

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)180 /A-II/2015-16 / 3307-12
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-0150.-16-17
दिनांक Date : 25.11.2016 जारी करने की तारीख Date of Issue 05/12/16

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 AHM-SVTAX-000-JC-025-15-16 Dated 09.02.2016

Issued by Joint Commissioner STC HQ, Service Tax, Ahmedabad

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

M/s. Metro Wireless Engineering 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:-

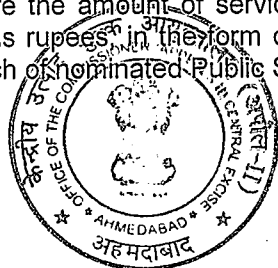
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, 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.

(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.



G. Jile

(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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्त 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 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 बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ों 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. Metro Wireless Engineering Pvt. Ltd., A-4 & 5, 1st Floor, Safal Profitaire, Corporate Road, Prahladnagar, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against Order-in-Original No. AHM-SVTAX-000-IC-025-15-16 dated 09.02.2016 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Service Tax, Hqrs., Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. Briefly stated the facts of the case are that an audit of the records of the appellants was conducted by the department's audit team, wherein it was noticed that the income figures recorded in their balance sheet and books of account were more than what were declared in their ST-3 returns for the year 2007-08. The difference in value involved a Service Tax of ₹13,88,129/-. On being directed by the department to pay the said Service tax amount, the appellants stated that they had already paid the said amount pointed out in the audit report. However, no documentary evidence was submitted by them. Thus, the Additional Commissioner of Service tax, Ahmedabad, vide Order-in-Original number 03/STC/AHD/ADC(JSN)/2013-14 dated confirmed an amount of ₹13,88,129/- along with applicable interest and penalties. Aggrieved with the said OIO, the appellants filed an appeal before the than Commissioner (A) who allowed an amount of ₹1,50,205/- and disallowed the remaining amount of ₹12,37,924/-. Being aggrieved once again the appellants approached the CESTAT, Ahmedabad. The Tribunal remanded the matter back to the adjudicating authority to decide the case afresh on merit. The adjudicating authority discussed the matter thoroughly and concluded that the levy of Service Tax on TDS amount is not in dispute. He also agreed to the fact that though the amount accrued in 2007-08, the same was credited in 2008-09 and Service Tax liability was supposed to be discharged in the year 2008-09 for the reason that the Service Tax payment was on receipt basis. However, as the appellants did not submit any documentary evidence regarding payment of the said amount, the adjudicating refused to accept the fact that the Service Tax was paid by the appellants. Thus, the adjudicating authority, vide the impugned order, confirmed an amount of ₹12,37,924/- out of the original amount of ₹13,88,129/- (rest of the amount of ₹1,50,205/- was already allowed by my predecessor) under Section 73(1) of the Finance Act, 1994. He ordered the appellants to pay interest under Section 75 and imposed penalties under Sections 77(2) and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order the appellant has preferred the present appeal. They argued that they have already deposited the Service Tax on receipt basis however, for the accounting purpose, they had accounted the same in the books of account on accrual basis as per generally accepted principle of accounting thus, there has been no short payment on



their part.

4. Personal hearing in the case was granted on 14.09.2016 wherein Shri Vipul Khandhar, Chartered Accountant, on behalf of the said appellants, appeared before me and reiterated the contention of their submission. Shri Khandhar states that the reconciliation sheet issued by their internal audit for subsequent year was not verified by the adjudicating authority and therefore he requested before me that the appeal may be remanded back to the original adjudicating authority once more so as to permit them one opportunity before the original adjudicating authority for examination of records.

5. In view of the above, I first of all uphold the levy of Service Tax as confirmed by the adjudicating authority vide the impugned order along with interest and penalties. Further, regarding the request made by the appellants, I remand back the case once again, in light of the principle of natural justice, to the adjudicating authority. However, while doing so I direct the adjudicating authority to check the bonafides of the documents issued by the appellants by way of cross examining the books of accounts or any other records in that regard and to ascertain the genuineness of the statement. The appellants are hereby directed to extend full cooperation to the adjudicating authority by submitting required payment particulars.

6. In light of the above discussion, I remand back the matter to the adjudicating authority to decide the case afresh. The appeal filed by the appellants' stands disposed off on the above terms.

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

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

उमा शंकर

(उमा शंकर)

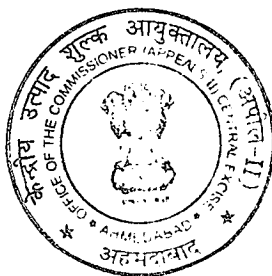
आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

S. Dutta
(S. DUTTA) 25/11/16

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



BY R.P.A.D.

To,

M/s. Metro Wireless Engineering Pvt. Ltd.,
A-4 & 5, 1st Floor, Safal Profitaire,
Corporate Road, Prahladnagar,
Ahmedabad

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Joint Commissioner, Service Tax, Ahmedabad.
4. The Deputy/Assistant Commissioner, Service Tax, Division-III, A/bad.
5. The Assistant Commissioner, System-Ahmedabad.
6. Guard File.
7. P.A. File.

