रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065

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)154 /A-II/2015-16** / 2750-2754

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-SVTAX-000-APP-0131 -16-17**

दिनाँक Date : **28.10.2016** जारी करने की तारीख Date of Issue 08/11/16

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 _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original No SD-04/10/AC/2015-16 Dated 27.11.2015

Issued by Assistant Commissioner, Div-IV, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता **Name & Address of The Appellants**

M/s. Vibrant Décor(India) Pvt Ltd 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 विरूद्ध 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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.

(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 A2I9k 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 शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 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, 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 है –

(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 होगे।

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

1. This order arises on account of an appeal filed by M/s Vibrant Decore (INDIA) Pvt. Ltd., 18/543, 545, 546, Sarkhej-Bavla Road, Chagodar, and Ahmedabad (hereinafter referred to as 'the appellant' for the sake of brevity along with Condonation of Delay Application against Order-in-Original No. SD-04/10/AC/2015-16 dated 27.11.2015 (hereinafter referred to as the "impugned order" for the sake of brevity) passed by the Assistant Commissioner, Service Tax, Div. IV Ahmedabad (hereinafter referred to as the "Adjudicating Authority" for the sake of brevity).

2. Issue in brief is that audit party during course of audit for F.Y. 2010-11 it was found that appellant has not paid service tax on renting income and has short paid service tax on GTA. Appellant, on being pointed out, paid tax but interest was not paid. Show cause dated 23.07.2015 was issued to recover interest of Rs. 36,0308/- on renting service tax and Rs. 7,936/- on GTA service tax late paid. Considering non payment of service tax as suppression of facts, penalty under 76 of Finance Act-1994 was proposed.

3. Adjudicating authority vide impugned OIO confirmed the payment of interest under section 75 and imposed penalty under section 76 of Finance Act 1994. Aggrieved by the impugned order, the appellant has filed an appeal on 18.02.2016 along with condonation of delay application, citing the following grounds-

I. Since the demand of service tax was time barred, order of imposition of penalty and recovery of interest is against the law of limitation. Adjudicating Authority has ignored the contentions including the vital contentions of limitation.

II. Value of rent was shown in books of accounts, which were subjected to audit and submitted to various Government authorities. Similarly, value of GTA service was shown in ST-3 returns. In the circumstances invocation of larger period for levy of service tax does not hold good.

III. Appellant are in process of filing refund claim of service tax paid. As such when the payment of service tax itself is under scrutiny, imposition of penalty and interest is against the law.

IV. All the manufacturing and commercial activities were ceased since July- 2014, as such appellant could not pay attention to the impugned order. It is therefore requested to condone the delay in filing the appeal. Delay of 4 days is requested to be condoned.

4. Personal hearing held on 17.08.2016 was attended by Shri P. G. Maheta on behalf of the appellant, who reiterated the contents of their appeal memorandum and showed their willingness to pay interest. He requested to wave the penalty.

Discussion and finding

5. I have gone through the facts of the case, Showcase notice and the impugned order issued in this regard. I have also gone through the grounds of appeal under Appeal Memorandum and condonation of delay application.

6. I find that appellant has submitted reasonable cause for delay of 4 days in filling of appeal against impugned OIO. Delay is hereby condoned. Appellant during the course of hearing has shown readiness to pay interest and requested to wave penalty. Question to be decided is whether or not penalty is imposable on appellant. I find that GTA value is declared in ST-3 submitted and demand has been arise merely due to calculation mistake. No suppression of facts found, therefore , I hold that, penalty under section 76 in respect of GTA service is not imposable. Regarding penalty imposed with respect to renting income, I find that said income was not declared in ST-3 return. It was during the audit said suppression was noticed. Had the audit not being conducted, the said income would have gone un-noticed. I find that there is element of suppression of fact. I uphold the impugned OIO as far as penalty under section 76.

7. In view of my above findings, the appeal filed by the appellant stands partly rejected and the impugned order is partly upheld.

8. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

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

(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED

(R.R. PATEL)
SUPERINTENDENT(APPEALS-II),
CENTRAL EXCISE, AHMEDABAD.

By R.P.A.D.:
by M/s Vibrant Decore (INDIA) Pvt. Ltd.,
18/543, 545, 546, Sarkhej-Bavla Road,
Chagodar, Ahmedabad

Copy To:

1) The Chief Commissioner, Central Excise, Ahmedabad.
2) The Commissioner, Service Tax, Ahmedabad.
3) The Deputy Commissioner, Service Tax, Division-IV, Ahmedabad.
5) The Assistant Commissioner (Systems), Service Tax(HQ), Ahmedabad.
6) The P.A. to Commissioner (Appeals-II), Central Excise, Ahmedabad.
7) Guard File.