



केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
7th Floor, Central Excise Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015

सत्यमेव जयते

केंद्रीय कर शुल्क भवन,
सातवीं मंजिल, पॉलिटेक्निक के पास,
आम्बावाडी, अहमदाबाद-380015

टेलीफैक्स : 079 - 26305136

079-26305065



- क. फाइल संख्या : File No : V2(ST)0159/A-III/2016-17 / 1666 to 1672
- ख. अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-094-17-18
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 AHM-SVTAX-000-JC-012-16-17 Dated 11.08.2016 Issued by Joint Commissioner STC, Service Tax, Ahmedabad

- घ. अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s. Shree Security 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 :-

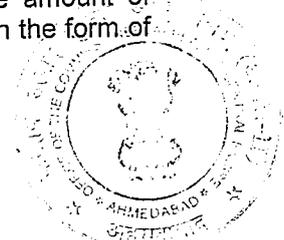
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, 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.

(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 रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 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 (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, 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 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,

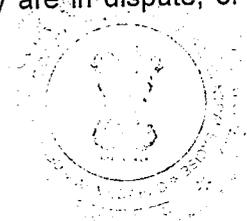
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

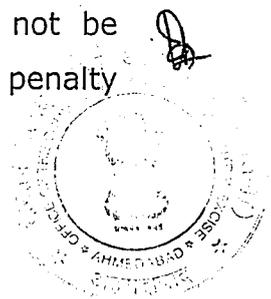


ORDER IN APPEAL

M/s. Shree security (Proprietor Sanjay. G. Patel), 15, Mausam Apartment, Dhanlakshmi Society, Opp. Gopal Tower, Maningar (West), Ahmedabad- 380 008 (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number AHM-SVTAX-000-JC-012-16-17 dated 11.08.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Joint Commissioner, Service Tax, HQ, Ambawadi, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants were engaged in supply of Cash Van on rental basis with drivers to various Bank & their branches to carry cash from one branch to another and for that they were charging monthly rent. Appellant raised invoices on the basis of kilometers the Cash Van had travelled during the month/period. In balance sheet income of Rs. 3,13,78,176/- received from period 2010-11 to 2012-13 (up to June 2012) was recorded under head "Cash Van Rent Income". Agreement was also for supply of Cash Van with Driver. Appellant was not having any registration till June-2012. Service Tax registration number AFAP P2570F SD002 was taken w.e.f. 01.07.2012. Department classified the said service as "SUPPLY OF TANGIBLE GOODS" mentioned under Section 65(105)(zzzzj) of FA, 1994 and demanded Service tax of Rs. 33,31,038/- vide SCN dated 20.10.2015. Appellant was of view that said service was not taxable as it is transportation of cash service. Adjudicating authority held that appellant was rendering service of supply of tangible goods and confirmed duty demanded in SCN, with interest liability u/s 75 and imposition of equal penalty u/s 78. Penalty of Rs. 10,000/- under section 77(1)(a) and penalty of Rs. 10,000/- under section 77(2) of FA, 1994.

3. Being aggrieved with the impugned order, the appellants preferred an appeal on 17.10.2016 before the Commissioner (Appeals-II) wherein it is contended that service provided is not covered under "supply of tangible goods service". Essence of service rendered is "transportation of cash" in specialized van and further, cash not being goods, their service is not taxable under "transportation of goods service" also. He argued that the essence of contract should be deciding factor for classification of taxable category of service; that the extended period of limitation can not be invoked as there is no fraud or willful misstatement and that the penalty could not be levied if there is reasonable cause for failure to pay tax.



4. Personal hearing in the case was granted on 18.08.2017. Shri Gopal Krishna Loddha and Shri Vipul Kothari, both CA, on behalf of appellant, appeared before me and reiterated the grounds of appeal. They also submitted additional written submission dated 18.08.2017 during the course of hearing.

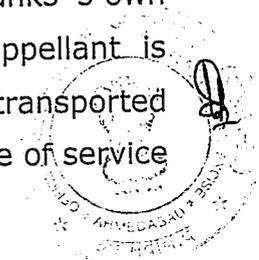
DISCUSSION AND FINDINGS

5. 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 at the time of personal hearing.

6. Question to be decided is whether appellant is providing "supply of tangible goods service" or "transportation of goods (cash) service" to the bank. Appellant's contention is that they are providing transportation of cash service and cash is not goods therefore service rendered is beyond the scope of service tax.

7. I have perused the contract papers and agreement conditions. I find that contract is for supply of cash van with drivers for transportation of cash from one bank to another. Monthly rate for usage of Cash Van is mentioned for maximum kilometer running up to 2000 kilometers and extra charge per km if required beyond 2000 km usage is specified in contract. I am not convinced with appellant's argument that they are providing "transportation of cash service" as they have not produced any evidence to establish that bank have handed them over cash to deliver at another bank, just like consignment note issued by GTA as a token of having received goods. My simple understanding is that, the Bank wanted to undertake "activity of transportation of cash" for which they wanted the service of cash van. Hence my opinion is that, it does not mean that owner of cash van is rendering service of "transportation of cash service" as Payment is made on Cash Van Kilometer usage basis and not on amount of cash transported basis.

8. From terms and condition of agreement I find that primary purport and object with which appellant entered into contract is nothing else but to "supply cash van with driver". With this Cash Van Bank had carried out secondary purport and object of "transportation of cash" under banks' own supervision and control, but that does not mean that the appellant is rendering 'transport of cash service'. Even if the cash were not transported appellant would have been given monthly rent of cash van. Nature of service

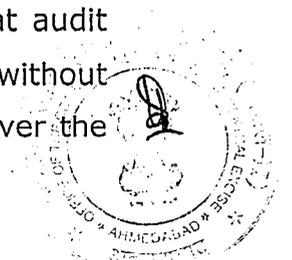


provided is clear and distinct and easily identifiable as 'supply of tangible goods'. Had there been mixture of two or more service then, there would have been ambiguity and in that case it would have been difficulty to decide classification. Appellant have resorted to and have supplied copies of judgment in case of (a) Super Poly Fabricks Ltd. -2008 (10) STR 545 (SC) and (b) Coal Carriers -2011 (24) STR 395 (Ori) but said judgments are of no help to them as in present case there is no ambiguity in deciding the classification.

9. As per Section 65(105)(zzzzj) of the Finance Act, 1994 "Taxable Service" means any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipments and appliances for use, without transferring the right of possession and effective control of such machinery, equipments and appliances. In other words, the right of possession and effective control over the goods should remain with the service provider. When the Cash Van are supplied with the Driver, the possession and control over the Cash Van lie with the service provider. Therefore, I hold that activity of renting of Cash Van come within the purview of 'Supply of Tangible Goods'.

10. Appellant has not put forth any concrete argument as to why said service can not be classified as "supply of tangible goods" but instead of that appellant is making futile effort to classify the service as "transport of cash" service. Appellant cited seven judgments, vide para B-5.1 to 5.7 of submission on merit of their additional submission dated 18.08.2017, in support of their contention that 'transportation of Cash' is not covered under supply of tangible goods. Copies of judgments are not submitted and I am unable to trace out the same at my end also. Out of said seven judgment I could find one judgment of Bhima SSK Ltd. Versus Commissioner of C. Ex. & S. T., Pune-III-2015 (39) S.T.R. 440 (Tri. - Mumbai). In said judgment of Bhima SSK Ltd., it is held that supply of bullock cart without bullock is not covered under supply of tangible goods service. Said judgments are not applicable even at remote end to present case in hand.

11. Appellant contended that after investigation by preventive party of department, no show cause notice was issued for long, therefore department has no right to issue present SCN. I find that this argument as very vague and without any backing of law. I conclude that Inquiry conducted earlier does not legally vitiate the present SCN. Appellant's contention that audit beyond audit period i.e. beyond taking registration on 01.07.2012, is without authority of law, is also not convincing as revenue has right to recover the



tax not paid before taking registration and there is not restriction given in FA, 1994 r/w C.Ex. Act that department can not recover tax un-paid for period prior to taking registration. Appellant is contending that department is has to adopt only one stand in classification of supply of Cash Van. I find that this argument is beyond the jurisdiction of SCN and of no help to appellant. In this regards I mention that, views differ from officer to officer in classification of some awkward service or service having mixture of two services or definition. Regarding SCN barred by limitation I completely agree with the observation made at para 19.9 of OIO that appellant has suppressed the facts from department with the intent to evade the duty and department is justified in invoking expended period u/s 73(1) of FA, 1994. Further had the audit not been conducted, said non payment would have gone un-noticed. Reasonable cause, like Board circular, judgments in any other case etc, for failure to pay tax has not being given. Appellant had violated the provisions of FA, 1994 and C.Ex., 1944 by not paying service tax and not taking registration and not filing return. I hold that duty is correctly confirmed with interest u/s 75 and further penalty under section 78 , 77(1)(a) and 77(2) of FA, 1994 is correctly imposed in impugned OIO.

12. Appellant`s argument that cum-duty tax benefits may be granted to them to arrive at service tax liability. Appellant has not produced any evidence that amount collected is cum-duty amount. In this regards I hold that whatever is collected from Bank is value towards service only, therefore service tax has to be paid on whatever has been collected and therefore cum-duty tax benefits can not be given to appellant.

13. In view of above, I up-hold the impugned OIO and appeal filed by the appellants is rejected.

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

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

उमा शंकर
(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED

Rajendra

(R.R. PATEL)

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.



To,

M/s. Shree security

(Proprietor Sanjay. G. Patel),

15, Mausam Apartment, Dhanlakshmi Society,

Opp. Gopal Tower, Maningar (West),

Ahmedabad- 380 008

M/s. Shree security

(Proprietor Sanjay. G. Patel),

306, Jalaram Complex, Geeta Mandir Road,

Old Lati Bazzar, Ahmedabad- 380002

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Central Tax , South, Ahmedabad-.
- 3) The Additional Commissioner, Central Tax , South, Ahmedabad
- 4) The Asst. Commissioner, Service Tax Div-V, APM Mall, Satellite, Ahmedabad.
- 5) The Asst. Commissioner(System), Central Tax , South, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.



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