

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)076/A-II/2016-17  
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-229-16-17  
दिनांक Date : 20.02.2017 जारी करने की तारीख Date of Issue 28/02/17

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

A. J. S.

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 AHM-SVTax-000-ADC-017-15-16 Dated 29.02.2016 Issued  
by ADC STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. IRM 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 रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 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 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 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निर्धारित 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 अर्ज़ी एवं अपील को लागू नहीं होगा।

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,

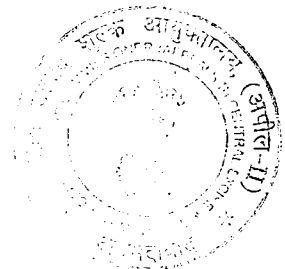
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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. I.R.M. Ltd., I.R.M. House, Kalpana Society, Sardar Patel Sewa Samaj Road, Off. C.G. Road, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against Order-in-Original No. AHM-SVTAX-000-ADC-017 to 018--2015-16 dated 29.02.2016 (*hereinafter referred to as 'impugned order'*) passed by the Additional Commissioner, Service Tax, Ahmedabad.

2. The facts of the case, in brief, are that the Appellants are engaged in the activity of providing taxable services covered under the definition of "Air Travel Agent Service, Rent-a-Cab Service, Business Auxiliary Service, Banking and Financial Services, Outdoor Catering Service, Maintenance & Repair Service and Business Support Service", for which they are holding Service Tax Registration No. AAACI3678MST003. During the course of audit, it was observed that the appellants were showing income under the head 'Bus Operating Income' for the buses operated by them for the transportation of staff belonging to M/s. Cadila Pharmaceuticals Ltd. They were paying Service Tax on such income by classifying the same under the category of 'Rent-a-Cab Operator Services' after claiming abatement under Notification number 01/2006 up to 30.06.2012 and Notification number 26/2012 w.e.f. 01.07.2012. However, on going through the agreement of the appellants with M/s. Cadila Pharmaceuticals Ltd., it was noticed that according to the terms and conditions of the agreement, the service provided by the appellants is more of the nature related to supply of manpower than rent-a-cab.

3. Thus, two show cause notices, dated 17.04.2014 and 16.04.2015 were issued to them for the periods 2012-13 and 2013-14 respectively. The adjudicating authority confirmed the said notices vide the impugned order. The adjudicating authority confirmed the recovery of Service Tax amount of ₹ 22,12,758/- for the period 2012-13 and ₹ 12,75,394/- for the period 2013-14, as demanded in the show cause notices, under Section 73 of the Finance Act, 1994. He also ordered for the recovery of interest under Section 75 of the Finance Act, 1994 and imposed penalty under Sections 76 read with 78B of the Finance Act, 1994.

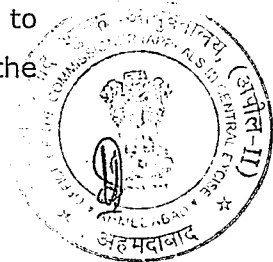
4. Being aggrieved with the impugned order the appellants have preferred the present appeal. They stated that the adjudicating authority has erred by holding that the activity of operating buses by the appellants fell under 'Manpower Recruitment and Supply Agency Service'. They though admitted that they had not made any agreement with M/s. Cadila Pharmaceuticals Ltd. for supplying a particular number of employees (in the nature of drivers or conductors etc.) and the appellants had not charged any amount on man-hour or man-day basis towards Bus Operators' service for



transportation of the staff of M/s. Cadila Pharmaceuticals Ltd. The appellants argued that Service Tax under manpower recruitment or supply agency service was not leviable when payment was made to a person for undertaking a series of activities (by way of lump sum works) and the payment for such activities was not on man-hour or man-day basis, but the payment was a fixed amount based on the quantum of work done.

5. Personal hearing in the matter was granted and held on 08.12.2016. Smt. Shilpa P. Dave, Advocate, 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. The issue to be decided in the present case is whether or not the services provided by the appellants fall under the category of Rent-a-Cab service or Manpower Recruitment and Supply Agency Service. In this regard, I find that the appellants have quoted that the payment for the activities provided by them to M/s. Cadila Pharmaceuticals Ltd. was not on man-hour or man-day basis but by the way of lump sum work. But in page 14 of the appeal memorandum, the appellants have stated that the ownership of the buses operated by the appellants was that of M/s. Cadila Pharmaceuticals Ltd. In page 15 of the said appeal memorandum, the appellants have quoted that the buses belonged to M/s. Cadila Pharmaceuticals Ltd. and the appellants had taken them on hire. Surprisingly, the appellants argued that this issue has no relevance at all. In their agreement, I find that the issue discussed and mutually agreed upon was the supply of driver, conductor, cleaner etc. by then appellants. This issue is sufficient to clear the fact that the appellants were plying the buses of M/s. Cadila Pharmaceuticals Ltd. for the staff welfare of the latter by the help of the manpower supplied by the appellants. Had the appellants were the owner of those buses than the issue could have been seen in a different perspective but that is not the case. Shri Patel, the Deputy Manager of the appellants, had admitted the fact that the appellants were providing manpower to M/s. Cadila Pharmaceuticals Ltd. and maintaining their buses. But strangely, the appellants consider the confession of Shri Patel to be immaterial. Any evidence going against the appellants surprisingly becomes immaterial or irrelevant. In page 15 of the appeal memorandum, the appellants confirm that they did not submit any documentary evidence, in support of their claim, before the adjudicating authority. However, they expected the adjudicating authority to verify all their relied upon documents. The appellants have failed to enlighten me as to how the adjudicating authority could have verified the documents when the appellants had not deliberately submitted the same.



7. In view of the above, I find that the appellants were operating the buses of M/s. Cadifa Pharmaceuticals Ltd. for the transportation of the staff belonging to M/s. Cadila Pharmaceuticals Ltd. with the help of the manpower supplied by them (the appellants). As per the agreement between M/s. Cadila Pharmaceuticals Ltd. and the appellants, the manpower (drivers, conductors, cleaners, loaders, helpers etc.) to conduct the transportation service was to be supplied by the appellants. The appellants were supposed to maintain all the records of the manpower provided to M/s. Cadila Pharmaceuticals Ltd. and were responsible for complying with all the legal requirements as per the Contract Labour (Regulations & Abolition) Act, 1970. This is a very clear indication that the appellants were involved in providing the service of 'Manpower Recruitment or Supply Agency Services' and not 'Rent-a-Cab Operator Service'. Simply stating all evidences, which were against them, as irrelevant and immaterial does not convert a wrong into right.

8. Thus, it has been very clear that the appellants had wrongly discharged their Service Tax liability declaring their service to be in the category of 'Rent-a-Cab Operator Service' instead of 'Manpower Recruitment or Supply Agency Services'. Moreover, instead of accepting their mistake, they have submitted useless arguments and unnecessarily blamed the adjudicating authority. I agree to the views and analysis of the adjudicating authority reflected in the impugned order.

9. 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.

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

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



(उमा शंकर)

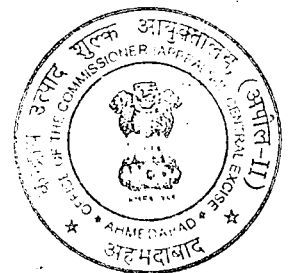
आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

**ATTESTED**

  
(S. DUTTA)

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



To,  
M/s. I.R.M. Ltd.,  
I.R.M. House, Kalpana Society,  
Sardar Patel Sewa Samaj Road, Off. C.G. Road,  
Ahmedabad-380 009

**Copy to:**

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

