

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

क फाइल संख्या : File No : **V2(ST)011/A-II/2017-18** / 10610 को 10614
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-193-17-18**
 दिनांक Date : 30-11-2017 जारी करने की तारीख Date of Issue 11-12-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **AHM-SVTAX-000-ADC-13-16-17** Dated **31.08.2016** Issued by ADC SVTAX, Service Tax, Ahmedabad

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

M/s. Everest Outdoor Media Pvt. Ltd

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 :-

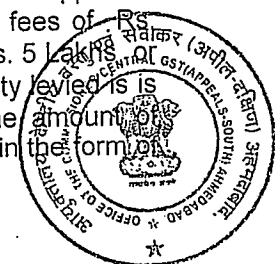
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

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

M/s. Everest Outdoor Media Pvt. Ltd., 404 Crystal Arcade, Near Navrangpura Telephone Exchange, C.G. Road, Navrangpura, Ahmedabad-380009 (*hereinafter referred to as the 'appellant'*) has filed the present appeal against the Order-in-Original No. AHM-SVTAX-000-ADC-013-2016-17 dated 31.08.2016 (*hereinafter referred to as 'impugned order'*) passed by the Additional Commissioner, Service Tax, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. Briefly stated that during scrutiny and verification of the (i) Balance Sheet for the years 2010-11 and 2011-12, (ii) Form 26AS for the year 2009-10 to 2011-12, (iii) ST-3 returns for the period from October, 2010 to September, 2013, (iv) Sample copies of invoices, and (v) sales Register/Ledger for the year 2009-10 to 2012-13 by Preventive Section of Service Tax, Ahmedabad under the provisions of Rule 5A of the Service Tax Rules, 1994, it was found that:

(a); though the appellant were providing advertising services by way of hoarding since 2009, they had taken the registration only in 2010 and had not filled any ST-3 returns for the year 2009-10;

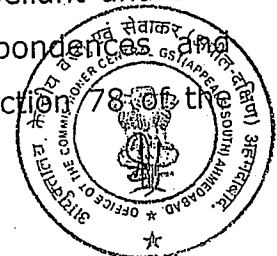
(b) scrutiny of the ST-3 returns for the year 2011-12 revealed that the appellant had short paid Service Tax of Rs. 20,504/-;

(c) scrutiny of ST-3 returns for the FYs 2009-10 to 2012-13 revealed that the appellant failed to file/ late filled the periodical returns;

(d) scrutiny of the balance sheet and sales register of the appellant, revealed that the appellant had suppressed the value of taxable Services to the extent of Rs. 1,44,21,064/- (net amount calculated on cum duty price method) for the period from 2009-10 to 2013-14 (up to February, 2014)

2.1 Subsequently a show cause notice dated 07.10.2014 was issued demanding service tax along with interest, late fee and further proposing penalties on the appellant. This show cause notice was adjudicated vide above said impugned order wherein the adjudicating authority, confirmed the demand of Service Tax of Rs.15,05,874/-, late fee along with interest under sections 73(1), 70 and 75 of the Finance Act, 1994 and further imposed penalties under sections 76, 77(1), 77(2) and 78 *ibid*.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that they have not suppressed anything from the department and there was no malafide intention on the part of the appellant and that they had always co-operated by replying to all correspondences and inquiries. They further requested that the penalty under section 78 of the Finance, Act, 1994 may be waived off.



4. A personal hearing in the matter was held on 14.11.2017 and Shri Bhagyashree Bhatt, Chartered Accountant, appeared on behalf of the appellant and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case on records and grounds of appeal. I find that there has been a delay of 151 days in filing the appeal. The impugned order was received on 12.09.2016 by the appellant whereas they filed the appeal on 11.04.2017 i.e. after a delay of 151 days. Section 85 of the Finance Act, 1994 states as follows: [relevant extracts]

SECTION 85. Appeals to the [Commissioner] of Central Excise (Appeals). —

[(1)

(2)

(3)

[(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.]

The section, clearly stated that any person aggrieved by any decision or order passed by an adjudicating authority, may prefer an appeal before the Commissioner (Appeals) **within 2 months** from the date of receipt of order from such adjudicating authority. Further, the proviso to Section 85(3A), *ibid*, grants power to the Commissioner (Appeals) to condone delay of a further period of one month over the prescribed period of two months for filing an appeal, provided there is sufficient cause for delayed filing of the appeal. In the instant case, I find that the delay in filing the appeal is of 151 days. No reason is advanced by the appellant at any point of time for such delay in filing the appeal. Since, the statute permits me to condone delay of only one month over the prescribed period of two months, in case of delay in filing the appeal, I am left with no choice but to reject the appeal on the ground of limitation, without going into the merits of the case. My view is also supported by a decision given in case of Flemingo (Duty Free Shop) P. Ltd. Vs The Commissioner of customs (Appeal) Mumbai Zone-I & others reported in [2015 (315) E.L.T. 321 (Bom.)].



6. In view of the above discussion and findings, I reject the appeal being time barred.

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

Vinod

(VINOD LUKOSE)
SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.

To,
M/s. Everest Outdoor Media Pvt. Ltd.,
404 Crystal Arcade,
Near Navrangpura Telephone Exchange,
C.G. Road, Navrangpura,
Ahmedabad- 380009

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Ahmedabad South.
- 3) The Dy./Asstt. Commissioner, Central Tax, Division-VI, Vastrapur,
Ahmedabad-south
- 4) The Asstt. Commissioner (System), Central Tax Hq., Ahmedabad.
- 5) Guard File.
- 6) P. A. File.

