s P.P. Patel (herein after referred to as the appellants) against the OIO No. SD-04/17/AC/2016-17 dtd. 01.01.2017 (herein after referred to as the impugned order) passed by the Assistant Commissioner, Division-IV, Service Tax, Ahmedabad (herein after referred to as the adjudicating authority).

2. the brief facts of the case are that the appellants were engaged in providing their service of construction of Canal, Bridges, Roads etc to Sabarmati River Front Development Corporation (SRFDC). Since this fell in the exclusion from the definition of commercial or industrial construction service, they were required to pay service tax but they had not discharged service tax amounting to Rs. 11,00,603/-. Accordingly, a notice under Section 73 (1A) of the Finance Act, 1994 was issued to the appellants. The adjudicating authority, after having considered their defence arguments and case records, held that the appellants were not providing any service in relation to agriculture or irrigation so as to be covered under the exclusion part. He further held that the services were also not in relation to watershed development as a watershed can be defined as the drainage basin or catchment area of a particular stream or river. He, vide the impugned order, confirmed the demand of service tax of Rs. 11,00,603/- alongwith interest and also imposed penalties under various Sections of the Finance Act, 1994.

3. being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That the adjudicating authority has failed to appreciate the relevant clause of the exemption Notification No. 25/2012-ST dated 20.06.2012;
- b) That they had provided service to the Ahmedabad Municipal Corporation (AMC) for their SRFDC project and AMC is a "local authority" within the meaning of Section 65B(31) of the Finance Act, 1994;
- c) That they have provided services in relation to earth filling etc. for the construction of Sabarmati River Front and the same is considered to be a civil structure;
- d) That the objective of the work was for restoration of the river banks of Sabarmati river for increasing the capacity of the river for storing of water and flood control;



- e) That they had provided the services to the local authority for better resourcing of water which had no commercial use and therefore the same was not taxable;
- f) That the service provided was covered within the ambit of the exemption granted by the above mentioned clause 12 (a) of the Exemption Notification No. 25/2012-ST dtd. 20.06.2012;
- g) That the impugned order has been passed relying on the old provisions of the law as the same has been withdrawn w.e.f. 01.07.2012 vide Notification No. 18/2012-ST dtd. 01.06.2012 read with Notification No. 20/2012-ST dtd. 05.06.2012;
- h) That when no tax is collected separately, the gross amount has to be adopted to quantify the liability treating it as value of taxable service plus service tax payable as also held in the case of Robot Detective and Security Agency vs. C.C.Ex. cited in 2009 (140) STR 689 (Tri.) and C.C.Ex. & Cus., Patna vs. Advantage Media Consultant cited in 2008 (10) STR-449 (Tri.);
- i) That all transactions have been recorded on regular basis shows their bonafide intention and therefore no penalty can be imposed;
- j) The appellants sought support from the following case laws:

Hindustan Steel Ltd. Vs. The State of Orissa – AIR 1970 (SC) 252 and Kellner Pharmaceuticals Ltd. Vs. CCE – 1985 (20) ELT – 80 and many other cases.

4. The personal hearing in the case was held on 06.10.2017 in which Shri Parag Shah and Shri Arjun Akruwala, both Chartered Accountants appeared on behalf of the appellants. They reiterated the grounds of appeal and pointed out that their submission about Notification granting mega exemption was not considered.

5. I have carefully perused the documents pertaining to the case and submitted by the appellants alongwith the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issue to be decided in the instant case is whether the service tax has been rightly demanded on the services provided by the appellants to the SRFDC.

7. I find that the appellants were engaged in providing their service of construction of Canal, Bridges, Roads etc. to SRFDC. They have claimed that the Ahmedabad Municipal Corporation is a local authority and therefore services provided to them are not liable to service tax.



provisions contained in Notification No. 25/2012-ST. I find that the notification provides exemption as follows:

"12. Services provided to the government, a local authority or a government authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;"

8. Now in the instant case, the appellants have provided service to the SRFDC of Ahmedabad Municipal Corporation. So to avail this exemption provided in the notification, the Ahmedabad Municipal Corporation has to be a local authority. The term "local authority" has been defined in Section 65B(31) of the Finance Act, 1994 which reads as under:

"local authority" means- (a) a Panchayat as referred to in clause (d) of Article 243 of the Constitution; (b) a municipality as referred to in clause (e) of Article 243P of the Constitution"

From the above definition, it is very clear that a municipality as referred to in (e) of Article 243P of the Constitution of India is to be considered as "local authority". Now a municipality has been defined in clause (e) of Article 243P of the Constitution of India as under:

"Article 243P (e) in the Constitution of India 1949

(e) Municipality means an institution of self government constituted under Article 243Q;"

From a plain reading of the above provision of Article 243P (e), it is seen that Article 243Q of the Constitution of India prescribes the definition as under:

"Article 243Q in the Constitution of India 1949

243Q. Constitution of Municipalities

- (1) there shall be constituted in every state,
- (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area
- (b) a **Municipal Corporation for a larger urban area, in accordance with the provisions of this Part; provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may**



deem fit, by public notification, specify to be an industrial township" (emphasis supplied)

I also find that the Ahmedabad Municipal Corporation or the AMC, established in July, 1950 under the Bombay Provincial Corporation Act, 1949, is responsible for the civic infrastructure and administration of the city of Ahmedabad and in view of the above definitions and various provisions of the Constitution of India, I hold that the Ahmedabad Municipal Corporation is a local authority.

9. Now I take up another aspect of the provisions of the point 12 of the Notification No. 25/2012. The exemption from the payment of service tax was to the services provided to, among others, a local authority of a civil structure or any other original work meant predominantly for use other than for commerce, industry, or any other business or profession. From the case records, I find that the appellants provided service of filling of earthwork behind R.C.C. retaining walls and the retaining walls are structures designed to restrain soil to unnatural slopes. They are used to bound soils between two different elevations often in areas of terrain possessing undesirable slopes or in areas where the landscape needs to be shaped severely and engineered for more specific purposes such as maintaining water flow for use in irrigation and preventing its deterioration.

10. It is very clear that these services were provided to the SRFDC of Ahmedabad Municipal Corporation. One important aspect of the service to be eligible for exemption is that it should not be for commercial or industrial purpose. There is nothing on record and findings given by the adjudicating authority about what commercial or industrial purpose this service served. No material about business or commercial use of the project has been placed on records and therefore I am of the view that the purpose of the service provided by the appellants falls well within the requirements of the Notification No. 25/2012 i.e. a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession.

11. I have also perused a proposal for Sabarmati Riverfront Development, Ahmedabad stating purpose of the project. It speaks about the various purposes the project will serve in helping water retention, prevention of seepage and evaporation losses, help in using water from the Narmada main canal for irrigation of the Fatehwadi Command Area, and ground water recharge etc. So I am of the view that the services provided by the appellants in the instant case were for use other than for commerce, industry, or any other business or profession and consequently are eligible



for exemption from payment of service tax. This aspect has also been discussed in the case of Shapoorji Paloonji & Company Pvt. Ltd. Vs. C.C., C.Ex. & S.T., Patna cited at 2016 (42) S.T.R.681 (Patna) in which it has been held by the Hon'ble High Court that the authority set up by an Act of Parliament or State Legislature is not and cannot be made subject to any condition to be eligible for the exemption contained in the Notification No. 25/2012.

12. I also find support from the case of ITD Cementation India Ltd. Vs. C.S.T., Mumbai, Mumbai -V, Mumbai-I cited at 2014(36) S.T.R.-897 (Tri.-Mum.) which has been upheld by the Hon'ble Supreme Court of India in the case of Commissioner vs. ITD Cementation India Ltd. cited at 2015(38) S.T.R.-J425 (S.C.).

13. In view of the above findings, the impugned order is set aside and the appeal is allowed.

14. The appeal is disposed off accordingly with consequent relief.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

उमा शंकर

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक: 23.11.2017

सत्यापित

धर्मेंद्र उपाध्याय

(धर्मेंद्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To:

M/s P.P.Patel,
2/5, Gold Coin Complex,
Jodhpur Char Rasta,
Ahmedabad

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (South),
- (3) The Dy./Astt. Commissioner, CGST, Div.-VII, Ahmedabad (South),
- (4) The Dy./Astt. Commissioner (Systems), CGST, Ahmedabad (South),
- (5) Guard File,
- (6) P.A. File.



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