

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)08/A-II/2016-17 | 207-11
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-199-16-17
दिनांक Date : 23.12.2016 जारी करने की तारीख Date of Issue 17/02/17

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

A. Shanker

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 STC/25/GAR-AC/Div-III/10-11 Dated 01.04.2011 Issued
by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Ahmedabad Parsi Panchyat 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
हॉस्पिटल 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 accompany ed 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 Section Bank of the place where the bench of Tribunal is situated.



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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, 1984 की धारा 34F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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 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 बशर्तें यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किररी 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

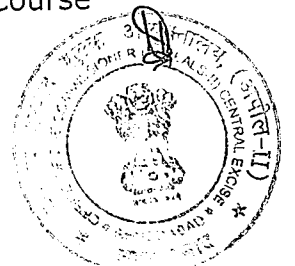
M/s Ahmedabad Parsi Panchyat, Bukara, Mohalla, Khamasa Gate, Ahmedabad (hereinafter referred to as "the Appellant"), has filed the present appeal against the Order-in-Original No STC/25/GAR-AC/D-III/10-11 dated 01.04.2011 (*hereinafter referred to as 'impugned orders'*) passed by the Assistant Commissioners of Service Tax, Division-III, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant had has collected rent from various tenants for the properties situated at Parsi Dungarwadi, Jasodanagar, Ahmedabad for the period June, 2007 to September, 2008. As per section 68(1) every person providing taxable service to any person shall pay service tax. Thus the Appellant not paid Service tax of Rs 257606 and thereby violated the provision of Section 68(1) read with Rule 6 of the Service Tax Rules, 1994. The appellant had contravened provision of section 68 & 70 of the Service Tax Act and Rule 6 & 7 of the service tax Rules 1994. The above said contraventions are punishable under section 76, 77 and 78 of the Finance Act.

3. Therefore Appellant was issued SCN dated and later on addendum on 22.11.2010 which was adjudicated by the adjudicating authority confirming the Service tax of Rs 257606 alongwith equivalent penalty. Interest was also demanded under section 75 of Finance Act. Penalty of Rs 5000 was imposed under section 77(a) for not taking service tax registration and penalty of Rs 6000 was imposed for not filing ST-3 return.

4. Being aggrieved with the impugned orders of confirming Duty and penalty, the appellant filed the present appeal. The appellant claimed that they were not given opportunity to represent their case. Further the impugned order is contradictory as personel hearing was fixed on 30.09.2010, 4.10.2010 & 08.10.2016. As per order Mr Bastawala appeared before adjudicating authority on 4.10.2010. If Mr Bastawala appeared before adjudicating authority on 4.10.2010 why hearing was fixed on 08.10.2010. Further Mr Bastawala appeared before adjudicating authority on 4.10.2010 then how he can submit the challan dated 8.10.2010 & 14.10.2010. Further they have submitted that they are providing "Renting of Immovable property service as define in Section 65(90a) of the finance Act

"Renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the Course or furtherance of business or commerce but does not include -



(i) Renting of immovable property by a religious body or to a religious body;
or

a. renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

They submitted that Appellant is a religious body. The main Object is to work for welfare of the parsi community. The activity of renting property is carried out mainly to fulfill its religious object. i.e well being of parsi community in Ahmedabad. It is submitted that there is no Taxable service provide no service tax liability will occur hence question of penalty and interest does not arise.

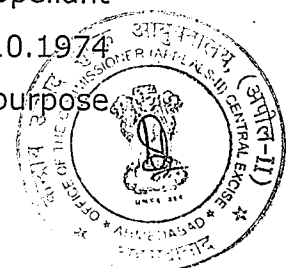
5. Personal hearing in the case was granted on 19.10.2016 wherein Brigadier (Retd) J P Anklesaria VSM President Parsi Panchyat Ahmedabad, on behalf of the appellant appeared before me and reiterated that Parsi Panchyat is a religious trust. As per the definition they are not liable to pay Service Tax. Additional Submission was also made by him.

6. I have carefully gone through the facts of the case on records, grounds of the appeal, and written submission put forth by the appellant as well as oral submission made at the time of personal hearing. Looking to the facts of the case, I proceed to decide the case on merits.

7. In the present case, I find that the appellant had rented the immovable property for which department ask to pay service tax. The definition as given in the Finance Act, I would like to mention below the related contents of the said Act;

(90a) "Renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include — (i) Renting of immovable property by a religious body or to a religious body; or (ii) Renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Appellant has produced the copy of certificate issued by Deputy Charity Commissioner to substantiate that appellant is body of Public Trust registered under Bombay Public Trust act- 1950. Registered on 17.10. 1952. Appellant has also produced Certificate No. CIT:II/A-2/AR/74 dated 16.10.1974 whereby activity of appellant is exempted under section 12A for the purpose of income tax as appellant being trust.



In the above definition, it can be seen that the services provided are exempt from payment of Service tax. Thus, it is quite clear that any religious body is exempt to pay service tax for renting immovable property. Therefore, no question of payment of Service Tax arises on the part of the service provide. Once tax itself is not payable, then payment of any penalty is also illegal. I quash the impugned OIO and set aside the demand.

8. Thus, in view of discussion at Para 7 above and in the fitness of things, it would be just and proper to allow the appeal.

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

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - II)

(UMA SHANKER)

COMMISSIONER (APPEAL-II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

R R Patel

(R R Patel)

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

To,
Ahmedabad Parsi Panchyat,
Bukara, Mohalla,
Khamasa Gate,
Ahmedabad

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Dy./Assistant Commissioner, Service Tax, Division-III, Ahmedabad.
4. The Assistant Commissioner(Systems), Service Tax,, Ahmedabad
5. Guard File.
6. P.A. File.



