
 सत्यमेव जयते	<b>केंद्रीय कर आयुक्त (अपील)</b>		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर शुल्क भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015		
079-26305065		टेलिफैक्स : 079 - 26305136	

क फाइल संख्या : File No : V2(ST)061/A-II/2017-18 / 10615 to 10619  
 ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-001-APP-197-17-18**  
 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 **STC/27/KM/AC/D-III/16-17** Dated **27.03.2017**  
 Issued by Assistant Commr **STC**, Service Tax, Ahmedabad

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

**M/s. Shangar Décor 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 :-

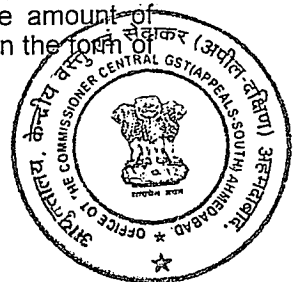
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, 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 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 39क 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,

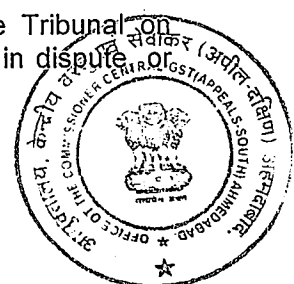
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

M/s. Shangar Décor Limited, 4, Sharad Apartments, Opp. Dharnidhar Derasar, Paldi, Ahmedabad, [for short – ‘appellant’] has filed this appeal against OIO No. STC/27/KM/AC/D-III/16-17 dated 27.3.2017 passed by the Assistant Commissioner, Service Tax Division III, Ahmedabad[for short – ‘adjudicating authority’].

2. Briefly, the facts are that based on the list of stop filers received from systems, it was noticed that the appellant, who was registered under the category of “*Pandal or Shamiana Services*” had not filed their returns in time and had also not discharged their service tax liability in full. A show cause notice dated 31.3.2016 was therefore, issued to the appellant *inter alia*, demanding service tax of Rs. 27,68,980/- along with interest and proposing penalty under sections 77 and 78 of the Finance Act, 1994. The notice also proposed appropriation of the amount already paid by the appellant and further also proposed penalty on the Director of the appellant.

3. This notice was adjudicated vide the impugned OIO dated 27.3.2017, wherein the adjudicating authority confirmed the demand along with interest. The amount already paid was appropriated. Penalty was also imposed on the appellant and the Director of the appellant.

4. The appellant feeling aggrieved, filed an appeal against the impugned OIO raising the following averments:

- that the appellant was aware of the provision of the service tax;
- that their chief accountant had left the job and also deleted the relevant data from the computer and hence they were not in a position to submit relevant document to the Assistant Commissioner;
- that during the survey operation the person whose statement was taken was afraid and not in a stable mind and also correct figures were not available;
- that the actual service tax payable comes to Rs. 35,31,748/- as against service tax payable of Rs. 36,58,933/- which is paid in full after utilizing CENVAT;
- that they had paid all the challans and there is no pending levy against them;
- that the main reason of late payment beyond the prescribed time was blockage of funds from one of their main client and non availability of liquid funds.

5. Personal hearing in the matter was held on 14.11.2017. Shri Niral Parikh, CA appeared on behalf of the appellant and reiterated the grounds of appeal.

6. I have gone through the facts of the case, the grounds of appeal and the oral averments raised during the course of personal hearing. I find that the main issue to be decided is whether the findings of the adjudicating authority confirming the short payment by the appellant along with interest and imposition of penalty, is correct or otherwise.

7. I find that along with the appeal papers the appellant has not submitted the copy of the show cause notice. However, on going through the facts mentioned in the impugned OIO, I find that the Director of the appellant in his statement dated 10.8.2015, agreed to the show cause notice.



payment of service tax during the period from January 2013 to March 2013 and 2014-15. Consequent to this, the show cause notice was issued to the appellant. Now, the appellant is [a] disputing the taxable value for the FY 2014-15; [b] disputing the amount of CENVAT utilized during the FY 2014-15; and [c] questioning the statement on the grounds that during the course of statement, he was afraid and was not in a stable mind. The appellant has provided a table in the grounds of appeal, to substantiate his claim. The appellant has also provided copies of ST-3 returns of FY 2014-15 to dispute the figures of [a] the taxable value of services provided during the year 2014-15 and the figures of duty paid through CENVAT in the year 2014-15.

8. However, I find that both the half yearly returns for the year 2014-15 were filed only on 13.5.2017, much later after the impugned OIO dated 27.3.2017 was issued by the adjudicating authority. This leads me to conclude that the figures mentioned in the ST-3 returns can at best be termed as an afterthought. In-fact, the appellant's, whole claim belies facts. His grouse for late payment is that the accountant had left the job after deleting the entire data; that the main customer had not paid the amount to the appellant. But on going through the balance sheet for the year 2014-15, I find that even the Auditors had signed the financial records in the month of August 2015, yet the appellant chose to file his return only on 13.5.2017. I find that the appellant has not been able to refute the findings of the adjudicating authority. Even the table in the grounds of appeal, are not supported by documents except for the ST-3 returns, whose validity/accuracy is not free from doubt. Compounding this facts, are the issue that the appellant failed to appear before the adjudicating authority. The whole sequence of events leaves me with no doubt, that whatever is being stated by the appellant are wrong on facts.

9. Except for the above, the appellant has not come up with any averment. The arguments put forth not being legally tenable, I do not find any merit in the appeal and the same is dismissed. The impugned OIO is upheld.

10. The appeal filed by the appellant stands disposed of in above terms.

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

उमा शंकर

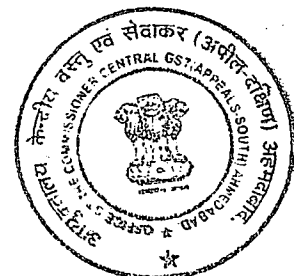
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date: 30.11.2017

Attested

(Vinod L. Kose)  
Superintendent,  
Central Tax (Appeals),  
Ahmedabad.



By RPAD.

To,  
M/s. Shangar Décor Limited,  
4, Sharad Apartments,  
Opp. Dharnidhar Derasar,  
Paldi,  
Ahmedabad,

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Deputy/Assistant Commissioner, Central Tax, Division VIII, Ahmedabad South.
4. The Additional Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.

