



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<sup>th</sup> Floor, GST Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)5/Ahd-South/2018-19  
Stay Appl.No. /2018-19

572270 5727

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-033-2018-19  
दिनांक Date : 13-08-2018 जारी करने की तारीख Date of Issue

13/8/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/Supdt-BLK-01/WS0801/TSVN/2017-18 दिनांक:  
28.09.2017 issued by Superintendent, AR-1, Div-VIII, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Titanium Square Vikas Mandal  
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 अतत 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।

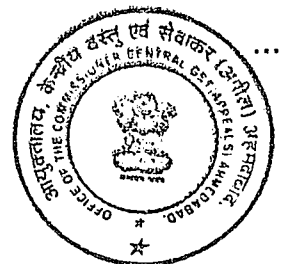
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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।



... 2 ...

(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 नियम 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) रिविजन 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.

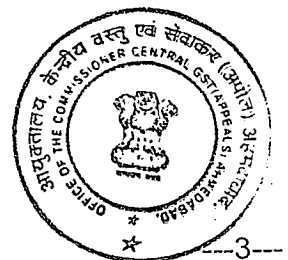
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 Appellant 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 अनुसूचि-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.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

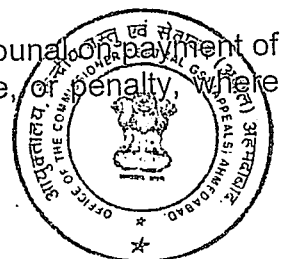
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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, where penalty alone is in dispute."



ORDER-IN-ORIGINAL

This appeal has been filed by M/s Titanium Square Vikas Mandal, Commerce House-IV, 10<sup>th</sup> floor, Beside Reliance Petrol pump, 100 Ft ring road, Prhladnagar, Ahmedabad [for short-appellant] against Order-in-Original No.CGST/Supdt-BLK-01/WS0801/TSVN/2017-a8 dated 28.09.2017 [for short-impugned order] passed by the Superintendent, CGST, AR-1, Division-VIII, Ahmedabad South [for short-adjudicating authority].

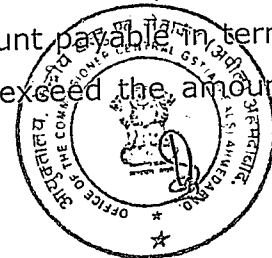
2. A show cause notice dated 27.02.2017 was issued to the appellant for non-filing of ST-3 returns for the period from 2012-13 to 2015-16 (up to Sept), by proposing penalty in terms of Rule 7 of Service Tax Rules, 1994 (STR) read with Section 70 of the Finance Act, 1994 (FA) and penalty under Section 77(2) of FA for violation of provisions of Section 70 of FA. Vide the impugned order, the adjudicating authority has imposed penalty of Rs.1,00,000/- under Rule 7 of STR read with Section 70 of FA and penalty of Rs.1,00,000/- under Section 77(2) of FA.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that they rightly believed that they were not liable for payment of service tax in respect of service rendered and accordingly, under the bonafide belief that they do not file any returns under Section 70 of FA; that they were bonafide not to file any returns as the issue regarding leviability of service tax on Club or Association service is pending before the Hon'ble High Court of Gujarat;

4. Personal hearing in the matter was held on 24.07.2018 and Shri Dhaval K Shah appeared on behalf of the appellant. He reiterated the grounds of appeal

4. I have considered the facts of the case and submissions made by the appellant in the appeal memorandum. The limited issue to be decided in the instant case is relating to imposition of penalty for non filing of ST-3 returns during the relevant periods.

5. As per provisions of Section 70, every person liable to pay service tax, shall himself assess the tax due on the service provided by him and shall furnish a return in the prescribed format before the concerned authority. As per amended Rule 7 of the Service Tax Rules, 1994, form ST-3 required to be submitted by the 25<sup>th</sup> October 2012 shall cover the period from 1<sup>st</sup> April 2012 to 30th June 2012. Rule 7C of the Service Tax Rules 1994 stipulates penalty for non-filing of prescribed ST-3 returns in time. The statute prescribes that from the date prescribed for submission of ST-3 return, rupees five hundred for the delay of fifteen days, one thousand rupees for beyond fifteen days but not later than thirty days and beyond thirty days, an amount of rupees one thousand plus hundred rupees every day. The provisions to the said Rules provides the total amount payable in terms of the said rule, for delayed submissions of return, shall not exceed the amount specified in Section 70 of the Finance Act. i.e Rs.20,000/-.



6. In the instant case, the appellant has argued that they were not liable pay any service tax during the period and accordingly no service tax return is required to be filed.

7. I observe that as per Board Circular dated 23.08.2007, no ST-3 return is required to be filed in such situation. The said circular states as under:-

"6.1 The service tax return is required to be filed under Section 70 of the Act read with rule 7 of the Rules, by "any person liable to pay the service tax". This return is required to be filed on a half yearly basis, in Form ST-3. For the periods from April to September and October to March, it must be filed by the 25<sup>th</sup> October and the 25<sup>th</sup> April respectively. Further, 'Input Service Distributor' is also required to file this return. Persons who are not liable to pay service tax (because of an exemption including turnover based exemption), are not required to file ST-3 return."

8. From the submission made by the appellant, I observe that the investigation carried out by the Directorate General of Central Excise Intelligence (DGCEI), Ahmedabad against the appellant in respect of non- payment of service tax under the service category of "Club and Association" is culminated into the show cause, demanding service tax amounting to Rs.34,23,287/- for the period from 2011 to December 2013. I also observe from the facts submitted by the appellant that the said show cause notice was challenged by the appellant before the Hon'ble High Court of Gujarat which is pending for final hearing. In the circumstances, the taxability of service rendered by them is not finalized. It is not under dispute that if the service is not taxable, no return is required to be filed as per Board's circular *supra*.

8. In view of above, I am of the opinion that the penalty imposed by the adjudicating authority for non-filing of return is premature. In the circumstances, I set aside the same and remand back to the adjudicating authority to keep pending the show cause till the final outcome from Hon'ble High Court of Gujarat is received.

8. In view of above discussion, I set aside the impugned order and allow the appeal by way of remand. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है। The appeal filed by the appellant stand disposed of in above terms.

*उमा शंकर*

(उमा शंकर)

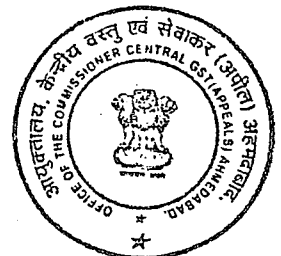
आयुक्त (अपील्स - I)

Date: /08/2018

Attested

*Mohanan V.V.*

(Mohanan V.V)  
Superintendent (Appeal-I)  
Central Excise, Ahmedabad



**BY R.P.A.D.**

To

M/s Titanium Square Vikas Mandal,  
Commerce House-IV, 10<sup>th</sup> floor,  
Beside Reliance Petrol pump, 100 Ft ring road, Prhladnagar, Ahmedabad

- Copy to:-
1. The Chief Commissioner of Central GST, Ahmedabad.
  2. The Commissioner of Central GST, Ahmedabd Ssouth
  3. The Additional Commissioner, Central GST, Ahmedabad South
  4. The Assistent Commissioner, Central CGST, Dn.VIII, Ahmedabad South
  5. The Superintendent, CGST, Divn VIII, Ahmedabad Sourth.
  6. ~~Guard file.~~
  7. P.A.

