

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)061/A-II/2016-17 / 4694-98
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-217-16-17
दिनांक 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)

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

Arising out of Order-in-Original No SD-05/16-18/DKJ/AC/2015-16 Dated 29.01.2016 Issued
by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Rajubhai R Shukla 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 :-

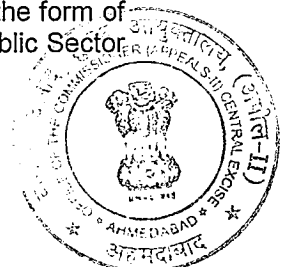
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल 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 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 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 (सीस्टैट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 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 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.

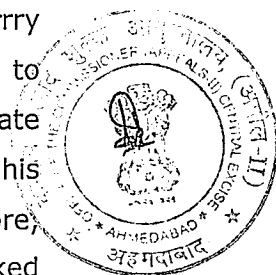


ORDER-IN-APPEAL

Shri Rajubhai R Shukla, 13, Lallu Gordhan ni Chali, Odhav, Ahmedabad (*hereinafter referred to as 'appellant'*) has filed the present appeal against Order-in-Original No. SD-05/16 to 18/DKJ/AC/2015-16 dated 29.01.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-V, 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 customers. During the course of audit of the records of M/s. Anup Engg. Co. Ltd., Odhav, it was noticed that for the period from 2006-07 to 2010-11, the appellant had supplied labours/ workers to the above mentioned factory for attending various works, related to manufacture of final products, on contract basis. However, on further scrutiny it came to light that the appellant did not discharge his Service Tax liabilities. Accordingly, show cause notices for the periods 2006-07 to 2010-11 and April 2011 to March 2012 demanding Service Tax amounting to ₹ 9,76,081/- and ₹ 3,32,355/- respectively, were issued. As the issue was of periodical nature, the information for the further periods April 2012 to June 2012, July 2012 to March 2013 and April 2013 to March 2014 was called for and it was found that the appellant had continued the same practice of providing the service under Manpower Recruitment & Supply Agency to M/s. Anup Engg. Co. Ltd., Odhav and not discharging the Service Tax liable on the service rendered. Accordingly, a show cause notices dated 16.04.2014, 17.09.2014 and 01.04.2015 respectively, were issued to the appellant which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed Service Tax of ₹ 2,19,453/- (₹ 1,38,815/- for the period April 2012 to June 2012 + ₹ 61,670/- for the period July 2012 to March 2013 + ₹ 18,968/- for the period April 2013 to March 2014) under Section 73(1A) of the Finance Act, 1994. He also ordered for the recovery of interest under Section 75 of the Finance Act, 1994 and imposed penalties under Sections 77, 78 and 70 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant filed the present appeal. The appellant stated that he denies all allegations imposed vide the impugned order. The appellant further argued that he is not providing the services of Manpower Recruitment & Supply Agency but carry out job work at the premises of M/s. Anup Engg. Co. Ltd. on principal to principal basis. That, the appellant was carrying out job work on kg rate basis at the site of M/s. Anup Engg. Co. Ltd. The appellant, in support of his claim, has relied upon the case laws of S. S. Associates vs. CCE, Bangalore, and Ritesh Enterprise vs. CCE, Bangalore. The show cause notice has invoked extended period of limitation alleging that the appellant has suppressed the



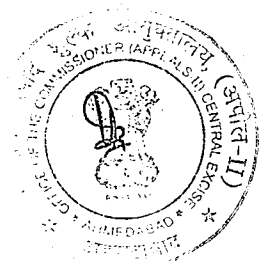
information from the department. But there is no suppression or willful wrong statement on the part of the appellant. They have further urged that penalty under Section 78 of the Finance Act, 1994 cannot be imposed in the present case. They also prayed for condonation of delay as there has been delay of nearly 27 days in filing the appeal.

4. Personal hearing in the case was granted on 06.01.2017 wherein Shri Gunjan Shah, CA, on behalf of the appellant appeared before me and reiterated the contents of appeal memorandum. He also requested for condonation of delay.

5. 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 find that there has been a delay occurred in filing the appeal by the appellant. The appellant has filed an application for condonation of delay stating that he has received the impugned order on 24.02.2016 and his authorized representative has submitted a dated acknowledgement, before the adjudicating authority, of receipt of the impugned order. Moreover, he stated that the father of the authorized representative expired on 23.04.2016. I accept his statement on humanitarian ground and condone the delay.

6. Now, I take the contention of the appellant 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 adjudicating authority that the appellant was involved in a contractual work with M/s. Anup Engg. Co. Ltd. The appellant's contention that he was having a relation under principal to principal basis with M/s. Anup Engg. Co. Ltd. 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 entries found in the ledger of M/s. Anup Engg. Co. Ltd. have been shown as 'Labour Charges'. Thus, the case laws cited by the appellant do not hold any ground as they discuss the issue of job work and not Manpower Recruitment & Supply Agency. Further, regarding his argument that no suppression can be invoked, I would like to quote the judgement of Hon'ble CESTAT, Mumbai in the case of M/s. Daichi Karkaria Ltd. vs. CCE, Pune-I where the Hon'ble CESTAT, Mumbai proclaimed that;

"....if some information is available in various reports and returns which are to be formulated in compliance to other statutes, it does not lead to a conclusion that the utilization of credit for the activity of renting is known to the Department. The Department is not supposed to know each and every declaration made outside the Central Excise and Service Tax law. Even if the Financial Report is available to



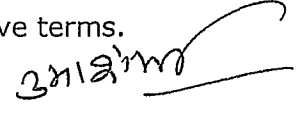
the audit, the same is meaningless in the sense that it does not indicate that input Service Tax credit utilized to pay the tax liability on such renting of property. The appellant's argument on limitation is rejected."

7. In view of the above, I uphold the levy of Service Tax as confirmed by the adjudicating authority vide the impugned order. Regarding the interest under Section 75 of the Finance Act, 1994, I uphold the same as the appellant has failed to pay up the Service Tax and is rightly invoked under the impugned order. Regarding imposition of penalty under Sections 77 and 70 of the Finance Act, 1994, I uphold the same. However, in view of the show cause notice being periodic, I set aside the penalty under Section 78 *ibid*.

8. Accordingly, as per the above discussion, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.

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)

आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

(S. DUTTA) 27/11/17

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

BY R.P.A.D.

To,

Shri Rajubhai R Shukla,

13, Lallu Gordhan ni Chali, Odhav,

Ahmedabad

Copy To:-

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



