
	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर शुल्क भवन, सातवाडी जिले, 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)0231/A-II/2016-17 / 1533 व 1537**  
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-093-17-18**  
 दिनांक Date : 25-09-2017 जारी करने की तारीख Date of Issue 10-10-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No **MP/06/ST -Dem/10-11** Dated **30.04.2010**  
 Issued by Assistant Commr **STC**, Service Tax, Ahmedabad

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

**M/s. Ameer Travels  
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 :-

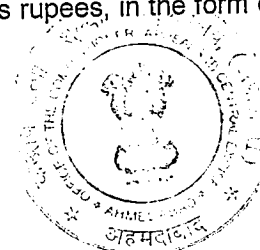
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल 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 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35फ 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 अर्जी 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,

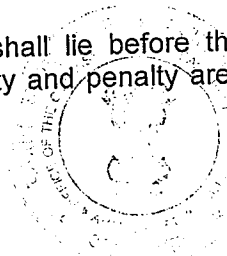
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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-PPEAL**

M/s. Ameer Travels, 35-B, Mangal Tirth Shopping Center, Opp. Dharnidhar Jain Temple, Paldi, Ahmedabad (*hereinafter referred to as 'the appellants'*) has filed the present appeal against Order-in-Original No. MP/06/ST-Dem/10-11 dated 30.04.2010 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants were engaged in the business of providing 'Rent-a-cab service' and charged taxi fare value and service tax from the customers and were covered under definition of Rent-a-cab service defined in Section 65(105) of the Finance Act, 1994. During the course of CERA audit, it was noticed that the said applicant had declared less value of taxable service in their ST-3 returns as compared to value shown in their Profit & Loss account and have short paid the service tax thereon during the years 2001-02, 2002-03 and 2003-04. Accordingly, a show cause notice was issued to the said applicant demanding service tax totalling to Rs. 1,84,369/- with interest and penalty was also proposed. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax amounting to Rs. 1,84,369/- under Section 73 (1) of the Finance Act, 1994 alongwith interest and imposed penalty of equal amount of demand under Section 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellants filed the present appeal along with a request letter for condonation of delay in filing the appeal before me. In the request for condonation of delay, the appellants stated that the business operation of the firm (appellant's firm) was carried out by the wife of the Proprietor at the material time. Show cause notice was issued to the appellants against which the appellants had submitted written reply and the adjudicating authority adjudicated the show cause notice vide the impugned order. At that time the appellants (probably the Proprietor) were not aware of the said impugned order as the wife of the Proprietor was looking after the whole business activity. The wife of the Proprietor was in knowledge of the fact but she expired. Afterwards, the appellants were of the belief that the disputed issue of the Service Tax demand was resolved. However, when the appellants, recently, received the recovery demand notice for the impugned order, they came to know that the case was still alive. Thus, the appellants requested me to condone the delay. Regarding the charges framed in the impugned order, the appellants stated that the appellants had given their vehicle on hire to various clients and collecting charges on kilometer basis. They were not giving their vehicles on rent. Therefore, the activities of the appellants were not covered under the Rent-a-cab operator service and hence they are not liable for Service Tax. They also claimed that penalty under Sections 76 and 78 of the Finance Act, 1994 cannot be simultaneously imposed. In view of the above argument, the appellants requested to admit the appeal and set aside the impugned order.

4. Personal hearing in the case was granted on 07.09.2017 wherein Shri Vipul Khandhar, Chartered Accountant, on behalf of the appellants appeared before me and reiterated the contents of appeal memorandum.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellants and oral submission made at the time of personal hearing. To begin with, I find that there has been a delay of 6 years and 6 months in filing the



appeal by the appellant. The reason for delay (more than six years) claimed by the appellants, is that the wife of the appellant expired on 10.01.2013 (she was knowing the facts) and the appellants meanwhile believed that the issue was resolved like any other case. However I find that The Commissioner (Appeals) may allow a further period of 1 month, if sufficient cause for late filing of appeal is shown and proved to him. Section 85 of the Finance Act, 2003 (during the material time) provided that:

“85. Appeals to the Commissioner of Central Excise (Appeals) – (1) Any person aggrieved by any decision or order passed passed by an adjudicating authority subordinate to the Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals)

(2) .....

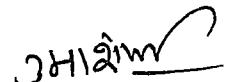
(3) An appeal shall be presented within three months from the date of receipt of the decision or order of the such adjudicating authority relating to service tax, interest or penalty under this Chapter made before the date on which the Finance Bill 2012 receives the assent of the President:

Provided that the Commissioner Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months]”

From the above provisions of Section 85 of the Finance Act, 2003, it is very clear that the delay of not more than three months can be condoned beyond the statutory limit of three months on sufficient cause being shown. Now in the instant case, I find that the delay is even beyond the statutory limit of period within which the appeal can be filed and therefore such delay which is beyond the condonable period in filing the appeal, cannot be condoned. I find that the delay in this case is of more than six years and in view of this, I reject the appeal on the ground of limitation.

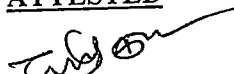
6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
(उमा शंकर)

आयुक्त (अपील्स)  
केन्द्रीय कर, अहमदाबाद.

**ATTESTED**

  
(D. UPADHYAYA )  
SUPERINTENDENT (APPEALS),  
CENTRAL TAX, AHMEDABAD.  
**BY R.P.A.D.**

To,

M/s. Ameer Travels,  
35-B, Mangal Tirth Shopping Center,  
Opp. Dharnidhar Jain Temple, Paldi,  
Ahmedabad- 380 007.

**Copy To:-**

1. The Chief Commissioner, CGST, Ahmedabad zone, Ahmedabad.
2. The Commissioner, CGST, Ahmedabad (South).
3. The Asstt./Deputy Commissioner, CGST, Div-VII, Ahmedabad (South).
4. The Assistant Commissioner (systems), CGST, Ahmedabad (South).
5. Guard File.
6. P.A. File.

