

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद— 380015.

क फाइल संख्या : File No : V2(ST)80/A-II/2015-16 314070 3144
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-003-16-17
दिनांक Date : 13.04.2016 जारी करने की तारीख Date of Issue 28/04/16

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग _____ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं
_____ दिनांक : _____ से सृजित
Arising out of Order-in-Original No SD-02/REF-130/DRM/2015-16 Dated 09.09.2015
Issued by Assistant Commissioner, Div-II, Service Tax, Ahmedabad

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

M/s. Rajpath Club Limited 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:-

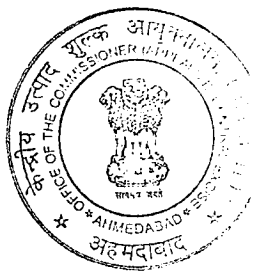
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

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.

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(ii) अपीलिय 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 सकेंगी 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 न्यायापीठ 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 accompanied 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 सकेंगी 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 A219* केन्द्रीय उत्पाद शुल्क, अपीलिय 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 स्थान 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 अपीलिय 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 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

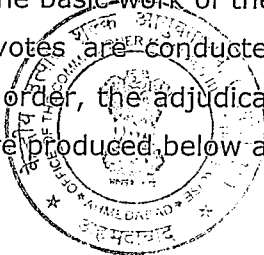
This order arises on account of an appeal filed by M/s. Rajpath Club Limited, S. G. Road, Ahmedabad (hereinafter referred to as the 'the Appellants' for sake of brevity) against Order-in-Original No. SD-02/REF-130/DRM/2015-16 dated 09.09.2015 (hereinafter referred to as the "impugned order" for the sake of brevity) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (hereinafter referred to as the "Adjudicating Authority" for the sake of brevity).

2. Briefly stated the facts of the case are that the appellants are duly registered with the Service Tax Department having Service Tax Registration No. AAACR7379AST001. They filed a refund claim of ₹ 92,700/- on 25.05.2015 under Notification No. 25/2012-ST dated 26.06.2012 in respect of Service Tax paid on the specified services for which Service Tax claimed to have been not required to be paid by the appellants. The appellants were issued a show cause notice on 05.08.2015 which was adjudicated by the adjudicating authority by rejecting the refund claim stating that the service for which the refund is claimed is a taxable one under Reverse Charge Mechanism.

3. Being aggrieved with the impugned order, the appellants filed the present appeal. The appellants argued that the payment made to the retired judges was not on account of legal service. The retired judges were appointed as per the direction of Hon'ble Gujarat High Court to observe and assist in smooth and fair process of election of the club. The Service Tax was paid inadvertently under Reverse Charge Mechanism and therefore, the appellants are eligible for refund.

4. Personal hearing in the case was granted on 05.04.2016 wherein Shri Bishan R. Shah, Chartered Accountant, appeared on behalf of the appellants and reiterated the contents of the appeal memorandum. Shri Shah urged that the service received by the appellants is not legal service. The service providers are not registered under Advocate's Act, 1941 and hence, are not Advocates. The service has been provided to a club and the club is not a business entity but a mutual concern and hence, not liable to pay Service Tax under Reverse Charge Mechanism. He further stated that unjust enrichment is also not applicable in the case.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and oral submissions made by the appellants at the time of personal hearing. In view of the above, I find that two retired judges were appointed by the appellants as election observers as per the direction of the Hon'ble High Court of Gujarat. In the process of election, the basic work of the observer is to see that the process of election and counting of votes are conducted smoothly and safely. In paragraphs 9 and 10 of the impugned order, the adjudicating authority also says so. The contents of paragraphs 9 and 10 are produced below as it is;

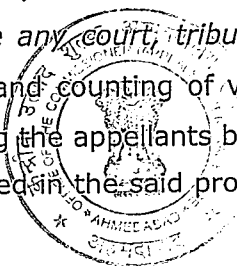


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"9. I find from the refund application that retired judge Shri D. A. Mehta was appointed by the Hon'ble High Court of Gujarat as a observer to election of the M/s. Rajpath Club Limited and retired judge Shri G. K. Upadhyay was appointed by Shri D. A. Mehta for his assistance in relation to the election process and counting of votes of the said claimant as per the direction of Hon'ble High Court of Gujarat vide order dated 25.03.2015 at para 2(3). While deciding the matter vide order dated 25.03.2015 in Civil Application (OJ) No. 252 of 2015, the Hon'ble High Court of Gujarat at para 4(b) has ordered that "The entire process of counting of votes shall be done under the control and supervision of learned Observer,". Further at para 4 (I) of the order dated 25.03.2015, the Hon'ble High Court of Gujarat has ordered that "..... the decision of the learned observer shall be final and binding to all concern".

10. I find from the order dated 25.03.2015 of Hon'ble Gujarat High Court that appointment of retired judges Shri D. A. Mehta and retired judge Shri G. K. Upadhyay was made to provide assistance to the claimant in conducting the election and counting of votes thereof smoothly. Whereas, it appears that by virtue of the order of Hon'ble High Court of Gujarat, the persons who appointed to supervise the entire process of election of the said claimant were retired judges. The above said judges have utilized their legal expertise and rendered their services in election process of the claimant. The Hon'ble High Court had made the said judge a decision making authority in counting process of the votes as such, it appears that the said judges have used the sense of their legal competency and provided legal assistance to the claimant in the election process for which the claimant paid a remuneration to the tune of Rs.7,50,000/-. Accordingly, it appeared that claimant during the election and its counting process of votes received the legal assistance of the said judges".

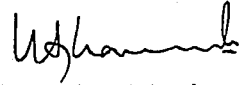
In view of the above mentioned paragraphs, I see that the adjudicating authority has said time and again that the retired judges were appointed in relation to the election process and counting of votes of the appellants and thus provided legal service to the latter. However, the adjudicating authority did not mention what kind of legal services were provided in the process of smooth running of election and counting of votes. The definition of legal service as per Notification No. 25/2012-Service Tax, dated 20.06,2012 says that "Legal service means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority". In the process of smooth functioning of election and counting of votes, the observers did not provide any legal assistance representing the appellants before any court, tribunal or authority as no legal activity was conducted in the said process. An election observer can come



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from any sphere or branch of the society and from any respectable profession. It was a mere coincidence that the Hon'ble High Court of Gujarat had appointed retired judges for this work. The particular work the said retired judges had undergone, does not call for any legal advice or assistance. The adjudicating authority has merely put and allegation without any supporting evidence. In paragraph 10 of the impugned order, the adjudicating authority says "..... it appears that the said judges have used the sense of their legal competency and provided legal assistance to the claimant in the election process for which the claimant paid a remuneration to the tune of Rs.7,50,000/-". But the impugned order is silent about how it appears that the judges have used the sense of their legal competency and provided legal assistance to the claimant in the election process. In view of the above, in absence of proper evidence, the impugned order needs to be set aside.

6. In view of the discussion held above, the appeal filed by the appellants is disposed off accordingly.




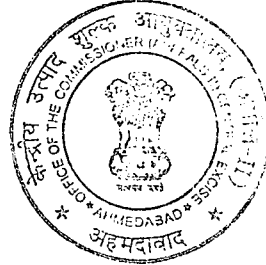
(UMA SHANKER)

COMMISSIONER (APPEAL-II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA) 180416
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.



To,
M/s. Rajpath Club Limited,
S. G. Road,
Ahmedabad- 380 059

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad.
- 3) The Dy./Asst. Commissioner, Service Tax, Division-II, Ahmedabad.
- 4) The Asst. Commissioner (System), Service Tax Hq, Ahmedabad.
- 5) Guard File.
- 6) P. A. File.