

	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	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)0284/A-II/2016-17 / ~~HTD-163 to 167~~

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-082-17-18

दिनांक Date : 25-09-2017 जारी करने की तारीख Date of Issue 13-10-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-05/05/DKJ/DC/2016-17 Dated 30.12.2016

Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

**M/s. Prithvi Hotels 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:-

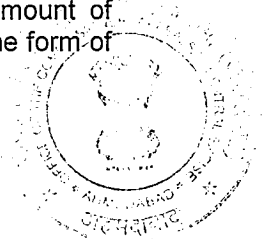
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, 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 फॉर्म 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 (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 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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 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 अर्ज़ी 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,

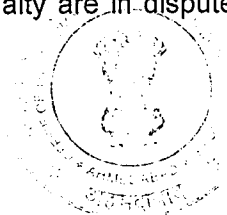
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 appeal is filed by M/s. Prithvi Hotel (Gujarat) Private Limited, 106/20, Gardeward, Nr. L G Hospital, Maninagar, Ahmedabad 380 008 [hereinafter referred to as the 'appellant'] against OIO No. SD-05/05/DKJ/DC/2016-17 dated 30.12.2016, passed by the Deputy Commissioner of the erstwhile Service Tax Commissionerate, Division V, Ahmedabad [for short - 'adjudicating authority'].

2. A show cause notice dated 6.10.2016, was issued to the appellant, based on inquiry conducted by the Preventive wing of the erstwhile Service Tax Commissionerate, Ahmedabad. The notice *inter alia* demanded service tax of Rs. 21,23,463/- along with interest and further proposed penalty under sections 77(2) and 78 of the Finance Act, 1994. The notice further proposed appropriation of Rs. 7,95,892/- already paid by the appellant. Penalty under section 78A was also proposed on the Managing Director of the appellant.

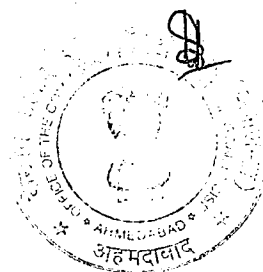
3. The aforementioned notice dated 6.10.2016 was adjudicated vide the impugned OIO dated 30.12.2016 wherein the adjudicating authority confirmed the demand along with interest and further imposed penalty on the appellant. The amount already paid towards duty was appropriated. Feeling aggrieved, the appellant has filed this appeal, raising the following averments:

- that they had filed returns upto September 2013 on the date of initiation of inquiry;
- that they had subsequently filed returns upto March 2015;
- that they have fully paid up Rs. 21,23,463/- towards the service tax demand;
- that the adjudicating authority erroneously concluded that the appellant had failed to determine the correct value of taxable services;
- that the adjudicating authority erroneously concluded they had not filed correct ST 3 returns;
- that the adjudicating authority erroneously concluded that the appellant has knowingly and wilfully not paid the correct amount of service tax;
- that there was no wilful suppression of facts;
- that the penalties levied may be waived; that since the full service tax liability stands discharged within 30 days from the receipt of the order, the penalty under section 78 needs to be quashed.

4. Personal hearing was held on 13.9.2017, wherein CA Kushboo Mer and CA Krutesh Patel, appeared for the appellants and reiterated the grounds of appeal.

5. I have gone through the facts of the case, the appellant's grounds of appeal, and the oral submissions made during the course of personal hearing.

6. I find that in the reliefs claimed before me, the appellant has only challenged the penalties imposed under Sections 77(2), 78 and 78A of the Finance Act, 1994. I find that the appeal is filed by the appellant, a Private Limited Company. Since the appeal has been filed by M/s. Prithvi Hotel (Guj.) Private Limited, my findings would be restricted in respect of the penalties imposed on the appellant only. The appellant I find is not disputing the confirmation of service tax by the adjudicating authority.



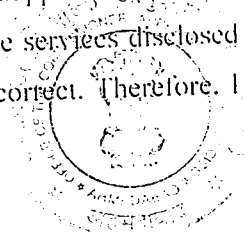
7. Briefly, the facts are that an inquiry was initiated against the appellant on 1.12.2014 by issuing a letter. Later on based on the reconciliation of the value declared in the ST-3 returns with the Balance Sheets, Profit and Loss account, etc. it was ascertained that [a] the appellant had not discharged the service tax liability regularly although the service tax was collected from the customers; [b] that the value in the ST-3 returns was mis-declared; and [c] that the service tax returns were not filed for certain period till the initiation of the inquiry.

8. The appellant is contesting only the imposition of penalty. Hence, it needs to be examined whether the adjudicating authority was correct in imposing penalty under sections 77(2), 78 on the appellant. As already stated, since the penalty under section 78A is imposed on the MD of the appellant, for which no separate appeal is filed, I would not be dealing with the averments in that respect.

9. The appellant has vehemently contested the imposition of penalty on the grounds that the adjudicating authority erroneously concluded that the appellant had failed to determine the correct value of taxable services; that the adjudicating authority erroneously concluded they had not filed correct ST 3 returns; that the adjudicating authority erroneously concluded that the appellant has knowingly and wilfully not paid the correct amount of service tax; that there was no wilful suppression of facts. Before dwelling onto these averments, I would like to examine the Annexure A, B and C to the show cause notice dated 6.10.2016. In respect of Annexure A, relating to mandap keeper, it is observed that the appellant had suppressed the correct value of taxable service for the FY 2013-14. In respect of Annexure B relating to restaurant service, it is observed that the appellant had suppressed the correct value of taxable service for the FY 2013-14. In respect of the Annexure C, relating to accommodation service, it is observed that the appellant had suppressed the correct value of taxable services for the FY 2011-12, 2012-13 and 2013-14. The appellant had not filed any return for the FY 2014-15, which was filed subsequently consequent to the initiation of inquiry. This suppression of correct value led to the short payment of Service tax. Therefore, to now argue that the adjudicating authority had erred in holding

- [a] that the appellant had failed to determine the correct value of taxable services;
- [b] that they had not filed correct ST-3 returns and
- [c] that they had knowingly and wilfully not paid the correct amount of service tax.

belies the facts. It is on record that the correct value was not declared in the ST 3 returns leading to short payment of service tax and also that they had not filed certain service tax returns. It is also a fact that though the service tax was collected it was not deposited to the Government. It is also an undisputed fact that the assessable value was suppressed and correct value was only ascertained after Balance Sheet was correlated. The appellant has not disputed this value and paid duty on this. In appeal however, they have pleaded that there was no suppression and the "Learned Deputy Commissioner in his order has relied on amount of taxable services disclosed by us in service tax return", which again is mis-statement and factually incorrect. Therefore, I

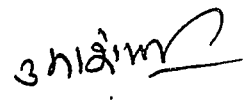


find that this case has all the ingredients for invoking extended period and the imposition of penalty under section 78 of the Finance Act, 1994 is therefore, upheld on account of clear cut suppression of facts.

9. As far as imposition of penalty under Section 77(2) is concerned, I find that the adjudicating authority in para 15 has listed the contraventions but concluded that he refrains from imposing the penalty. However, in the operative part of the order i.e. the order portion, he has imposed penalty. Hence, the last line in para 15, wherein the adjudicating authority talks of refraining from imposing penalty, seems to be a typographical error. Hence, I uphold the penalty under Section 77(2) of the Finance Act, 1994 on the appellant. Further, since the penalty is not quantified, I quantify the same and a penalty of Rs. 8,000/- is imposed on the appellant under Section 77(2) of the Finance Act, 1994.

10. In view of the foregoing, I uphold the impugned order of the adjudicating authority except for the aforementioned modification, as mentioned supra.

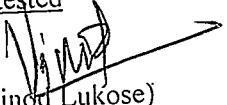
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
11. The appeal filed by the appellant stands disposed of in above terms.

  
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date : 25.09.2017

Attested

  
(Vinod Lukose)  
Superintendent,  
Central Tax(Appeals),  
Ahmedabad.

By RPAD.

To,

M/s. Prithvi Hotel (Gujarat) Private Limited,  
106/20, Gardenward,  
Nr. L G Hospital, Maninagar,  
Ahmedabad 380 008

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Deputy/Assistant Commissioner, Central Tax, Division VI, Ahmedabad South.
4. The Additional Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.

