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)066/A-II/2016-17** / 3291-95

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-SVTAX-000-APP-0158-16-17**

दिनाँक 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 _____

_____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original No SD-05/21/DKJ/AC/2015-16 Dated **26.02.2016**

Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

M/s. Ahmedabad Muncipal 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, 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.

केन्द्रीय उत्पाद शुल्क आयुक्त (अपील-II) OFFICE OF THE COMMISSIONER CENTRAL EXCISE (APPEALS-II) AHMEDABAD अहमदाबाद

(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 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 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 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

M/s. Ahmedabad Municipal Corporation (AMC), Sardar Patel Bhavan, Danapith, Ahmedabad *(hereinafter referred to as 'the appellants')* have filed the present appeal against the Orders-in-Original number SD-05/21/DKJ/AC/2015-16 *(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 various taxable services like Selling of Space or Time Slots for Advertisement, Renting of Immovable Property Services, Mandap Keeper Service and having Service Tax Registration number AAALA0024CST005. In the course of CERA audit, it was noticed that the income under the ledger head number 13121 was an income from a property called 'Museum' and was used for various functions, exhibitions and even marriages under the category of Mandap Keeper Service. It was further noticed that the appellants have failed to pay Service Tax on the income generated for the financial year 2008-09 to 2012-13 on Mandap Keeper Service of the said premises. Therefore, a show cause notices dated 18.10.2013 were issued to them which were adjudicated vide the above mentioned impugned order by the adjudicating authority. The adjudicating authority confirmed demand of ₹4,83,000/- under Section 73 of the Finance Act, 1994. He also ordered to pay interest under Section 75 of the Finance Act, 1994 and imposed penalties under Sections 77 and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned orders the appellants have preferred the present appeal. The appellants have submitted that the adjudicating authority has failed to appreciate the fact that Service Tax was not leviable on the amounts collected by them. The appellants argued that the Mandap Keeper Service provided by them, are covered under negative list as the premises were not provided to any business entity. The service was provided to religious body, educational body, residential accommodation such as hostels, tents and land used for educational sports, circus, entertainment etc. They further stated that under the ledger head of Rent of Service from Mandap Keeper, even the incomes which were not liable for Service Tax, had been included in the same head and considered as taxable income during the CERA audit. They requested to set aside the impugned orders as the demands are barred by limitation.

4. Personal hearing in the matter was granted and held on 04.11.2016. Shri Nazim F. Rajaiwala, Chartered Accountant, appeared before me and reiterated the contents of appeal memo. He stated that he would submit details of accounting but when it was pointed out that the show cause notice

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-II) OFFICE OF THE COMMISSIONER (APPEALS-II) CENTRAL EXCISE AHMEDABAD अहमदाबाद

was issued in 2013 and why he has not submitted the same in last year, he was unable to reply.

5. 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.

6. I find that the appellants have no where doubted the taxability of the case. They argued that from 01.07.2012, the service was included in negative list where non business entity is involved. They claimed that their customers were not business entity. However, they have not submitted any documentary evidence in support of their claim. Mere stating that their service was directed to religious body, educational body, residential accommodation such as hostels, tents and land used for educational sports, circus, entertainment etc. will not sail them through unless they submit documentary proof to support their claim. In the impugned order, the adjudicating authority quoted the same thing that the verbal statement of the appellants is not supported by any document. They have argued before me that under the ledger head of Rent of Service from Mandap Keeper, even the incomes which were not liable for Service Tax, had been included in the same head and considered as taxable income during the CERA audit. Once again their claim is devoid of any supporting documents. The learned representative of the appellants, Shri Nazim F. Rajaiwala, should know it very well that mere accusing that the impugned orders are wrong will not help them any way unless they submit documentary evidence in support of their claim. Mere allegation without documentary evidence is bad in the eye of law. Therefore, in absence of any documentary evidence, I am unable to accept the argument of the appellants and consider the impugned order to be legally correct.

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

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**)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED
(S. DUTTA)
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-II) OFFICE OF THE COMMISSIONER (APPEALS II) CENTRAL EXCISE AHMEDABAD अहमदाबाद

To,

M/s. Ahmedabad Municipal Corporation (AMC),

Sardar Patel Bhavan, Danapith,

Ahmedabad- 380 001

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.