

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)160 /A-II/2015-16 / 2147 to 2152  
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-0102 -16-17  
दिनांक Date : 26.09.2016 जारी करने की तारीख Date of Issue 05/10/16

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 VCES/23/DAMDS/2015-16 Dated 28.12.2015

Issued by Assistant Commissioner-VCES, Service Tax, Ahmedabad

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

M/s. Radhe Industries 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, 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 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 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.

A. Jishu



(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 34फ 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 अर्ज़ी 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 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 out of the appeal filed by M/s Radhe Industries having office at B-87, Maruti Tenamants, Near Bhavna School, Odhav, Ahmedabad- 382 415 (hereinafter referred to as 'the appellant') against the Order In Origin No. VCES/ 23/ DA/ MDS/ 2015-16 (hereinafter referred to as the 'impugned order') issued by the Assistant Commissioner (Designated Authority), Service Tax Commissionerate, Ahmedabad (hereinafter referred to as 'the Designated Authority').

2. The facts of the case are that the appellant has filed a declaration VCES-1 under sub section 1 of section 107 of the Finance Act, 2013 (chapter VI) under the Service Tax Voluntary Compliance Encouragement Scheme-2013, (herein after referred to as 'VCES' for sake of brevity) on 27.12.2013, declaring 'total tax dues' amounting to Rs. 54,133/- (actual amount 1,08,266/-) for the period April 2009 to December 2012. [89,235/- for April 2009 to March 2012 + 19,031/- for April 2012 to December 2012 = Rs. 1,08,266/-]
3. Deputy Commissioner (preventive) , service tax, Ahmedabad intimated vide letter dated 19.02.2014 that an inquiry had been initiated against the appellant by issuing letter dated 21.11.2012 to them.
4. Since the inquiry was pending as on 01.03.2013 appellant has not satisfied eligibility conditions as stipulated under sub-section (2)(a)(ii) and (2)(a)(iii) section 106 of Finance Act, 2013 (chapter VI) under the Service Tax Voluntary Compliance Encouragement Scheme-2013. Therefore SCN dated 18.07.2014 was issued to appellant proposing to reject VCES-1 under section 106 finance act , 2013
5. Appellant contended before designated Authority they are not in receipt of any letter dated 21.11.2012 vide which inquiry covering period 2007-08 to 2011-12 was initiated. They further contended that CBEC vide sr. No. 4 of Circular No. 169/4/2013-ST has clarified that section 106(2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidences are requisitioned by the authorized officer from the declaration under the authority of a statutory provisions. Since no communication is received from the department provisions of section 106(2)(a)(iii) would not be attracted. Thus department can not reject declaration.
6. Adjudicating authority vide impugned OIO rejected the VCES-1 declaration amounting to Rs. 89,235/- for period April 2009 to March 2012 under provisions of section 106(2) of the finance Act, 2013 as inquiry for said period was pending as per service tax preventive letter dated 21.11.2012. Further adjudicating authority accepted the VCES-1 declaration amounting to Rs. 19,031/- for period April 2012 to December 2012 under provisions of the finance Act, 2013 as inquiry for said period was not pending.



7. Aggrieved by the impugned OIO issued by the Designated Authority, the appellant had filed the appeal memorandum on 25.02.2016 followed with written submission. It is contended that VCES-1 declaration amounting to Rs. 89,235/- for period April 2009 to March 2012 can not be rejected due to following grounds-

- (a) that they have not received any so called preventive section letter dated 21.11.2012 vide which inquiry is said to be initiated against appellant. Appellant has submitted affidavit duly notarized to effect that appellant has not received any letter dated 21.11.2012.
- (b) provisions of section 106(2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidences are requisitioned by authorized officer from the declarant under the authority of the statutory provisions. Appellant relied upon Sr. No. 4 of CBEC Circular 169/4/2013-ST dated 13.05.2013

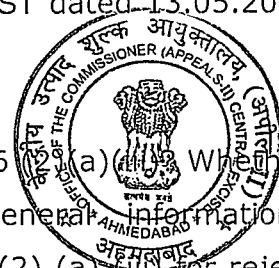
8. Personal Hearing in the matter was held on 17.08. 2015, wherein Shri Gunjan Shah, CA appeared on behalf of the appellant and reiterated the grounds of the appeal memorandum.

### DISUCSSION AND FINDING

9. I have gone through the issue in appeal, alongwith the impugned order issued by the Designated Authority. Limited question before me for decision in case is whether any of proceedings mentioned in provisions to sub section (2) of section 106 of Finance Act 2013 has been initiated against the appellant which makes VCES-1 declaration for period April 2012 to December 2012 liable for rejection.

10. Appellant has contended that communication covered under Sr. No. 4 of CBEC Circular 169/4/2013-ST dated 13.05.2013 can only lead to rejection of VCES-1. Clarification given at Sr. No. 4 of CBEC Circular 169/4/2013-ST dated 13.05.2013 is as following

QUERY----- What is the scope of section 106 (a) (iii) Whether a communication from department seeking general information from declarant would lead to invoking of section 106 (2) (a) (iii) for rejection of declaration under the said section



*[Handwritten signature]*

ANSWER-----Section 106 (2) (a)(iii) of the Finance Act, 2013 provides for rejection of declaration if such declaration is made by a person against whom an inquiry or investigation in respect of service tax not levied or not paid or short-levied or short paid, has been initiated by way of requiring production of accounts, documents or other evidence under the chapter or the rules made there under, and such inquiry or investigation is pending as on the 1st day of March, 2013.

The relevant provisions, beside section 14 of the Central Excise Act as made applicable to service tax vide section 83 of the Finance Act, 1994, under which accounts, documents or other evidences can be requisitioned by the Central Excise Officer for the purposes of inquiry or investigation, are as follows,-

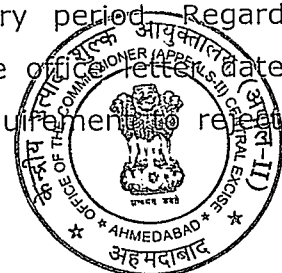
(i) Section 72 of the Act envisages requisition of documents and evidences by the Central Excise Officer if any person liable to pay service tax fails to furnish the return or having made a return fails to assess the tax in accordance with the provision of the Chapter or rules made thereunder.

(ii) Rule 5A of the Service Tax Rules, 1994 prescribes for requisition of specified documents by an officer authorised by the Commissioner for the purposes specified therein.

The provision of section 106 (2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidences are requisitioned by the authorised officer from the declarant under the authority of any of the above stated statutory provisions and the inquiry so initiated against the declarant is pending as on the 1st day of March, 2013.

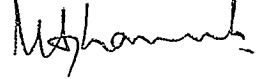
No other communication from the department would attract the provisions of section 106 (2)(a)(iii) and thus would not lead to rejection of the declaration.

11. I find that inquiry initiated vide preventive office letter dated 21.11.2012 is for period 2007-08 to 2010-11. VCES-1 declaration amounting to Rs. 89,235/- for period April 2009 to March 2012 is covered under inquiry period. Regarding appellant contention that appellant has not received preventive office letter dated 21.11.2012 hence VCES can not be rejected, I find that only requirement for rejection of VCES is that



inquiry should have been initiated, which is initiated moment inquiry letter is issued. I hold that VCES amounting to Rs. 89,235/- correctly rejected.

12. In view of above discussion, appeal filed by appellant is rejected.



(UMA SHANKER)  
COMMISSIONER (APPEAL-II)  
CENTRAL EXCISE, AHMEDABAD.

ATTESTED



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

BY R.P.A.D.

To.

M/s Radhe Industries ,  
B-87, Maruti Tenamants,  
Near Bhavna School, Odhav,  
Ahmedabad- 382 415

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. Assistant Commissioner (Designated Authority), VCES Cell, Service Tax Commissionerate, Ahmedabad.
4. The Assistant Commissioner, Service Tax, Division-IV, Ahmedabad.
5. The Assistant Commissioner, Systems, Service Tax Commissionerate, Ahmedabad.
6. Guard File.
7. P.A. File.

