

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद- 380015.

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क फाइल संख्या : File No : V2(ST)185 /A-II/2015-16 / 3313-18

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-0151 -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-ADC-013-15-16 Dated 25.01.2016

Issued by Additional Commissioner, Service Tax, Ahmedabad

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

M/s. Black Pearl Shipping & Logistics 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 :-

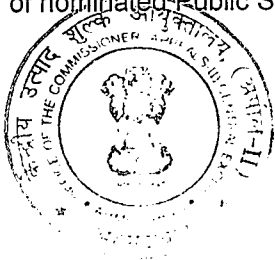
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 ओर लगाया गया जुर्माना रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 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. J. J.

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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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 13 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,

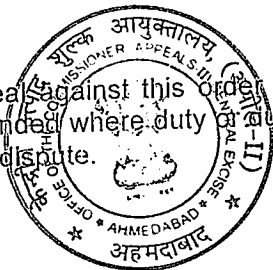
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 and penalty are in dispute, or penalty, where penalty alone is in dispute.

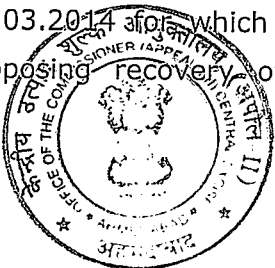


ORDER IN APPEAL

M/s. Black Pearl Shipping & Logistics, 210, 2nd Floor, Unique Metropolis, Nr. Prashang Party Plot, R. C. Technical Road, Opp. Bhagwat Vidyapith, Off. S. G. Highway, Gota, Ahmedabad (*hereinafter referred to as 'appellants'*) has filed the present appeal against Order-in-Original No. AHM-SVTAX-000-ADC-013-15-16 dated 25.01.2016 (*hereinafter referred to as 'impugned order'*) passed by the Additional Commissioner, Service Tax, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the Appellants are engaged in the business of providing taxable services covered under the definition of "Business Auxiliary Services", for which they are holding Service Tax registration No. ADUPT8291KST001.

3. During the course of audit, it was observed during scrutiny of the Balance Sheet and Profit & Loss Account and on reconciliation with the ST-3 returns for the year 2011-12, that the appellants had not paid Service Tax on income of sale "Ocean Freight Charges" and "Air Freight Charges". It was confirmed that the appellants were not engaged in transportation of ocean going vessels, but were actually facilitating freight booking of ocean going vessels and aircraft on behalf of their clients. It is seen that exporters and importers do not directly go to the transporters/ shipping line for freight booking of ocean going vessels or aircrafts but approach the forwarding agents for getting the work done. In this situation, the appellants either ask the shipping line to provide space in the ocean going vessels which they book in advance in anticipation or they make such bookings with the shipping line on behalf of exporters/ importers (their clients) whenever there was such request. The amount paid to the shipping line for such freight booking is termed as 'purchase value' and the amount collected from the exporters/ importers, is termed as 'sales value' by the appellants. Accordingly, a show cause notice dated 30.09.2013 was issued to the appellants proposing recovery of Service Tax of ₹ 2,20,052/-. The appellants continued the above practice of non-payment of Service Tax on Ocean Freight/Air Freight charges. Therefore, information regarding ocean freight and air freight charges for the subsequent period 01.07.2012 to 31.03.2013 was called for from the appellants. Thus, another show cause notice dated 10.09.2014 was issued proposing recovery of ₹ 6,92,886/- for the period from 01.07.2012 to 31.03.2013. The present appeal pertains to the period 01.04.2013 to 31.03.2014 for which a show cause notice dated 27.03.2015 was issued proposing recovery of ₹ 7,33,556/-. The said show cause notice was



adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority confirmed the demand of Service Tax amounting to ₹ 7,33,556/- for the period from 01.04.2013 to 31.03.2014 under Section 73 of the Finance Act 1994 and ordered recovery of interest under Section 75 of the Finance Act 1994. The adjudicating authority, vide the impugned order, also imposed penalty under Sections 76 and 77(2) of the Finance Act 1994.

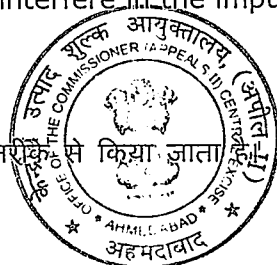
4. Being aggrieved with the impugned order the appellant has preferred the present appeal. The appellants have submitted that they are engaged into the business of purchasing and selling of container space in a vessel and hence, not providing any service which would attract any Service Tax. They further stated that their activity can be termed as a pure trading one. The transaction between the appellants and the shipping lines is on principal to principal basis.

5. Personal hearing in the matter was granted and held on 04.11.2016. Shri Pradeep Jain, Chartered Accountant, appeared before me and reiterated the contents of appeal memo. He also makes additional written submission.

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 do not want to accept the argument tabled by the appellants that they were not producing any service that attract Service Tax. I find that they were booking space on behalf of their clients and pay to the shipping line for that. Then they collect an amount higher than the booking amount and treat the differential amount as their profit. This activity is nothing but an act of Commission Agent offering a service under Business Auxiliary Service. This is nowhere an activity from principal to principal as the appellants are neither consuming the space themselves (instead they sell the space to actual consumer) nor are they the original providers of the space. They simply act as a commission agent and pass on the service for a certain sum of fee in terms of differential amount which is not Ocean Freight. Regarding the case laws quoted by the appellants, I find that the same are not relevant to the situation in question as they all speak about Ocean Freight whereas here the case is not of Ocean Freight. The appellants are trying to show that the activity conducted by them pertains to Ocean Freight but it is not so. The ocean freight is always paid by the person who utilizes the services of shipping line for carrying goods.

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

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)

25/11/16
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,

M/s. Black Pearl Shipping & Logistics,
210, 2nd Floor, Unique Metropolis,
Nr. Prashang Party Plot, R. C. Technical Road,
Opp. Bhagwat Vidyapith, Off. S. G. Highway, Gota,
Ahmedabad- 382 481

Copy to:

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

