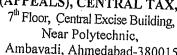


केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय करश्लकभवन् सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015



Ambavadi, Ahmedabad-380015

: 079-26305065

टेलेफैक्स : 079 - 26305136

फाइल संख्या : File No : V2(ST)032/A-II/2017-18 क

अपील आदेश संख्या : Order-In-Appeal No..<u>AHM-EXCUS-001-APP-235-17-18</u> ख दिनाँक Date :29-12-2017 जारी करने की तारीख Date of Issue

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

- Arising out of Order-in-Original No SD-05/10/DKJ/DC/16-17 Dated 28.02.2017 ग Issued by Deputy Commr STC, Service Tax, Ahmedabad
- ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

M/s. M-Zone World Wide Events

Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in

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 गैन्टल 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.
 - अपीलीय न्याथाधिकरण 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 विरूद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीट स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र वैंक के न्यायपीठ के राहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख था 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी।
 - 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 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 (२ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (२ए) के अंतर्गत निर्धारित फार्म एस टी.-७ में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्फ (अपील) के आदेश की प्रतियाँ (OIA)(उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A2l9k केन्द्रीय उत्पाद शुल्क, अपीलीच न्यायाधिकरण को आवेदन करने के निर्देश 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 शर्तो पर अनुसूची—1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 6.50/— पैसे का न्यायालय शुल्क टिकट लग' 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 शुत्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यचिधि) नियमावली. 1982 में चर्चित एवं अन्य संबंधित मामला का सिमिलित करने वाल 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की सख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 रोवाकर 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 होगे।
- 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. M-Zone World Wide Events, (STR AFEP B1499M SD001 w.e.f. 10.12.2015), 202, Nikunjchhaya Complex, Krishnabaug-Jawahar chowk Road, Nr. Sankalp Restaurant, Maninagar, Ahmedabad (hereinafter referred to as 'appellants') have filed the present appeals against the Order-in-Original number SD-05/10/DKJ/DC/2016-17 dated 28.02.2017 (hereinafter referred to as 'impugned orders') passed by the Deputy Commissioner, Service Tax, Div-V, Ahmedabad (hereinafter referred to as 'adjudicating authority').

- 2. The facts of the case, in brief are that appellant's premises was raided by HQ Service tax and was found that appellant was providing services related to "Event Management" since 2010. From 26AS, income tax return, it was found that service of Rs. 1,49,02,981/- was rendered without taking registration and without discharging Service Tax Liability of Rs. 17,74,082/- for the period 2011-12 to 2015-16.
- 3. SCN dated 17.10.2016 issued, invoking extended period, was adjudicated Vide impugned OIO wherein duty of Rs. 17,74,082/- has been confirmed u/s 73(1) along interest liability u/s 75. Following penalties were imposed
 - a. Penalty of Rs. 17,74,082/- u/s 78 for suppression of facts with intent to evade tax,
 - b. Penalty of Rs. 10,000/- u/s 77(1)(a) for failure to take registration,
 - c. Penalty of Rs. 10,000/- u/s 77(1)(b) for failure to maintain proper record, retain books of account, other documents etc,
 - d. Penalty of Rs. 10,000/- u/s 77(1)(c)(i)
 - e. Penalty of Rs. 10,000/- u/s 77(1)(c)(ii) and Rs. 10,000/- 77(1)(c)(iii) for failure to furnish information/documents called for,
 - f. Penalty of Rs. 10,000/- u/s 77(1)(c)(iii) for failure to appear before Department to give statement and
 - g. Penalty of Rs. 10,000/- u/s 77(2) for improper self assessment and improper filing of ST-3.
- 4. Being aggrieved with the impugned order, the appellants preferred an appeal on 26.04.2017 before the Commissioner (Appeals-II), Ahmadabad wherein it is contended that
 - a. Appellant has received amount (a) for providing Event Management Service (b) and in capacity of pure agent. However service tax liability is worked out on clubbed amount. In terms of



Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 amount received as pure agent is excluded from taxable service amount.

- b. Appellant is not liable to take registration since he is availing the thrash hold based exemption available under Notification No. 33/2012-ST dated 20.06.2012.
- c. There is no other corroborative evidence to support their contention except 26AS statement.
- 5. Personal hearing in the case was granted on 30.11.2017. Shree Abhishek Chopra, CA, appeared before me and reiterated the grounds of appeal. He showed IT returns and refund claimed. He submits that PH was given with small time gap. He requested to remand.

DISUSSION AND FINDINGS

- 6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants, evidences produced at the time of personal hearing. I have gone through additional submission dt. 07.12.17
- 7. Appellant has stated that he could not attend the hearing due to short notice of hearing and he is deprived of natural justification . Appellant has request to remand the case back to adjudicating authority on ground of short notice of personal hearing. I find that personal hearing for SCN dated 17.10.2016 was fixed by adjudicating authority on 06.12.2016, 13.12.2016 and 20.12.2016 which is at interval of seven days. Appellant has argued that most of the service has been received as "pure agent" and same should be deducted from taxable service amount calculated in SCN.
- 8. Appellant has produced invoices and annexure showing receipt of "pure agent service", in support of their contention, that some service has been received as pure agent. Appellant produced documents 26AS, Bank statements, Income tax returns, copies of invoices, summary of invoice Vs payment received. All these documents which were not produced before adjudicating authority because of short notice of personal hearing needs to be verified by original adjudicating authority. I am of considered view that case needs to be remanded back to original adjudicating authority.

- 9. In view of facts and discussion herein above, the Adjudicating Authority is directed to decide the case afresh, for which case is remanded back to the Adjudicating Authority, after due compliance of the principles of natural justice and after proper appreciation of the evidences that may be put forth by the appellant before him. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority. These findings of mine are supported by the decision/order dated 03.04.2014 of the Hon'ble High Court, Gujarat in the Tax appeal No.276//2014 in the case of Commissioner, Service Tax, Ahmedabad V/s Associated Hotels Ltd. and also by the decision of the Hon'ble CESTAT, WZB Mumbai in case of Commissioner of Central Excise, Pune-I Vs. Sai Advantium Ltd and reported in 2012 (27) STR 46 (Tri. Mumbai).
- 10. In view of above, appeal filed by the appellants is allowed by way of remand.
- 11. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

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

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

M/s. M-Zone World Wide Events,

202, Nikunjchhaya Complex,

Krishnabaug-Jawaharchowk Road,

Nr. Sankalp Restaurant,

Maninagar, Ahmedabad

Copy to:



- 1) The Chief Commissioner, Central Tax, Ahmedabad South .
- 2) The Commissioner Central Tax, CGST, Ahmedabad South.
- 3) The Additional Commissioner, Central Tax , Ahmedabad- South
- 4) The Asst. Commissioner, Central Tax, Div-IV- NAROL, Ahmedabad South
- 5) The Asst. Commissioner(System), Hq, Ahmedabad South.
- 6) Guard File.
- 7) P.A. File.

