



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,  
केंद्रीय कर शुल्क भवन,  
सातवीं मंजिल, पॉलिटेक्निक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, Central Excise Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)0292&0293/A-II/2016-17 11/11/18  
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-001-APP-211&212-17-18  
दिनांक Date : 26-12-2017 जारी करने की तारीख Date of Issue 4/1/2018

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-JC-026-16-17 Dated 25.01.2017 Issued by Joint Commissioner STC, Service Tax, Ahmedabad

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

**M/s. Alfa Investigation & Security 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 मेंटल 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 न्यायापीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायापीठ 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 (सीस्टेट) 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, 1994 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 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,

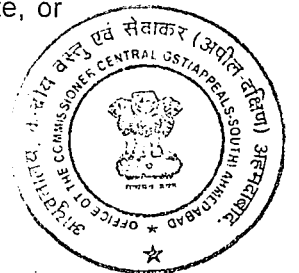
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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. Alfa Investigation & Security Pvt.Ltd.,GF-51,Yashniketan Complex, opp. Khokhra Police Chowky, Maninagar, Ahmedabad (hereinafter referred to as 'the Appellant'), has filed the present appeal against the Order-in-Original No AHM-SVTAX-000-JC-026-16-17 dated 25.01.2017 (*hereinafter referred to as 'impugned orders'*) passed by the Joint Commissioner Service Tax, HQ, Ahmedabad, (*hereinafter referred to as 'adjudicating authority'*).

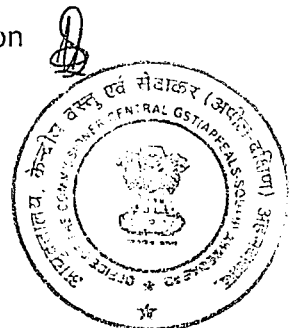
2. The facts of the case, in brief, are that the appellants are engaged in providing "Security Agency Service" and are holding Service Tax Registration No. AAICA2759HSD001. On the basis of information received from the police authorities that relevant license to M/s. Alfa Investigation & Security Pvt. Ltd. had been cancelled. On the basis of the said information an inquiry was conducted. During the course of audit it was detected that the said appellants has short paid the service tax on the basis of reconciliation on income of security service for the period 2010-11 to 2013-14, to the tune of Rs.94,99,526/- they agreed to objection and paid Rs.24,22,000/- during audit. Subsequently the matter was transferred to preventive Section, the said appellant further paid Rs.87,000/- towards their liability. Investigation resulted into issuance of Show Cause Notice, demanding service tax Rs. 94,99,526/- which was confirmed vide impugned OIO, equal amount of penalty was imposed u/s.78 of the Finance Act,1994, penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act,1994 for failure to file return, imposed penalty of Rs.1,00,000/- on Shri Satyajit G.Pandya, Director of the Company under Section 78A of the Finance Act,1994.

3. Being aggrieved with the impugned order, the appellant and the Director Shri Satyajit G. Pandya filed the present appeal before me on the following grounds;

3.1 Adjudicating authority has failed to appreciate that Show Cause Notice was barred by limitation of time;

3.2 It is submitted that the issue is no more *res-Integra* that extended period of limitation for the purpose of issuing SCN on the basis of suppression of facts could not be invoked and that no penalty could be imposed on the basis of such allegation if a private limited company has declared all the figures in their Balance Sheet. They relied on the following judgment/decisions.

- i) Hindalco Industries Ltd. v/s. Commissioner of C.Ex. Allahabad [2003(161)E.L.T.346 (Tri.-Del.)].
- ii) Martin & Harris Laboratories Ltd.v/s. Commissioner of C.Ex. Gurgaon [2005(185)E.L.T. 421 (Tri.-Del.)].



iii) Commissioner of C.Ex. Delhi-III v/s. Martin & Harris Laboratories Ltd. [2010(260)E.L.T. 31 (P & H)].

3.3 That appellant Company works under the provision of Private Security Agencies (Reulation) Act 2005. The said license was cancelled vide order No. SB-1/Secu.Lic.Appl./102014/16339 dated.01/09/2014 being passed by the Secretary to the Govt. of Gujarat, Home Department. As a result of the same, their entire business was stopped and they had suffered irreparable financial loss.

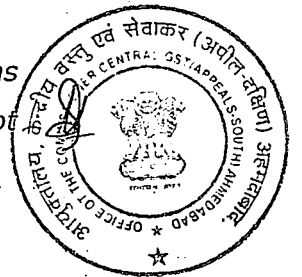
4. Personal hearing in the matter was conducted on 18.12.2017 wherein Shri D.K.Trivedi Advocate, appeared on behalf of the both appellants and reiterated the written submissions and grounds of appeal.

5. I have gone through the fact of the case, Show Cause Notice, Order-in-Original, grounds of appeal, and their oral submissions at the time of personal hearing. The core issue is to be decided by me is whether the demand confirmed by the adjudicating authority by invoking extended period and imposition of penalties and personal penalty is correct or otherwise.

5.1 To begin with, I take the contention of the appellant pertaining to Show Cause Notice was barred by limitation of time; as suppression of facts could not be invoked and that no penalty could be imposed on the basis of such allegation if a private limited company has declared all the figures in their Balance Sheet.

5.2 The appellants aforesaid plea does not hold any water, as the information was received from the police authorities that relevant license to M/s. Alfa Investigation & Security Pvt. Ltd. had been cancelled it was not intimated by the appellants this proves their intention. Their plea that due to cancellation of license their entire business was stopped and they had suffered irreparable financial loss. The aforesaid plea is also not acceptable to me as the detection of evasion and demand pertains up to 2013-14. Their license was cancelled on 1.9.2014, this also proves their intention to evade tax. The department after receipt of the said information undertook the audit and investigation of the evasion. Therefore, the argument of the appellants that the show cause notice is hit by the law of limitation, under Section 73 of the Finance Act, 1994, is not acceptable to me. Further, regarding their argument that no suppression can be invoked as limited company has declared all the figures in their Balance Sheet. I would like to quote the judgment of Hon'ble CESTAT, Mumbai in the case of M/s. Daichi Karkaria Ltd. vs. CCE, Pune-I where the Hon'ble CESTAT, Mumbai proclaimed that;

*"...if some information is available in various reports and returns which are to be formulated in compliance to other statutes, it does not*



lead to a conclusion that the utilization of credit for the activity of renting is known to the Department. The Department is not supposed to know each and every declaration made outside the Central Excise and Service Tax law. Even if the Financial Report is available to the audit, the same is meaningless in the sense that it does not indicate that input Service Tax credit utilized to pay the tax liability on such renting of property. The appellant's argument on limitation is rejected."

6. In view of the above discussed facts, I conclude that the impugned order does not warrant any interference I uphold the same for confirmation of demand, levy of interest, imposition of penalty u/s. 77 and 78 of the Finance Act, 1994. I Also confirm the penalty imposed on director Shri Satyajit G. Pandya as their basis of argument does not hold water.

7. I reject the appeals filed by both the appellants and up-hold the OIO's.

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

8. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

*उमा शंकर*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

**ATTESTED**

*K.H. Singhal*  
( K.H.Singhal)  
SUPERINTENDENT (APPEAL),  
CENTRAL TAX, AHMEDABAD.

BY R.P.A.D.

1.M/s. Alfa Investigation & Security Pvt.Ltd.  
2. Director Shri Satyajit G. Pandya  
GF-51, Yashniketan Complex,  
opp. Khokhra Police Chowky, Maninagar,  
Ahmedabad- 380 008

Copy To:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner Central Tax, GST, Ahmedabad South.
- 3) The Asst. Commissioner, Central Tax GST Div-I, Ahmedabad, South.
- 4) The Asst. Commissioner (System), GST South, Hq, Ahmedabad.
- 5) Guard File.
- 6) P.A. File.

