

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)083/A-II/2016-17 / 91-96
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-224-16-17
दिनांक Date : 25.01.2017 जारी करने की तारीख Date of Issue 08/02/17

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
_____ दिनांक : _____ से सृजित

Arising out of Order-in-Original No 20/Supdt AR-I/2015-16 Dated 15.04.2016 Issued
by Supdt AR-I Div-II, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Alka Air Link 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 :-

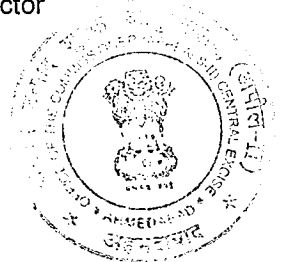
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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.



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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) (जिसमें 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, 1994 की धारा 39फ 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, बशर्त 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 बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जों 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,

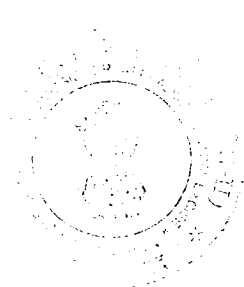
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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. Alka Airlink, Aashish Complex, Swastik Cross Road, C. G. Road, Navrangpura, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against the Order-in-Original number 20/Supdt AR-I/2015-16 dated 15.04.2016 (*hereinafter referred to as 'the impugned order'*) passed by the Superintendent, Service Tax, AR-I, Division-II, Ahmedabad (*hereinafter referred to as 'the adjudicating authority'*).

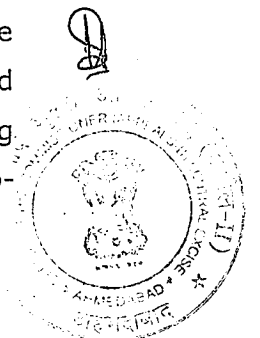
2. The facts of the case, in brief, are that the appellants are holding a Service Tax registration number ACAPS7028JST001. From the available records, it was established that the appellants had failed to file ST-3 returns for the periods 2009-10, 2010-11 and 2011-12, as required under Section 70 of the Finance Act, 1994, read with Rule 7 of the Service Tax Rules, 1994 as amended.

3. Accordingly, a show cause notice, dated 12.03.2013, 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 ₹48,000/- under Section 70 of the Finance Act, 1994 read with Rule 7(1) and 7(2) of the Service Tax Rules, 1994 and imposed penalty of ₹1,000/- under Section 77 of the Finance Act, 1994.

4. Being aggrieved with the impugned order the appellants have preferred the present appeal. In their appeal memo, they stated that they had delayed in filing the ST-3 returns, pertaining to the periods mentioned in paragraph 2 of this order, due to virus in their computer system and also due to absenteeism of their account personnel. Moreover, the appellants quoted that there was no revenue loss to the government. Accordingly, they requested to drop the demand of penalty by setting aside the impugned order.

5. Personal hearing in the matter was granted and held on 06.01.2017 wherein Shri Vipul Khandhar, 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 ₹48,000/- for not/late filing of ST-3 returns and imposed penalty of ₹1,000/- under Section 77 of the Finance Act, 1994. The appellants pleaded that due to certain reasons (mentioned in paragraph 4 of this order), they were unable to file ST-3 returns on time and also the issue is revenue neutral and therefore, requested to set aside the impugned order. Under the existing scheme of law, Rule 7 of the Service Tax Rules, 1994, read with its sub-



rules, deals with the provisions relating to the filing of Service Tax return. Rule 7C prescribes the penalty which an assessee has to pay if there is delay in filing of service Tax Return.

Where the return prescribed under Rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of Central Government, from the date prescribed for submission of return i.e. 25th of the month following the particular half year till the date of furnishing of the said return, the following penalty;

Period of Delay	Penalty/late fee before finance ACT 2011	Penalty/late fee After finance ACT 2011
for delay up to 15 days	₹ 500/-	₹ 500/-
for delay beyond 15 days but up to 30 days	₹ 1,000/-	₹ 1,000/-
for delay beyond 30 days	₹ 1,000/- + ₹ 100/- per day (from 31st day subject to a maximum amount of ₹ 2000/-.	₹ 1,000/- + ₹ 100/- per day (from 31st day subject to a maximum amount of ₹ 20000/-.

It is clear from the above the above that penalty is subject to maximum specified in Section 70. Section 70(1) Specify the maximum penalty of ₹ 2,000/- in respect of return filed up to 31st March 2011. This amount of maximum penalty is been increased to ₹ 20,000/- w.e.f. 01.04.2011.

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. However, in the present case, the appellants have clearly mentioned that they have paid the Service Tax before issuance of the show cause notice. Hence, the adjudicating authority has very rightly imposed penalty as per procedure.

In their grounds of appeal, the appellants have stated that the delay for filing the ST-3 returns was caused due to ignorance (that procedures have been changed in respect of filing of ST-3 returns), virus in computer system and also due to absenteeism of their account people. These are very rudimentary excuses on the part of the appellants. Ignorance of law cannot be treated as an excuse to escape from penal provisions. The virus in computer and absenteeism of their staff are their personal problems which cannot be shelters for escape from penalty. Moreover, it is also surprising that every



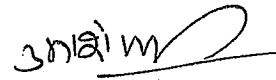
time, over a long period of time, virus appeared in the computer or the concerned person was not available, which does not appear to be credible or believable explanation.

Further, they have stated that they have discharged the Service Tax liability before issuance of show cause notice. In this regard, I would like to quote the recent judgment of Hon'ble Karnataka High Court in the matter of K. Madhav Kamath Brother & Co. v. Asst. Comm. of Central Excise. In the said case, the Hon'ble High Court pronounced that even if Service Tax is paid prior to Show Cause Notice, still the penalty shall be leviable under Sections 76/78 and 77 of Finance Act 1994. The matter pertains to the period January 2006 to October 2006. The department issued show cause notice for non-filing of return and non-payment of Service Tax along with the levy of penalty on the same (within the show cause notice itself) under Sections 76/78 and 77 of the Finance Act 1994. However, the assessee deposited the Service Tax liability before issuance of show cause notice. The assessee contended that since there was no intention to evade Service Tax on their part and non-filing of returns/ non-payment of tax was merely bonafide mistake, hence, penalty could not be levied. On appeal being filed before the Hon'ble CESTAT, Bangalore, the Hon'ble Tribunal rejected the plea of the assessee and upheld the levy of penalty. Subsequently, appeal was filed before the Hon'ble High Court. The Hon'ble High Court also held that even if Service Tax was paid prior to issuance of show cause notice, it does not preclude from the levy of penalty under Sections 76/78 and 77 *ibid*. Thus, the argument of the appellants that the issue is revenue neutral, as they have already paid the Service Tax, does not hold any ground.

7. 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.

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

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

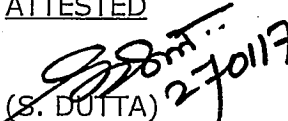


(उमा शंकर)

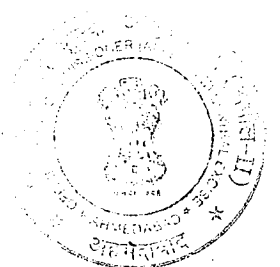
आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA) 27/01/17

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



To,
Alka Airlink, Aashish Complex,
Swastik Cross Road, C. G. Road, Navrangpura,
Ahmedabad

Copy to:

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

