

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)01/A-II/2016-17 / 3085-89  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-0149-16-17  
दिनांक Date : 21.11.2016 जारी करने की तारीख Date of Issue 24/11/16

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  
\_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित.

Arising out of Order-in-Original No SD-05/13/DKJ/AC/2015-16 Dated 21.01.2016

Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. Suraj Transport Corporation 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 :-

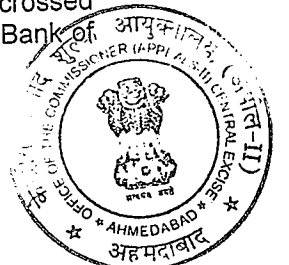
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल  
हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

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 at the place where the bench of Tribunal is situated.

A. Jale



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(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, 1994 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 रुपए 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 होगा।

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.



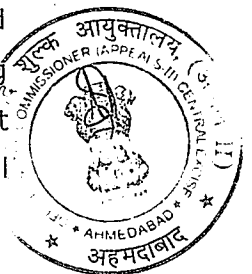
**ORDER IN APPEAL**

M/s. Suraj Transport Corporation, 88, Opp. Avtar Hotel, Narol, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number SD-05/13/DKJ/2015-16 dated 21.01.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-V, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants are engaged in providing services under the categories of 'Supply of Tangible Goods and Goods Transport Agency (GTA) services' and for which they are holding Service Tax Registration number AAQFS5032ASD001.

3. During the course of test audit of the records of the appellants, it was noticed that they had supplied a telescopic crane to M/s. Wardha Power Co. Ltd., MIDC, Warora, Maharashtra on fixed amount of rent, thus rendering the service of 'Supply of Tangible Goods' to the recipient. The appellants had provided the said service without charging Service Tax on value of the service provided. On being asked, the appellants informed that M/s. Wardha Power Co. Ltd. was an SEZ entity and as the service was provided to an SEZ entity, Service Tax was not charged in the invoice by the appellants as the service provided to an SEZ entity is exempt from Service Tax. However, on being asked to furnish the list of approved services, they could not provide the same. Later on an approved list dated 23.09.2011 was submitted to the adjudicating authority which contained the said service of 'Supply of tangible Goods'. However, it was seen that the said service was availed by M/s. Wardha Power Co. Ltd. prior to the approval list. Therefore, the adjudicating authority assumed that the exemption benefit under the Notification number 09/2009-ST dated 03.03.2009 would not be available to the service recipient. Thus, a show cause notice, dated 13.05.2015, was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority confirmed the demand of an amount of ₹1,45,127/- under the provisions of Section 73 of the Finance Act, 1994. He also ordered to recover interest at appropriate rate under Section 75 and imposed penalty under Section 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order the appellants have preferred the present appeal. In their grounds of appeal, the appellants pleaded that they provided services to M/s. Wardha Power Co. Ltd. under the category of 'Supply of tangible Goods'. However, the the said recipient used those services for 'Repair and Maintenance' purpose. The appellants further argued that later on, in the month of September 2011, additional services covering 'Supply of Tangible Goods' were approved by the Deputy Development Commissioner, SEZ. They appellants further stated that this was not a will



full default on their part but a case of nomenclature difference which put them in a position to pay huge amount of Service Tax which they have never collected from the service receiver. They argued that they have filed the Service Tax return under the category of 'Supply of Tangible Goods' instead of 'Repair & Maintenance service'. Had the department permitted the appellants to file a revised return for the concerned period under the category of 'Repair & Maintenance' then the whole case would have been justified accordingly.

5. Personal hearing in the matter was granted and held on 04.11.2016 wherein Shri Brijesh Sonvane, Chartered Accountant, appeared before me and reiterated the contents of appeal memo.

6. 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. I find that the adjudicating authority has rejected the refund claims on the ground that the service category of 'Supply of Tangible Goods' was not found in the list of approved services for authorized operation for the related period. The service receiver later on got the said service included in the approved list in 23.09.2011. In the Notification number 09/2009-ST dated 03.03.2009 it is mentioned that for the purpose of claiming exemption, the Developer or Unit of SEZ shall obtain a list of taxable services as are required for the authorized operations approved by the Approval Committee of the concerned SEZ.

".....the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in clause (105) of section 65 of the said Finance Act, which are provided in relation to the authorised operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone, whether or not the said taxable services are provided inside the Special Economic Zone, from the whole of the service tax leviable thereon under section 66 of the said Finance Act:

Provided that-

(a) the developer or units of Special Economic Zone shall get the list of services specified in clause (105) of section 65 of the said Finance Act as are required in relation to the authorised operations in the Special Economic Zone, approved from the Approval Committee (hereinafter referred to as the specified services);

(b) .....

(c) .....

(d) ....."



The adjudicating authority has mentioned that the service of 'Supply of Tangible Goods' was not included in the list of the approved service produced by the appellants at the relevant time. Since, the service utilized was not included in the list of the approved service; the exemption on this service is not admissible. In their grounds of appeal, the appellants stated that the service receiver was eligible for the exemption since, in the month of September 2011, the said service of 'Supply of Tangible Goods' was included in the approved list vide approval letter number SEEPZ/NEWSEZ/WARDHA-CHANDPR/01/2008-09 dated 23.09.2011. However, I find that the appellants had provided the service of 'Supply of Tangible Goods' to the recipient during the period from October 2010 to February 2011 and nowhere in the approval letter I find that the service of 'Supply of Tangible Goods' was included with retrospective affect. Further, the appellants have stated that it was not a will full default in their part but that cannot be pardoned as ignorance cannot be an excuse for non-payment of Service Tax. Regarding another argument that if the department permits the appellants to file a revised Service Tax return under "Repair & Maintenance service' for the concerned period, then the whole case would be justified, I can simply say that the department has no authority to permit the appellants to file return under the category as per the choice of the appellants. The appellants are registered under the categories of 'Supply of Tangible Goods and Goods Transport Agency (GTA) services' and thus they cannot file ST-3 return under any other category unless they officially apply for the addition of other services.

7. In view of above, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.

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

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

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स - II)

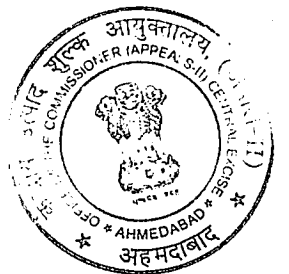
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

*S. DUTTA*  
(S. DUTTA)

21/11/16  
SUPERINTENDENT (APPEAL-II),

CENTRAL EXCISE, AHMEDABAD.



To,  
M/s. Suraj Transport Corporation,  
88, Opp. Avtar Hotel, Narol,  
Ahmedabad- 382 443

**Copy to:**

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

