
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
केंद्रीय कर शुल्कभवन, 7 th Floor, Central Excise Building,		
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,		
आम्बावाडी, अहमदाबाद-380015		
टेलीफोन : 079-26305065		टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)024/A-III/2017-18

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-232-17-18

दिनांक Date : 29.12.2017 जारी करने की तारीख Date of Issue 12-1-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-05/7-DKJ/DC/2016-17 Dated 31.01.2017

Issued by Deputy Commr STC, Service Tax, Ahmedabad

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

M/s. Parth Equipments 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 :-

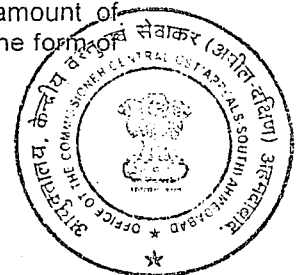
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 प्रतियों (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A2I9K केन्द्रीय उत्पाद शुल्क, अपील 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 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 13 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 अर्ज़ें 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 appeal has been filed by M/s. Parth Equipment Limited, 4208, Phase IV, GIDC Vata, Ahmedabad [for short – ‘appellant’] against OIO No. SD-05/07/DKJ/DC/2016-17 dated 31.1.2017 issued by the Deputy Commissioner, Division V, Service Tax Commissionerate, Ahmedabad [for short – ‘adjudicating authority’].

2. Briefly stated the facts are that the appellant was issued a show cause notice dated 18.4.2016, based on FAR No. 925/2015-16-ST dated 29.3.2016, *inter alia* alleging that they had carried out rectification work on used machine rolls to align them as per standard; that though this activity was leviable to tax, the appellant had not discharged service tax on the said activity. The notice therefore, demanded service tax of Rs. 2,80,733/- along with interest and further proposed penalty under section 78 of the Finance Ac, 1994.

3. This notice was adjudicated vide the impugned OIO dated 31.1.2017 wherein the adjudicating authority confirmed the service tax along with interest and further imposed penalty, equivalent to duty on the appellant.

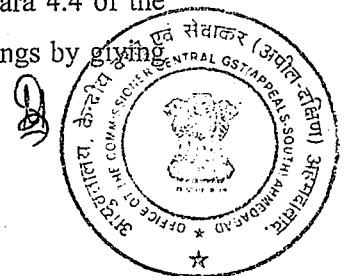
4. Feeling aggrieved, the appellant has filed this appeal on the grounds that:

- (a) the work undertaken was amounting to manufacture and since it was done on job work basis, the same was exempted under notification No. 214/86;
- (b) since the department considers the activity as taxable service, the burden was on the department to show that the same is taxable;
- (c) that the adjudicating authority has not shown how the activity was amounting to manufacture;
- (d) that since the demand is not maintainable, the question of penalty does not arise;
- (e) that extended period cannot be invoked; that penalty under section 78 cannot be imposed.

5. Personal hearing in the matter was fixed on 18.12.2017, but since I was busy in a meeting with the Chief Commissioner, personal hearing could not be held. Shri S. J. Vyas, Advocate, who was present for the personal hearing, had to return as the personal hearing could not be held. However, thereafter vide his letter dated 18.12.2017, received on 20.12.2017, Shri Vyas, Advocate, requested that the matter may be decided on the basis of grounds of appeal. In the letter he further reiterated his submissions made in the grounds of appeal.

6. I have gone through the facts of the case, the grounds of appeal and the submission reiterated by Shri Vyas in his letter dated 18.12.2017. The issue to be decided is whether the appellant is liable for payment of service tax or otherwise.

7. On going through the impugned order dated 31.1.2017, I find that the entire discussion and finding portion, consists of paras taken verbatim, from the show cause notice dated 18.4.2016. Para 8 of the impugned order, is a copy of para 3.2 of the show cause notice; para 9 of the impugned order, is a copy of para 3.3 & 3.4 of the show cause notice; para 9.1 of the impugned order, is a copy of para 3.4 of the show cause notice; para 10 of the impugned OIO, is a copy of para 4.2 of the show cause notice; para 11 of the impugned order, is a copy of para 4.3 of the show cause notice; para 12 of the impugned OIO, is a copy of para 4.4 of the show cause notice. Thereafter, the adjudicating authority has concluded his findings by giving



his order. Since, there is no finding recorded by the adjudicating authority, the impugned OIO can hardly be termed as a speaking order.

8. The Hon'ble Supreme Court of India in the case of Shukla & Brothers [2016 (46) STR 3 (SC)], has held as follows:

The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by Courts in India and abroad.

Further, Board vide its Master Circular No. 1053/2/2017-CX, dated 10-3-2017, with respect to Show Cause Notice, Adjudication and Recovery, has stated as follows:

14.5 **Adjudication order** : The adjudication order must be a speaking order. A speaking order is an order that speaks for itself. A good adjudication order is expected to stand the test of legality, fairness and reason at higher appellate forums. Such order should contain all the details of the issue, clear findings and a reasoned order.

14.6 **Analysis of issues** : The Adjudicating authority is expected to examine all evidences, issues and material on record, analyse those in the context of alleged charges in the show cause notice. He is also expected to examine each of the points raised in the reply to the SCN and accept or reject them with cogent reasoning. After due analysis of facts and law, adjudicating authority is expected to record his observations and findings in the adjudication order.

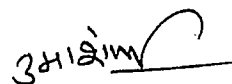
14.7 **Body of the order** : The adjudication order should generally contain brief facts of the case, written and oral submissions by the party, observation of the adjudicating authority on the evidences on record and facts of omission and commission during personal hearing and finally the operating order. At any cost, the findings and discussions should not go beyond the scope and grounds of the show cause notice.

9. Since the impugned OIO fails on the aforementioned parameters and as I have already held that it is a non speaking order, it is felt that the interest of justice would be served if the impugned OIO is set aside and the matter is remanded back to the adjudicating authority to issue a fresh order after following the principles of natural justice.

10. In view of the foregoing, the appeal is allowed by way of remand and the impugned OIO is set aside.

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

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




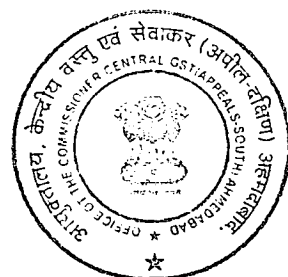
(उमा शंकर)

आयुक्त (अपील्स)

Date : 29.12.2017

Attested


(Vinod Lukose)
Superintendent (Appeal-I),
Central Excise, Ahmedabad.



By RPAD.

To,

Parth Equipment Limited,
4208, Phase IV, GIDC Vatwa,
Ahmedabad.

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central Excise Division-II, Ahmedabad South.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad South.
5. Guard File.
6. P.A.

