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)79/A-II/2015-16** /3451 to 3455

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-SVTAX-000-APP-015-16-17**

दिनाँक Date : **10.05.2016** जारी करने की तारीख Date of Issue 11/05/2016

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-02/Ref-128/DRM/2015-16 Dated 07.09.2015

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

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

M/s. Anil Associates 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 A2l9k 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

This order arises on account of an appeal filed by M/s. Anil Associates, A-102, Atma House, Opp. Old R.B.I., Ashram Road, Ahmedabad (hereinafter referred to as the 'the Appellants' for sake of brevity) against Order-in-Original No. SD-02/REF-128/DRM/2015-16 dated 07.09.2015 (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 registered with the Service Tax Department and holding Registration No. AOEPS5101EST001. They filed a refund claim of ₹ 2,16,017/- on 12.03.2015 stating that they had erroneously paid Service Tax to the tune of ₹2,16,017/- during the period 2013-14. On verification of documents it was found that the appellants had short paid Service Tax as liability received on reconciliation of the balance sheet and ST-3 returns. It was also found that the refund claim was hit by the limitation of time. Some other discrepancies were also noticed and hence, a show cause notice, dated 25.05.2015 was issued to the appellants. Subsequently, the Adjudicating Authority, vide the impugned order, rejected the entire refund claim.

3. Being aggrieved with the impugned order, the appellants filed the present appeal. The appellants argued that there is no event of short payment committed by them. It is correct that on reconciliation of the balance sheet and the ST-3 returns difference was noticed but same was paid along with interest and hence there is no short payment of tax but only a procedural lapse. Regarding the claim being hit by limitation of time, they have agreed to the adjudicating authority's view and requested him to restrict the claim to ₹1,46,410/-. Also, no clause of unjust enrichment would be applicable to the case as the refund was claimed for wrongly paid Service Tax.

4. Personal hearing in the case was granted on 22.03.2016 and 08.04.2016 but the appellants vide letter dated 19.04.2016 requested to process the appeal on the basis of written submissions made by the appellants. Thus, in view of the above mentioned letter of the appellants, I would like to decide the case purely on merit on the basis of written submissions made by them.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum and written submissions made by the appellants. I find that

many lapses have occurred on the part of the appellants. The adjudicating authority in para 8 of the impugned order has stated that during the course of personal hearing, the appellants promised to submit the documents of contract/ agreement within two or three days but they failed to fulfill their promise and without the said agreement, the adjudicating authority narrated, the actual receipt of commission could not be ascertained. However, the appellants, in their written submission before me, stated that there is no agreement made and therefore, same could not be submitted before the adjudicating authority. I am surprised that when there was no agreement made, how the appellants promised before the adjudicating authority two submit the same within two or three days.

6. Regarding the issue of difference in income on commission and short payment of Service Tax, the appellants stated that the difference noticed during reconciliation of balance sheet and ST-3 returns is correct but there is no short payment of Service tax as they have already paid the same along with interest. However, the appellants have not produced any proof to support their claim. Mere lip service without any supporting documents does not satisfy me and I have decided not to consider their claim.

7. Regarding the issue of unjust agreement, I find the argument of the appellants to be vague and devoid of any supporting document. Therefore, I agree to the view of the adjudicating authority that it is not proved that the value/ turnover on which payment of Service Tax is erroneously made, is inclusive of Service Tax.

8. I find that the appellants have submitted copies of some vague sample invoices and unsigned copies of ledger (commission) of Vardhaman Textiles Ltd., Anil Associates of F.Y. 2013-14 and Bank Statement (February 2014). However, these documents hardly suffice the purpose for which they have filed the appeal.

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

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

ATTESTED

(S. DUTTA) 11/05/16
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,

M/s. Anil Associates,

A-102, Atma House,

Opp. Old R.B.I., Ashram Road,

Ahmedabad.

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.