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.

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क फाइल संख्या : File No : **V2(ST)089/A-II/2016-17** / 4711-16

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-SVTAX-000-APP-213-16-17**

दिनाँक Date : **25.01.2017** जारी करने की तारीख Date of Issue 02/02/17

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 _____

_____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original No 6/Supdt AR-V/AKA/2015-16 Dated **11.03.2016** **Issued by Supdt AR-V Div-IV,** Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता **Name & Address of The Appellants**
M/s. Tim Engineering Technologies 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 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 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 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 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 Cenval Credit taken;
(iii) amount payable under Rule 6 of the Cenval 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. Tim Engineering Technologies Ltd., Plot No. 345/A, 348/A, 349/A, Changodar Industrial Estate, Sarkhej-Bavla Highway, Changodar, Dst: Ahmedabad *(hereinafter referred to as 'the appellants')* have filed the present appeal against the Order-in-Original number 6/Supdt AR-V/AKA/2015-16 dated 11.03.2016 *(hereinafter referred to as 'the impugned order')* passed by the Superintendent, Service Tax, Division-IV, Ahmedabad *(hereinafter referred to as 'the adjudicating authority')*.

2. The facts of the case, in brief, are that the appellants are holding a Service Tax registration number AACCT5088NSD001. From the available records, it was established that the appellants had failed to file ST-3 returns for the periods 2012-13, 2013-14 and 2014-15, as required under Section 70 of the Finance Act, 1994, read with Rule 7 of the Service Tax Rules, 1994 as amended.

3. Accordingly, a show cause notice, dated 07.09.2015, was issued to the appellants. The said show cause notice was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority ordered to recover late fee amounting to maximum ₹35,000/- (₹5,000/- each on ST-3 returns late filed) under Section 70(1) of the Finance Act, 1994 and imposed penalty of ₹2,000/- under Section 77 of the Finance Act, 1994.

4. Being aggrieved with the impugned orders the appellants have preferred the present appeal. In their appeal memo, they quoted a relevant text from the Circular number 97/8/07-ST dated 23.08.2007 where it is mentioned that the persons who are not liable to pay Service Tax, are not required to file ST-3 return. In support of their claim they cited the decision of the CESTAT in the case of M/s. Amrapali Barter. They claimed that in view of the Circular number 97/8/07-ST dated 23.08.2007; they were under the belief that no return is required to be filed as there was nil Service Tax liability.

5. Personal hearing in the matter was granted and held on 06.01.2017 wherein Shri Abhishek Chopra, Chartered Accountant, appeared before me and reiterated the contents of appeal memo.

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. I find that the adjudicating authority has ordered to recover late fee amounting to maximum ₹35,000/- for not/late filing of ST-3 returns and imposed penalty of ₹2,000/- under Section 77 of the Finance Act, 1994. In this regard I would like to cite the pertinent contents mentioned in paragraph 6 of the Circular number 97/8/07-ST dated 23.08.2007 as below;

"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."

In the above text, it can be seen that even those assesses who are availing turnover based exemption, are not required to file ST-3 return. It is needless to say that Board circulars and instructions are binding on the authorities. In the case of The Paper Products Ltd. vs. The Commissioner of Central Excise, The Hon'ble Supreme Court proclaimed that;

"Circulars issued by C.B.E. & C. are binding on the departmental authorities and they cannot take a contrary stand - Department cannot repudiate a Circular issued by the Board on the basis that it was inconsistent with a statutory provision - However assessee can contest the validity or legality of such Departmental Circulars or Instructions - Department does not have a right to file an appeal against the correctness or binding nature of a Circular - Department's actions have to be consistent with the Circulars - Consistency and discipline are of far greater importance than winning or losing Court."

Circulars are inserted in law, time to time, to serve as a tool to clarify an existing provision and remove the ambiguity. In Central Excise Law, Circular is issued by the Board for bringing the uniformity in approach related to Central Excise provisions. The Department is bound by the Circulars issued by the Central Board of Excise & Customs under Section 37B of the Central Excise Act, 1944. I hereby quote the relevant portion of Section 37B as below;

"The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board."

Thus, without much ado, I proclaim that the adjudicating authority should have followed the directions of the said circular. Further, the appellants have, in their grounds of appeal, quoted the case of M/s. Amrapali Barter where the Hon'ble Tribunal has observed that even in terms of Rule 7C of the STR in case of filing of NIL returns; the Assessing Officer has discretion to waive late fees for filing of ST-3 returns. In the case of M/s Suchak Marketing Pvt. Ltd. vs. The Commissioner of Service Tax, Kolkata [2013 (6) TMI 641], during the period April, 2005 to March, 2008 the said assessee has not provided any service and also has not filed Service Tax Return. However the assessee filed six "Nil" belated Service tax return for the period September, 2005 to March,

2008 on November 18, 2008. Thereafter the Department issued a show cause notice proposing to impose penalty under Rule 7C of the Service Tax Rules, 1994 and Section 77 of the Finance Act. The Adjudicating Authority vide the Order-in-Original ordered the assessee to pay late fee for each ST-3 Return under Rule 7C of Service Tax Rules, 1994 for late filing of Service Tax return and also imposed penalty of under Section 77 of the Finance Act. Subsequently, the assessee, against the Order-in-Original, filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) confirmed the late fee under Rule 7C of Service Tax Rules, 1994 and dropped penalty under Section77 of the Finance Act. Subsequently, the said assessee filed an appeal before the Hon'ble Tribunal challenging levy of late fee on the ground that it had not provided any services during impugned period and thus was not required to file Service Tax return. The Hon'ble Tribunal waived penalty under Rule 7C of the STR and set aside order of the Commissioner (Appeals) relying on the Central Board of Excise and Customs Circular No.97/8/07-ST dated August 23, 2007 and judgment of the Tribunal in the case of Amrapali Barter (P.) Ltd. Vs. CST [2013-TIOL-32-CESTAT-KOL] ("Amrapali Barter Case"). Thus, in view of the above citations and discussions, I held that there is no need to file Service Tax return when no taxable service is rendered during the relevant period.

7. In view of above, I set aside the impugned order with consequential relief to 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

27/01/17

(S. DUTTA)

SUPERINTENDENT (APPEAL-II),

CENTRAL EXCISE, AHMEDABAD.

To,

M/s. Tim Engineering Technologies Ltd.,

Plot No. 345/A, 348/A, 349/A, Changodar Industrial Estate,

Sarkhej-Bavla Highway, Changodar,

Dst: Ahmedabad- 382 213.

Copy to:

1) The Chief Commissioner, Central Excise, Ahmedabad.
2) The Commissioner, Service Tax, Ahmedabad.
3) The Dy./Asst. Commissioner, Service Tax, Division-IV, Ahmedabad.
4) The Superintendent, AR-V, Service Tax, Division-IV, Ahmedabad.
5) The Asst. Commissioner(System), Service Tax Hq, Ahmedabad.
6) Guard File.
7) P.A. File.