



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय कर शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015



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टेलीफैक्स : 079 - 26305136

- क फाइल संख्या : File No : **V2(ST)096&97/A-II/2017-18 / 395-99**
- ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-001-APP-247&248-17-18**
दिनांक Date : 16-1-2018 जारी करने की तारीख Date of Issue 22/01/18
- श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
- Passed by **Shri Uma Shanker** Commissioner (Appeals)
- ग Arising out of Order-in-Original No **SD-02/44 & 45/AC/2016-17** Dated **27.02.2017**
Issued by **Assistant Commr STC, Service Tax, Ahmedabad**
- ध अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s. Sequel Logistics 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 :-

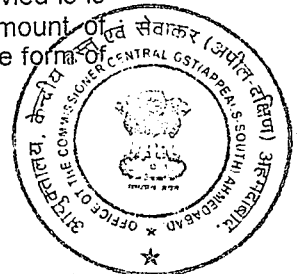
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 A2I9K 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 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 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. Sequel Logistics Pvt.Ltd. 29/B, Shrimali Society Opp. Passport Seva Kendra, Near Mithakhali Six Roads, Navrangpura, Ahmedabad-380 009 (hereinafter referred to as 'appellants') have filed the present appeal against the Order-in-Original No. SD-02/44 & 45/AC/2016-17 dated 27.02.2017 (hereinafter referred to as 'impugned order') by the Assistant Commissioner, Service Tax, Div-II, Ahmedabad (hereinafter referred to as 'adjudicating authority'.

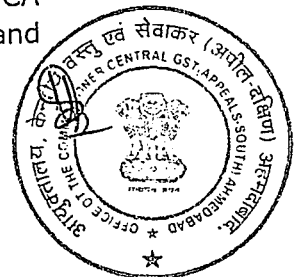
2. Briefly stated the facts of the case are that the appellants are engaged in providing taxable services under the category of "Clearing and Forwarding Agents Services" and are registered with the Service Tax department under Service Tax Registration number AAHCS9813PST001. During the course of audit, it was noticed that the appellants were recovering 'Notice Pay' from the employees who were leaving the job without giving notice for the stipulated period, and thereby permitting the concerned employees to leave the job. In this process, the appellants had recovered an amount of ₹4,01,037/- for the period from 01.01.2013 to 30.09.2014 and ₹ 2,15,771/- during Oct,2014 to March,2016. It was deduced by the audit team that by recovering the notice pay, the appellants were tolerating the act of the employees to leave the job. This activity of the appellants falls under the category of 'declared services' as envisaged under Section 66E(e) of the Finance Act, 1994. On being pointed out by the audit party, the appellants did not agree with the objection and accordingly, a show cause notice, dated 13.08.2015 and show cause notice dated 17.11.2016 respectively were issued to them. The said show cause notices were adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority confirmed the demand for recovery of Service Tax amounting to ₹49,567/- and 31,091 under Section 73 read with Section 68 of the Finance Act, 1994. He also ordered the appellants to pay interest under Section 75 of the Finance Act, 1994. The adjudicating authority further imposed penalty under Sections 76, 77 and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellants preferred the present appeal. They stated that the transaction entered into by the appellant with its employee is outside the scope of definition of service. Originally an employment agreement was entered into between appellant and its various employees with a condition to recover notice pay from the employees leaving job without notice pay for a stipulated period. Originally the agreement was not for notice pay, the agreement was an employment agreement between the appellant and employees. At the outset there was no agreement to the obligation to refrain from an act or to tolerate an act or a situation or to do an act on the part of appellant. Hence the transaction is not covered under declared service and such notice pay recovered is in nature of penalty levied upon the employees and not for refraining or tolerating an act or situation and hence cannot be considered as consideration for taxable services to fall under the entry no.(e) of Section 66E of the Finance Act,1994.They relied on the following decisions;

i). "CCE v/s. Victory Electricals Ltd. [2014] 42 taxmann.Com 2015 (Chennai-CESTAT-LB)".

ii). Nirma Ltd.OIA No.VAD-EXCUS-001-AAP-341/2016-17 dated 21.09.2016.

4. Personal hearing in the case was granted on 14.11.2017 wherein CA Bhagyashree Bhatt and CA Dhawni Patwari appeared before me and



reiterated the contention of their submission. Also submitted citation referred in their submission.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. Now, let me examine the reasons of confirming the demand and the defense reply given by the appellants.

6. To start with, I find that the adjudicating authority has confirmed the demand of Service Tax amounting to ₹ 49,567/- and ₹ 31,091/- stating that as per the definition of service as envisaged under Section 65B(44) of the Finance Act, 1994, read with Section 66E(e) of the Act, and as such it is established that the said assesses had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as they failed to pay service Tax within prescribed time limit.

6.1 It is pertinent to note that amendments made in the Act w.e.f. 01.07.2012, in the new system, the word 'service' has been redefined under Section 65B(44) of the Finance Act, 1994. However, CBEC, in the month of June 2012, had introduced an 'Education Guide' in light of the new system. The said guide clarifies many queries that were supposed to erupt at the time of the amendments made in the Act w.e.f. 01.07.2012. I would like to quote below a concerned paragraph from the said guide for clarification;

"2.9 Provision of service by an employee to the employer is outside the ambit of service;

2.9.1 Are all services provided by an employer to the employee outside the ambit of services?

No. Only services that are provided by the employee to the employer in the course of employment are outside the ambit of services. Services provided outside the ambit of employment for a consideration would be a service. For example, if an employee provides his services on contract basis to an associate company of the employer, then this would be treated as provision of service.

2.9.2 Would services provided on contract basis by a person to another be treated as services in the course of employment?

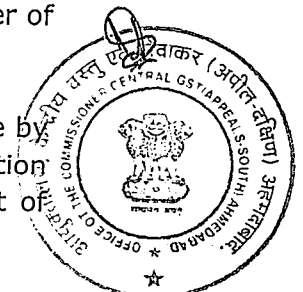
No. Services provided on contract basis i.e. principal-to-principal basis are not services provided in the course of employment.

2.9.3 Would amounts received by an employee from the employer on premature termination of contract of employment be chargeable to Service Tax?

No. Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amounts so paid would not be chargeable to Service Tax. However any amount paid for not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act".

In view of the above, it is now very clear that any payment made by either of the party to the other one would not be chargeable to Service Tax.

7. Thus, from the above, I conclude that the process of payment made by the employees to the appellants, for termination of job before the completion of the agreed upon period, is not to be treated as a service nor any act of



consideration for refraining from an act or tolerating an act. Therefore, I hold that the impugned order should be set aside in the interest of justice and the appellants should be given relief from payment of Service Tax along with interest and penalty.

8. In view of above, I set aside the impugned order with consequential relief to the appellants.

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

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

Umasankar

(उमा शंकर)

आयुक्त (अपील्स)

CENTRAL TAX & GST, AHMEDABAD.

ATTESTED

K.H. Singhal
(K.H.Singhal)
SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.

BY R.P.A.D.

To,
M/s. Sequel Logistics Pvt.Ltd.
29/B, Shrimali Society,Opp.Passport Seva Kendra,
Near Mithakhali Six Roads,Navrangpura,
Ahmedabad-380 009.

Copy To:-

1. The Chief Commissioner, Central Tax & GST, Ahmedabad zone, Ahmedabad.
2. The Principle Commissioner, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Div-VI (Vastrapur) Ahmedabad-South.
4. The Assistant Commissioner, System-Ahmedabad
5. Guard File.
6. P.A. File.

