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

7565 / 7572

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)150 /Ahd-I/2017-18
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0101-2018-19
दिनांक Date : 29-11-2018 जारी करने की तारीख Date of Issue _____ 7/12/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. SD/06/07/AC/Adarsh/17-18 दिनांक: 21.06.2017 issued by Assistant Commissionr, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Adarsh Security and Personnel Services
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतल नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं निगम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) शिवाजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

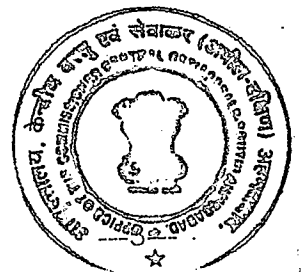
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथार्थिती अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथार्थिती निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

सह पूर्व जमा 'संबन्धित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

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।

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 alone is in dispute."



ORDER IN APPEAL

M/s. Adarsh Security and Personal Force, Goswami Chambers, ASPF Building, Near Nagarvel Hanuman Temple, Rakhial, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number SD-06/07/AC/Adarsh/17-18 dated 21.06.2017 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, Service Tax Div-VI, APM Mall, Satellite, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*). Appellants hold ST registration for providing the taxable service i.e. "Security Agency Services".

2. The facts of the case, in brief, are that it was noticed that the appellants were indulging in evasion of service tax by not paying appropriate service tax on the value of taxable services rendered by them and without filing ST-3 returns. Investigations were carried out and after investigations, a show cause notice dtd. 18.10.2005 was issued proposing demand of service tax of Rs. 4,49,150/- and adjustment of Rs. 12,000/- paid by them against the demand; proposed imposition of penalties and recovery of service tax with interest. The adjudicating authority, in its findings, recorded that the personal hearings were posted on 19.01.2006, 21.02.2006 and on 02.05.2006 yet the appellants did not attend the personal hearings putting forth excuses. After recording findings on the merits of the case, the adjudicating authority, vide the impugned order SD-02/SAS/OIO-02/06-07 dated 10.05.2006, confirmed the demand of service tax of Rs. 4,49,150/-; imposed penalties under various sections of the Finance Act, 1994 (for brevity 'the Act') and imposed penalty of Rs. 8,98,300/- under Section 78 of the Act.

2.1 Being aggrieved by the said OIO dtd. 10.05.2006, the appellants preferred an appeal before the Commissioner (Appeals-IV), Central Excise, Ahmedabad. The appeal of the appellants was decided vide OIA No. 37/2006(STC)AV/Commr (A-IV) Ahd dtd. 29.12.2006 issued on 05.01.2007. The Commissioner (Appeal-IV), in its order, noted that the appellants had been given personal hearings on 30.08.2006, 15.09.2006, 13.10.2006, 30.10.2006, 18.12.2006 and 27.12.2006 and the appellants appeared in the last personal hearing on 27.12.2006. The Commissioner (Appeals-IV), based on his findings recorded in the order, rejected the appeal on the grounds that the ST-3 returns had been filed, no documents were produced to establish that the amount credited to their bank accounts in excess of amount realized as per Ughrani Register did not pertain to taxable service provided by them and as per Section 67 of the Act, the value of any taxable service was the gross amount charged by the service provider.

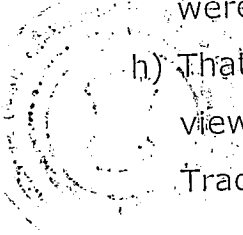


Commissioner (Appeals-IV) however reduced the penalty under Section 78 to Rs. 4,49,150/-

2.2 Being aggrieved by the Commissioner (Appeals-IV)'s order dtd. 29.12.2006, the appellants filed an appeal before the CESTAT, Ahmedabad which, vide its order No. A/10903/2015 dtd. 29.06.2015, remanded the case to the adjudicating authority to examine the legal issues and facts and decide afresh. On remand proceedings, the adjudicating authority, vide the impugned order dtd. 21.06.2017, confirmed the demand of service tax of Rs. 4,49,150/-; imposed penalties under various sections of the Act, and imposed penalty of Rs. 8,98,300/- under Section 78 of the Act. The adjudicating authority also noted in its findings that the personal hearings were posted on 13.07.2016, 14.12.2016 and 21.12.2016, 27.02.2017 and 16.05.2017 but the appellants neither submitted any reply nor attended the personal hearings citing various reasons.

3. Being aggrieved with the impugned order, the appellants have preferred this appeal wherein it is contended that-

- a) They were not provided an opportunity of being heard and therefore the impugned order is in violation of principle of natural justice;
- b) That as per Section 73, as it then stood, the reassessment can be done of the escaped taxable service. The assessment power does not include best judgment or presumptive assessment and that with omission of Section 72 with effect from 10.09.2004, there are no powers for best judgment assessment and therefore, no action could be taken or sustained thereafter;
- c) There is no authority of law to consider the deposits made to be the value of taxable service;
- d) That the arithmetical figures are incorrect in as much as the month wise summery of deposits total up to Rs. 87,74,335/- giving a difference of Rs. 7,57,821/-;
- e) That it is the service in relation to security which attracts tax i.e. only the service component of the entire transaction is taxable;
- f) That the demand is barred by limitation as the department was also aware about non-filing of service tax returns and the facts of non-payment of tax or non-filing of returns were not suppressed;
- g) That the Ahmedabad Municipal Corporation had refused to make payment of service tax and has also not paid the due amount so they were facing financial hardships;
- h) That the penalties under various Sections of the Act are not leviable in view of their submissions made and they rely on the case of Shri. J. K. Traders & Exporters Pvt. Ltd. vs. Commissioner of Income Tax, Ahmedabad (2016) 42 STR 210 (Guj.).



4. Personal hearing in both the cases was held on 26.11.2018 in which Shri S.J. Vyas, Advocate appeared before me and reiterated the grounds of appeal. They submitted that best judgement is not legal after 2004 when Section was omitted as held in (35) STR-257 (All.) and penalty under Section 76 & 78 not leviable simultaneously and the penalty under Section 78 has already been reduced by the Commissioner (Appeal).

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.

6. I find that the issue to be decided in this appeal is whether service tax has been correctly demanded and penalties imposed when the appellants did not file required returns and did not pay service tax on the taxable service for which they were registered. This case has come to me after an order was passed on remand proceedings as per directions given by the CESTAT-Ahmedabad vide its order dtd. 29.06.2015. The Hon'ble Tribunal had ordered to examine the Section 73 (1) (a) of the Finance Act and I find that the adjudicating authority in para 28 of the impugned order has examined the issue and held that the Section 73 (1) (a) of the Act was very well in existence during the period 01.04.2000 to 31.03.2001 and the same remained in existence until it was substituted by proviso to Section 73 (1) by Finance Act, 2004. I agree with the findings given by the adjudicating authority and reject the contention raised by the appellants. The case of Naresh Kumar & Co. Pvt. Ltd. Vs. Commissioner of C.Ex. and Service Tax - 2014 (35) STR-257 (All.) is not of any help to the appellants as the facts were different in that case. In para 9 of that order, it has been found that the party had furnished ST-3 returns and paid the service tax dues whereas in the instant case, the appellants had not furnished any ST-3 returns and had not paid applicable service tax. It is only after the investigation that this case came to light.

7. The appellants have contended that they were not provided an opportunity of being heard and therefore the impugned order is in violation of principle of natural justice. On perusal of the show cause notice, OIO dtd. 10.05.2006 and the impugned OIO dtd. 21.06.2017 have very specific findings that the appellants never bothered to appear before the authorities and submit required documents as evidences in support of their defence, claims or arguments. They appeared after seeking many adjournments during the proceedings of OIA dtd. 29.12.2006. So the contention raised by the appellants that there was no opportunity of being heard in person is not acceptable and it appears that these are merely dilatory tactics and are not helpful in smooth adjudication process. I find that at every stage the appellants were offered opportunities and sometimes even as per their



requests and convenience but they always avoided availing the opportunities. I therefore reject the contention of the appellants that the principle of natural justice has been violated.

8. Now I take up the contention by the appellants that the arithmetical figures are incorrect in as much as the month wise summery of deposits total up to Rs. 87,74,335/- giving a difference of Rs. 7,57,821/-. I find that except saying this thing, they have not submitted any documentary evidence to substantiate their claim. From the para 13 of the impugned order, I find that the calculations are correct arithmetically and find that the contention of the appellants is not correct.

9. Now as far as the contention that it is the service in relation to security which attracts tax i.e. only the service component of the entire transaction is taxable, is concerned, I find from the definition of the taxable service given in Section 65(105)(w) of the Act that it is "Taxable service" means any service provided or to be provided to any person, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity". This definition makes is very clear that any service provided to any person in relation to the security of that person by providing security personnel or otherwise is taxable and the appellants' contention is not correct that only service portion is taxable.

10. The appellants have contended that there is no case of suppression of facts by them. This case had been initiated by the department when it came to know that even being registered with the department, the appellants were not filing any ST-3 returns and not paying applicable service tax and if the department had not investigated the case, this nonpayment of service tax would never have been detected. Without filing statutory returns, the department cannot know the volume of the services rendered by them and the applicable service tax thereon. The contention raised by the appellants is not acceptable.

11. The appellants have further contended that there is no authority of law to consider the deposits made to be the value of taxable service. The appellants were given so many opportunities yet they never submitted any documents in their support and refute the calculations submitted by the department. Merely repeatedly saying that the calculations are wrong will not serve any purpose and it proves that the appellants have no documentary evidences in their support and these contentions are merely dilatory and evasive tactics to thwart the legal process. I find that the appellants have not presented any new documents or facts for consideration.



12. Now I take up the contention of the appellants that the penalty under Section 78 has been imposed more than what the Commissioner (Appeal-IV) vide his order dtd. 29.12.2006 issued on 05.01.2007 accepted in their appeal. I agree with the contention of the appellants that the penalty under Section 78 could not have been imposed more on remand proceedings than what the Commissioner (Appeal-IV) had accepted. I therefore set aside the penalty under Section 78 as is in excess of Rs. 4,49,150/-. The impugned order stands modified to this extent.

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

अपीलकर्ता द्वारा दर्ज की गयी अपीलों का निपटारा उपरोक्त तरीके से किया जाता है !

उमा शंकर

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित

धर्मद्र उपाध्याय

(धर्मद्र उपाध्याय)

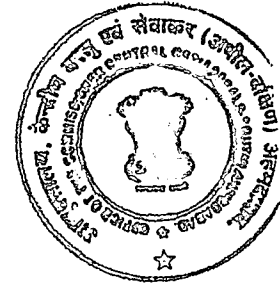
अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To,

M/s. Adarsh Security and Personal Force,
Goswami Chambers,
ASPF Building,
Near Nagarvel Hanuman Temple,
Rakhial,
Ahmedabad



Copy to:

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (South),
- (3) The Dy./Astt. Commissioner, CGST, Div.-I (Rakhial), Ahmedabad (South),
- (4) The Dy./Astt. Commissioner (Systems), CGST, Ahmedabad (South),
- (5) Guard File,
- (6) P.A. File.