

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)186/A-II/2015-16 | 3840-45  
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-160-16-17  
दिनांक Date : 29.11.2016 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 02/Gayatri/AR-II/Div-I/Supdt/2015-16 Dated 12.02.2016

Issued by Supdt AR-II Div-I, Service Tax, Ahmedabad

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

**M/s. Gayatri Filler Pvt 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, 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 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 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. file

(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 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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 रूपए 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 होंगे।

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. Gayatri Fillers Pvt. Ltd., 406- Sahjanand Complex, B/h AEC, Naranpura, Nr. Sola Housing Colony , Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number 02/Gayatri/AR-II/Div-I/Supdt/2015-16 dated 05.03.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Superintendent AR-II, Service Tax Div-I, APM Mall, Satellite, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

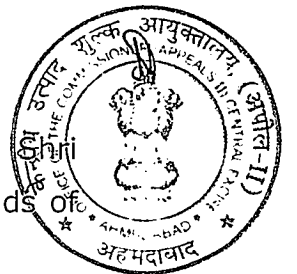
2. The facts of the case, in brief, are that the appellants were engaged in providing taxable service under the category of 'GTA service/ Transport of goods by road service'. Appellant were holding Service Tax registration number-AABC G7906P ST001. It was noticed from ACES that Appellant had not filled any statutory ST-3 returns as provided under section 70 of FA, 1994 read with Rules 7(1), 7(2) and 7(3) of Service tax rules 1994, for the period from 04/2014 to 09/2014. Show cause notice dated 23.10.2015 demanding late fees under section 70(1) and proposing penalty under section 77(2) was issued.

3. Adjudicating Authority vide impugned OIO imposed penalty of Rs. 1000/-under Section 77(2) for contravention of section 70 read with rule 7 of service tax rules, 1994 and also ordered to pay late fees under rule 7(c) of Service tax rules, 1944, however late fees was not quantified.

4. Being aggrieved with the impugned order, the appellants preferred an appeal on 23.03.2016 before the Commissioner (Appeals-II) wherein it is contended that-

- I. Appellant has regularly filed all the ST-3 from the date of registration till date as service receiver under GTA.
- II. Appellant has also deposited service tax due regularly to the credit of Central Government without any single default.
- III. Appellant has not claimed any cenvat of credit.
- IV. Appellant has no knowledge of computer software of department.
- V. System has accepted the return but SST has rejected the ST-3 due to an error of Rs. 60/-.

5. Personal hearing in the case was granted on 08.11.2016 and Gaurang Shethwala, CA, appeared before me and reiterated the grounds of appeal. He submitted additional submission wherein it is stated that-



- I. Appellant has filled ST-3 return online on 06.10.2014 for the period from 04/2014 TO 09/2014. Physical copy of acknowledgment and ST-3 filled before SST vide letter dated 09.11.2015 so no late fees and penalty imposable.
- II. It is illogical to impose penalty if ST-3 was uploaded successfully and acknowledgement by system of department.
- III. SST himself is confirming the filling of ST-3 (uploaded successfully) in para 6 , then there is no question of non-filing of ST-3 but without attestation.

#### DISUSSION AND FINDINGS

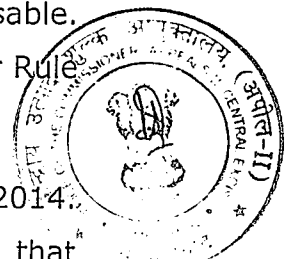
6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing.

7. As per section 70 every person liable to pay the service tax is required to furnish to the Superintendent of Central Excise, with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return. As per Rule 7C there will be levied following fees for delayed filing of service tax return. A mandatory penalty has been prescribed under Rule 7C of the Service Tax Rules,

Period of Delay	Penalty/late fee After finance ACT 2011
for delay up to 15 days	INR 500
for delay beyond 15 days but up to 30 days	INR 1,000
for delay beyond 30 days	INR 1,000 + INR 100 per day (from 31st day subject to a maximum amount of Rs 20000).

8. Section 77 is regarding penalty for contravenes any of the provisions of Finance act or any rules made there under for which no penalty is separately provided. For non-filing of ST-3 penalty under section 77(2) is imposable. Penalty is mentioned under section 70 and the Fees is mentioned under Rule 7C.

9. Appellant was required to file ST-3 return on or before 25.10.2014. Appellant has produced ACES screen shot from where it is established that ST-3 was uploaded on 06.10.2014 but could not submit due to ignorance of




ACES and computer. System has accepted the return but Superintendent has rejected the ST-3 due to an error of Rs. 60/- and to substantiate this appellant has produced the screen shot of ACES. Moreover I find that appellant has submitted physical copy on 09.11.2015. I also find that appellant has paid tax for period in question and for all earlier period timely. Keeping in view the effort made to upload return within time and this being first instance and no malafides are noticed, I am inclined to reduce the penalty imposed under section 77 to Rs. 250/-. I am also inclined to wave the late fees imposable under rule 7C as uploading date of ST-3 i.e 06.10.2014 may be treated as date of filing. I modify the impugned OIO to that extent.

10. In view of above, appeal filed by the appellants is partially allowed.

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

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

  
(उमा शंकर)

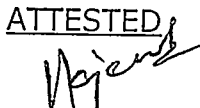
आयुक्त (अपील्स - II)

(UMA SHANKER)

COMMISSIONER (APPEAL-II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

  
(R.R. PATEL)

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

To,

M/s. Gayatri Fillers Pvt. Ltd.,

406- Sahjanand Complex,

B/h AEC, Naranpura,

Nr. Sola Housing Colony ,

Ahmedabad



**Copy to:**

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax ,Ahmedabad-.
- 3) The Additional Commissioner, Service Tax, Ahmedabad
- 4) The Asst. Commissioner, Service Tax Div-I, APM mall, Satellite, Ahmedabad.
- 5) The Asst. Commissioner(System), C.Ex. Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.

