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

क फाइल संख्या : File No : **V2(ST)089/A-II/2017-18**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-253-17-18**

दिनांक Date : 18-1-2018 जारी करने की तारीख Date of Issue 24-1-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No **SD-05/16/DKJ/DC/Div-II/2016-17** Dated **30.03.2017** Issued by Deputy Commr **STC**, Service Tax, Ahmedabad

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

M/s. Ratnabhumi Developers 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 :-

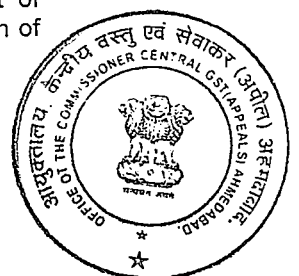
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी 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 भेजी 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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 अर्ज़ें 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

This order arises out of an appeal filed by M/s. Ratnabhumi Developers Pvt. Ltd., 203, Galaxy Line, B/H Samartheshwar Temple, Law Garden, Ellisbridge, Ahmedabad-380006 (in short 'appellant') against Order-in-Original No.SD-05/16/DKJ/DC/Division-II/2016-17 dated 30.03.2017 (in short 'impugned order') passed by the then Deputy Commissioner, Service Tax Division-V, Ahmedabad (in short 'adjudicating authority').

2. Briefly stated that the appellant's premises was searched by the DGCEI, Ahmedabad Zonal Unit on 12.04.2013 and statement of its director was recorded. It was found that appellant had received income from 'Renting of Immovable Property Service' (RIP) and availed 'Goods Transport Agency' service(GTA) as recipient but failed to pay service tax on it for the period April-2011 to March-2014 and April-2010 to March-2014 respectively and also failed to file ST-3 return and pay service tax to the govt. account though they were registered on 18.02.2011 under the Service Tax Rules, 1994. Later on they paid service tax due alongwith interest and filed ST-3 return before issue of SCN dated 13.10.2016. The appellant did not file any reply to the SCN nor appeared for personal hearing fixed on 28.02.2017, 07.03.2017 and 14.03.2017. This SCN was adjudicated by the adjudicating authority wherein demand of Rs.20,71,891/- under "Renting of Immovable Property Service" and Rs.34,938/- under "GTA service" was confirmed alongwith interest under Section 73(1) and 75 of the Finance Act, 1994 respectively; appropriated service tax of Rs.21,06,829/- (Rs.20,71,891/--RIP + Rs.34,938/--GTA) already paid; appropriated interest of Rs.58,211/- already paid; imposed penalty of Rs.10,000/- under Section 77ibid and also imposed penalty of Rs.21,06,829/- under Section 78ibid.

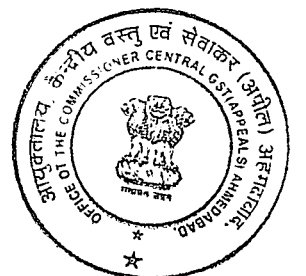
3. Aggrieved with the impugned order, the appellant has filed the present appeal wherein, *inter alia*, submitted that:

- (a) the adjudicating authority has erred in imposing penalty under Section 78 for suppression for 2013-14 despite the fact that search was conducted on 12.04.2013 and tax for the said years was paid and return was filed within due dates.
- (b) the adjudicating authority imposed penalty under Section 78 at 100% and not given option to pay 25% penalty as provided under second proviso to Section 78 as amended by the Finance Act, 2015 read with Section 78B.

4. Personal hearing in the matter was held on 18.12.2017. Shri Punit Prajapati, Chartered Accountant, appeared on behalf of the appellant and submitted that duty for 2013-14 was paid in time yet included in SCN and penalty imposed; that they have paid 25% to be on safer side; that penalty of Rs.3,54,594/- should be refunded.

5. I have carefully gone through the appeal memorandum, submission made at the time of personal hearing and evidences available on records. I find that the main issue

[Handwritten signature]

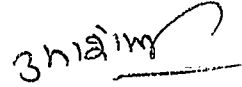


to be decided is whether the appellant is eligible for penalty @25% under Section 78 or otherwise. Accordingly, I proceed to decide the case on merits.

6. I find that the appellant has strongly contested that they have paid service tax along with interest within due date and therefore they are eligible for penalty @25% under second proviso to Section 78ibid. In this regard, I find that there is no dispute regarding levy of service tax on RIP as well as GTA services under RCM. The only dispute is for benefit of penalty @25% under Section 78ibid. In this regard, I find that the adjudicating authority has, though the full amount paid by the appellant towards duty and interest is appropriated against the confirmed dues, not clearly mentioned in its findings in the impugned order as to when (i.e date) the appellant had paid such dues. Further, I find that the appellant is invariably eligible for penalty @ 25% under second proviso to section 78 even if it is not provided expressly in the impugned order. So, I allow the appeal with consequential relief, if any, as claimed by the appellant subject to verification of duty payment & 25% penalty payment within stipulated time by the adjudicating authority.

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

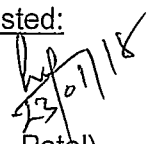
The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested:


(B.A. Patel)
Supdt.(Appeals)
Central GST, Ahmedabad.

BY SPEED POST TO:

M/s Ratnabhumi Developers Pvt. Ltd.,
203, Galaxy Line, B/H Samartheshwar Temple,
Law Garden, Ellisbridge,
Ahmedabad-380006.

Copy to:-

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Principal Commissioner, CGST, Ahmedabad South (RRA Section).
- (3) The Dy. Commr, CGST, Division VII(Vastrapur), Ahmedabad South.
- (4) The Asstt. Commissioner(System), CGST, Ahmedabad-South.
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.

