

केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), GENERAL TAX	
केंद्रीय कर शुल्क भवन	Block: Central Excise Building
सातवां जिला पोलिटिकलिक पास	Near Polytechnic
आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
079-26305065	टेलिफोन नं. 079-26305136

क फाइल संख्या : File No : **V2(ST)087/A-II/2017-18** 10665 to 10669
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-200-17-18**
 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 **6/Supdt. AR-1/2016-17** Dated **15.02.2017**
 Issued by **Supdt. SVTAX**, Service Tax, Ahmedabad

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

M/s. Differentiate

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 :-

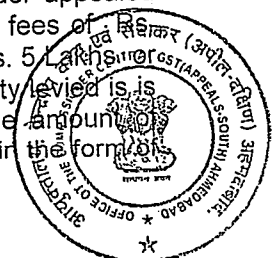
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 एव 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 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,

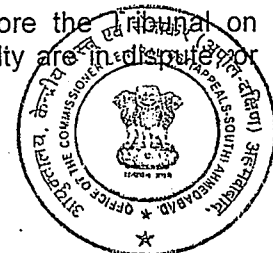
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 or penalty, where penalty alone is in dispute.



ORDER IN APPEAL

M/s. Differentiate, 903, Antrix, Panjrapole Cross Road, Ambawadi, Ahmedabad -380015 (*hereinafter referred to as 'appellant'*) has filed the present appeal against the Order-in-Original No. 06/ Supdt.AR-I/2016-17 dated 15.02.2017 (*hereinafter referred to as 'impugned order'*) passed by the Superintendent AR-I, Div-II, Service Tax, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that on going through ACES it was observed that the appellant had late filed six statutory ST-3 returns, as provided under section 70 of Finance Act, 1994 read with Rules 7(1) and 7(2) of Service Tax Rules 1994, for the period from July-2012 to March-2015. Subsequently, a show cause notice dated 01.06.2016, demanding late fees under section 70 read with rule 7C of Service Tax Rules, 1994 and proposing penalty under section 77(2) was issued. This show cause notice was adjudicated vide above said impugned order wherein the adjudicating authority, upheld the demand of late fees and further imposed penalty of Rs. 5,000/- under Section 77(2) of Finance Act, 1994.

3. Being aggrieved, the appellant filed an appeal on 05.06.2017 wherein it is contended that as per notification No. 33/2012 dated 20.06.2012 small service providers whose aggregate values of taxable services does not exceed ten lakhs rupees in any financial year are exempted from the whole of the service tax leviable thereon under section 66B of the Finance Act, 1994; that their turnover never exceeded ten lakh rupees during the period from 2012-13 to 2014-15.

4. Personal hearing in the case was granted on 15.11.2017 and Shri Rizvan M. Shaikh, CA, appeared before me and reiterated the grounds of appeal. He submitted copy of ST-3 returns, Form 26AS, ITR-5 Form and Balance Sheet for the period 2012-13 to 2014-15.

5. I have carefully gone through the facts of the case on records and grounds of appeal. To begin with, I find that there has been a delay in filing the appeal. The impugned order was received on 12.03.2017 by the appellant whereas they filed the appeal on 05.06.2017 i.e. after a delay of 23 days along with a condonation letter. In terms of proviso to Section 85(3A) of the Finance Act, 1994, I condone the delay of 23 days in filing the appeal.

6. Section 70 of the Finance Act, 1994 states as follows



SECTION [70. Furnishing of returns. — [(1)] Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency [and with such late fee not exceeding [twenty thousand rupees,] for delayed furnishing of return, as may be prescribed.]

[(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.]

6.1 Section 77 of the Finance Act, 1994 states as follows:

SECTION [77. Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. — (1) Any person, —

["(a) who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to a penalty which may extend to ten thousand rupees;]

(b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a penalty which may extend to [ten thousand rupees];

(c) who fails to —

(i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or

(ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or

(iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to [ten thousand rupees] or two hundred rupees for everyday during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to [ten thousand rupees];

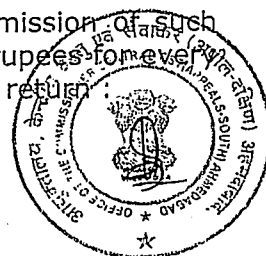
(e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to [ten thousand rupees].

(2) Any person, who contravenes any of the provisions of this chapter or any rules made there under for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees.

6.2 Rule 7C of the Service Tax Rules, 1994 states as follows:

RULE [7C. Amount to be paid for delay in furnishing the prescribed return. — [(1) Where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of -

- (i) fifteen days from the date prescribed for submission of such return, an amount of five hundred rupees;
- (ii) beyond fifteen days but not later than thirty days from the date prescribed for submission of such return, an amount of one thousand rupees; and
- (iii) beyond thirty days from the date prescribed for submission of such return an amount of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return.



Provided that the total amount payable in terms of this rule, for delayed submission of return, shall not exceed the amount specified in section 70 of the Act :

Provided further that where the assessee has paid the amount as prescribed under this rule for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded :

[Provided also that where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty.]

Explanation. - It is hereby declared that any pending proceedings under section 77 for delayed submission or non-submission of return that has been initiated before the date on which the Finance Bill, 2007 receives the assent of the President, shall also be deemed to be concluded if the amount specified for delay in furnishing the return is paid by the assessee within sixty days from the date of assent to the said Finance Bill.]]

[(2) Where the annual return referred to in sub-rule (3A) of rule 7 is filed by the assessee after the due date, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of one hundred rupees per day for the period of delay in filing of such return, subject to a maximum of twenty thousand rupees.]

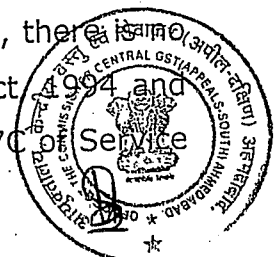
7. The appellant submitted copy of ST-3 returns, Form 26AS, ITR-5 Form and balance sheet for the period 2012-13 to 2014-15 to substantiate that in none of the Financial Years from 2012-13 to 2014-15 their gross turnover exceeded ten lakhs rupees and hence they are eligible for the turnover based exemption as per notification No. 33/2012 dated 20.06.2012. I have perused all the documents submitted by the appellant and find that the gross turnover/transaction of taxable services does not exceed ten lakhs rupees in any financial year during the period 2012-13 to 2014-15, therefore they are eligible for turnover based exemption.

8. I find that CBEC Circular's No. 97/8/2007 dated 23.08.2007, has clarified on the issue, the relevant extracts of which is reproduced below-

"6.1 The service tax return is required to be filed under Section 70 of the Act read with rule 7 of the Rules, by "any person liable to pay the service tax". This return is required to be filed on a half yearly basis, in Form ST-3. For the periods from April to September and October to March, it must be filed by the 25th October and the 25th April respectively. Further, 'Input Service Distributor' is also required to file this return. **Persons who are not liable to pay service tax (because of an exemption including turnover based exemption), are not required to file ST-3 return.**"

[Emphasis supplied]

I hold that in terms of above CBEC circular, the appellant was not required to file ST-3 return. When return itself is not required to be filed, there is no question of imposing penalty under section 77(2) of Finance Act, 1994 and late fees under section 70 of Finance Act, 1994 read with rule 70 of Service Tax Rules, 1994.



9. In view of above, appeal filed by the appellant is allowed and I set aside the impugned OIO.

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

V.V Mohan
(V.V MOHAN)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

To,

M/s. Differentiate,
903, Antrix, Panjrapole Cross Road,
Ambawadi, Ahmedabad -380015

Copy to:

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

