

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)091/A-II/2016-17 / 4521-26
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-181-16-17
दिनांक Date : 20.12.2016 जारी करने की तारीख Date of Issue 23/01/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

C. file

ग _____ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं
_____ दिनांक : _____ से सृजित

Arising out of Order-in-Original No 04/STC/Ahd/ADC(JSN)/ 2014-15 Dated 28.05.2014

Issued by ADC STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Vinod Shrigopal Sharma 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 :-

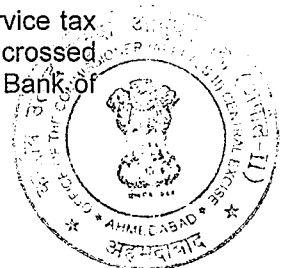
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 रूपए 5 लाख या उससे कम है वहाँ 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 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.



(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. यथाराशोधित 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, 1994 की धारा 35F के अंतर्गत वित्तीय (संख्या-2) अधिनियम 2014 (2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निर्धारित 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 or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.



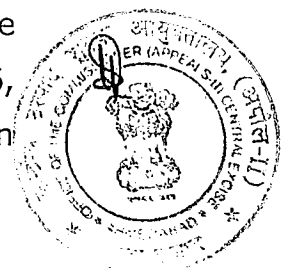
ORDER-IN-APPEAL

Shri Vinod Shrigopal Sharma, A/12, Bharat Small Industrial Estate, Behind Gujarat Offset, Vatva, Ahmedabad (*hereinafter referred to as 'appellant'*) has filed the present appeal against Order-in-Original No. 04/STC/AHD/ADC(JSN)/2014-15 dated 28.05.2014 (*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 appellant is engaged in providing the service of 'Manpower Recruitment & Supply Agency' and supplies labourer/ worker to his customers. During the course of audit of the records of M/s. Neesa Infrastructure Pvt. Ltd., Changodar, it was noticed that for the periods 2008-09 and 2009-10, the appellant had supplied labours/ workers to the above mentioned factory for attending various works, related to manufacture of final products, on contract basis and received an amount of ₹ 28,81,763/- and ₹ 25,11,574/- for the periods 2008-09 and 2009-10 respectively. However, on further scrutiny it came to light that the appellant did not discharge his Service Tax liabilities. Accordingly, a show cause notice, dated 23.10.2013, was issued for the periods from April 2008 to march 2012. The adjudicating authority, vide the impugned order, confirmed Service Tax of ₹ 800,020/- under Section 73 of the Finance Act, 1994. He also ordered for the recovery of interest under Section 75 of the Finance Act, 1994 and imposed penalty under Sections 76 (till 09.05.2008), 77 and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant preferred an appeal before the then Commissioner (Appeals-IV) who, vide Order-In-Appeal number AHM-SVTAX-000-APP-018-15-16 dated 08.05.2015, rejected the appeal, without going to the merits of the appeal, on the ground of non-payment of pre-deposit of 7.5% as prescribed under Section 35F of the Central Excise Act, 1944 made applicable to the Service Tax under Section 83 of the Finance Act, 1994.

4. Being aggrieved with the said OIA, the appellants filed an appeal before the Hon'ble CESTAT, West Zonal Bench, Ahmedabad. The Hon'ble CESTAT, vide order number A/10378/2016 dated 03.05.2016, remanded back the case to the Commissioner (Appeals) with direction



to decide the case on merit as the appellant has deposited the requisite amount.

5. In view of the above judgment of the Hon'ble Tribunal, I take up the case to be decided on merit.

6. Personal hearing in the case was granted on 16.11.2016 wherein Shri Nirav Shah, Advocate, on behalf of the appellant appeared before me and reiterated the contents of grounds of appeal. He stated that the impugned order was delivered ex-parte as the appellant could not attend the personal hearing before the adjudicating authority due to ill health of his mother and requested to remand the case back to the adjudicating authority.

7. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellant and oral submission made at the time of personal hearing. To begin with, I take the first contention of the appellants pertaining to whether the appellant was actually engaged in the service of manpower supply or carrying job work on kg rate basis at site. In this regard I agree with the view of the adjudicating authority that the appellant was involved in a contractual work with M/s. Neesa Infrastructure Pvt. Ltd. The appellant's contention is not supported by any documentary evidence. Simply stating that he was not a labour supplier but doing job work on kg rate basis at site does not suffice the purpose of the appellant and it seems to be a mere afterthought on his part. The adjudicating authority has categorically stated that the terms and conditions of the contract made between M/s. Neesa Infrastructure Pvt. Ltd. and the appellant categorically confirm his views.

8. However, the appellant has claimed that the case, vide the impugned order, was decided *ex parte* as he was unable to attend the personal hearing due to prolonged illness of his mother. The appellant was taking care of hospitalization and medicinal requirement of his mother and, according to him; either the notice was not received or went unnoticed. Thus, as he was devoid of the natural justice, he has requested before me, during the course of personal hearing, to remand the case back to the adjudicating authority as that would enable him to put forward additional submissions before the adjudicating authority.



9. His request sounds logical to me as everyone has the right to represent himself/herself and natural justice should not elude anyone. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. In light of the above discussion, I remand back the matter to the adjudicating authority to decide the case afresh following the principle of natural justice. The appellant is also directed to provide all sort of assistance to the adjudicating authority by providing all required documents during the proceeding for which the case is remanded back.

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

10. 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
22/2/16
(S. DUTTA)

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

BY R.P.A.D.

To,
Shri Vinod Shrigopal Sharma,
A/12, Bharat Small Industrial Estate,
Behind Gujarat Offset, Vatva,
Ahmedabad- 382 440

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Additional Commissioner, Service Tax, Ahmedabad.
4. The Assistant Commissioner, system, Service Tax, Ahmedabad
5. The Asstt./Dpty. Commissioner, Service Tax, Division-I, Ahmedabad.
6. Guard File.
7. P.A. File.

