

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)072/A-II/2016-17

ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-202-16-17

दिनांक Date : 23.01.2017 जारी करने की तारीख Date of Issue

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 SD-01/Supdt-AR-IV/53/Rajsiddh/15-16 Dated 21.03.2016 Issued  
by Supdt AR-IV Div-I, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. Rajsiddh Logyinst 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 :-

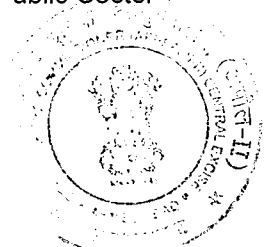
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, 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 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 भेजी 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 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 अर्जाएँ 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. Rajsiddh Logimyst Pvt. Ltd. , 76, Lavanya Park society, IOC Road, Chandkheda, Ahmedabad- 352424 (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number SD-01/AR-IV/SCN-12/2015-16 dated 28.03.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Superintendent, Service Tax, AR-IV, Div-I, B.D.Patel House, Naranpura, Nr. Sardar Patel Colony, 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 and was holding Service Tax registration number AAGCR 48883 BSD001. Since No business was carried out and no transaction was made, appellant had not filed ST-3 return for period 04/2014 to 09/2014 and 10/2014 to 03/2015. SCN dated 30.09.2015 was issued as appellant had contravened provisions of Section 70(1) read with rule 7 of service Tax Rule , 1994 of not filing ST-3 for imposing penalty under section 77(2) of FA, 1994. Penalty of Rs. 2,000/- was imposed under section 77(2) and ordered to file ST-3 with late fees under rule 7C read with section 70.

3. Being aggrieved with the impugned order, the appellants preferred an appeal on 31.05.2016 before the Commissioner (Appeals-II) wherein it is contended that-

- I. since No business was carried out and no transaction was made, appellant are not liable to file ST-3. Only "person liable to pay tax" is required to file ST-3.
- II. Hon'ble Kolkata Tribunal in the case of M/s Suchak Marketing Pvt Ltd Vs. Comm. of Service Tax, Kolkata [2013 (30) STR 593] has held that there is no Need to file Service Tax return (ST-3) when no service is rendered during the relevant period and it is fit case to invoke the proviso to Rule 7C and waive the late fees relating.
- III. In case of M/s Patwari Electricals Vs. CCE & ST , Aurangabad, CESTA Mumbai held that no penalty can be charged for non filing/delay of returns if there Is no service tax liability.

4. Personal hearing in the case was granted on 21.12.2016. Shri Sagar Sha, CA, appeared before me and reiterated the grounds of appeal.



## DISUSSION AND FINDINGS

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. Sort question to be decided is as to whether relation between appellant is liable filing ST-3 if no service is rendered.

6. 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,

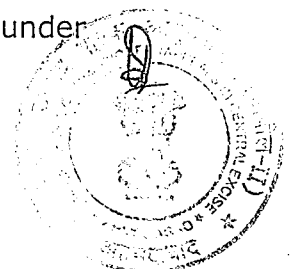
Period of Delay	Penalty/late fee After finance ACT 2011
for delay up to 15 days	INR 500
for delay beyond 15 days but up to 30 days	INR 1,000
for delay beyond 30 days	INR 1,000 + INR 100 per day (from 31st day subject to a maximum amount of Rs 20000).

7. 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.

8. I find that as no service was rendered, appellant was not required to file the ST-3 in terms of Boards Circular No. 97/8/2007-ST dated 23.08.2007. The relevant extract of the Circular is as under -

*"6. ....Persons who are not liable to pay service tax (because of an exemption including turnover based exemption), are not required to file ST-3 return."*

9. I find that Central Excise officer has power to waive the late fees under proviso of Rule 7C . said proviso is reproduced as below-

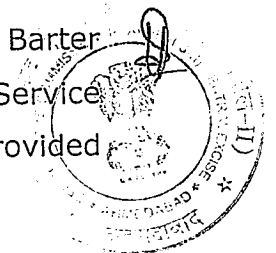


*"Provided also that where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty."*

10. Circulars issued by board are binding on departmental officers unless and until such circulars are quashed by judiciary. Hon'ble Kolkata Tribunal in the case of M/s Suchak Marketing Pvt Ltd Vs. Comm. of Service Tax, Kolkata [2013 (30) STR 593] has held that-

*"It is also not in dispute that during the period April 2005 to March 2008, they have not provided any service and also they have not filed any returns with the Department. They have filed six ST-3 Returns belatedly on 18-11-2008. I find that in view of the Board's Circular No. 97/8/2007-S.T., dated 23-8-2007, in the event, no service is rendered by the service provider, there is no requirement to file ST-3 Returns. The Id. AR could not produce anything contrary to the said Circular. Besides, I find that as per Rule 7C of the Service Tax Rules, in the event, 'nil' returns are filed, the assessing officer had the discretion to waive the late fees for filing the ST-3 Returns. In my view, it is a fit case to invoke the proviso to Rule 7C and waive the late fees relating to the nil returns filed by the appellant during the period April, 2005 to March, 2008. A similar view has been held by this Tribunal in the case of M/s. Amrapali Barter Pvt. Ltd. & M/s. Vijay Laxmi Promoters Pvt. Ltd. v. Commr. of Service Tax, Kolkata bearing its Order No. A-879-880/Kol/2012 dated 14-12-2012. In these circumstances, the order of the Id. Commissioner (Appeals) is set aside and the appeal filed by the appellant is hereby allowed. Appeal is allowed."*

11. I conclude that penalty is not imposable and also late fees are also not recoverable. My views is supported by judgement if case of Amrapali Barter Case [2013 (32) S.T.R. 456 (Tri. - Kolkata)]. Is said case, the Service provider is registered with the Service Tax Authorities and has not provided

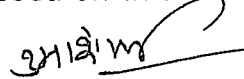


any services during a particular return cycle and was also not liable to pay any service tax during that return cycle. The Hon'ble Tribunal has held that the service provider is not required to file the Service Tax Return (even nil return) for that period as per the CBEC Circular No 97/8/07-ST dated August 23, 2007. Further the Hon'ble Tribunal held that in case the Service Provider files the nil return after considerable delay, then also no penalty under Section 77 of Finance Act or fees under Rule 7C of the STR imposable on him. Hence such case is fit for invocation of the proviso to Rule7C and grant waiver of late filing fees.

12. In view of above I set aside the impugned OIO and appeal filed by the appellants is allowed.

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

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

  
(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED

  
(R.R. PATEL)

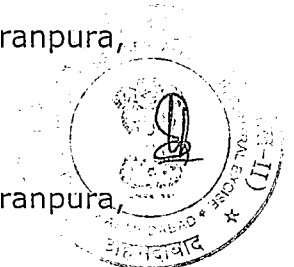
SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.

To,

M/s. Rajsiddh Logimyst Pvt. Ltd.,  
76, Lavanya Park society, IOC Road,  
Chandkheda,  
Ahmedabad- 352424

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, B.D.Patel House, Naranpura, Nr. Sardar Patel Colony, Ahmedabad.
- 5) The Asst. Commissioner(System), C.Ex. Hq, Ahmedabad.
- 6) Superintendent, Service Tax, AR-IV, Div-I, B.D.Patel House, Naranpura,



Nr. Sardar Patel Colony, Ahmedabad

7) Guard File.

8) P.A. File.

