

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)051/A-II/2016-17 / 338-43
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-230-16-17
दिनांक Date : 20.02.2017 जारी करने की तारीख Date of Issue 23/02/17

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

U. J.

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 VCES/26/DA/MDS/2015-16 Dated 31.03.2016 Issued
by Asst Commr VCES, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Sorath Builders 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 :-

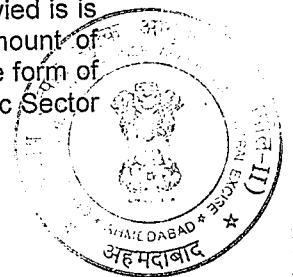
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी 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 रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34 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 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 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 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,

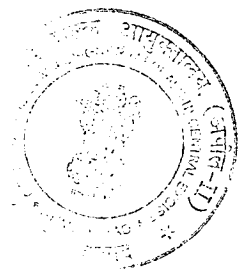
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



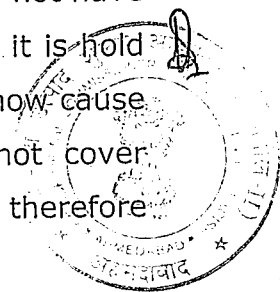
ORDER IN APPEAL

This Order arises out of the appeal filed by M/s Sorath Builders, 92, City Center, Near Swastik Cross Road, Navrangpura, Ahmedabad (hereinafter referred to as 'the appellant') against the VCES OIO No. STC/AHD/VCES/SORATHL/870/13-14 dated 17.07.2014 (hereinafter referred to as the 'impugned Order') issued by the Assistant Commissioner (Designated Authority), VCES Cell, Service Tax Commissionerate, Ahmedabad (hereinafter referred to as 'the Designated Authority').

2. The facts of the case are that the appellant has filed a declaration VCES-1 dated 27.12.2013 under section 107(1) of the Finance Act, 2013 (chapter VI) under the Service Tax Voluntary Compliance Encouragement Scheme-2013, (herein after referred to as 'VCES' for sake of brevity) declaring 'total tax dues' amounting to Rs. 6,22,439- for the for the period October 2007 to December, 2012.

3. On verification, it was noticed that inquiry has been initiated by issuing letter dated 31.10.2011, 14.02.2012 and 11.09.2012. Summons under section 14 of CEA, 1944 and inquiry was pending as on 01.03.2013. Therefore appellant has not satisfied eligibility conditions as stipulated under section 106(2)(a)(ii) and 106(2)(a)(iii) of Finance Act, 2013 (chapter VI) under the Service Tax Voluntary Compliance Encouragement Scheme-2013. Therefore SCN dated 17.07.2014 was issued to appellant proposing to reject VCES-1 filed.

4. Appellant contended before designated Authority that letter issued do not mention of services and hence are roving in nature. General nature of inquiry can not be considered as inquiry for all services together. Moreover SCN has not been issued within 30 days from filing of VCES-I therefore notice is invalid. Time limit of 30 days for SCN to reject declaration prescribed under circular 174/9/2013-ST dated 25.11.2013, has expired. In present case SCN has been issued after the limit has expired, therefore declaration is deemed to be accepted. Designated Authority vide impugned letter rejected the declaration holding that said circular as administrative circular and such circular can not have any over riding effect over the Sections of Finance Act. 2013. Further it is hold that no time limit is prescribed under 106(2) of FA, 2013 for issue of show cause notice. Letter dated 30.10.2011, 14.02.2013 and 11.09.2019 did not cover period from April, 2011 to December, 2012 for amount Rs. 1,88,944/- therefore



VCES benefit was allowed, however for rest of amount Rs. 4,33,495/- VCES benefit was denied.

5. Aggrieved by the impugned letter issued by the Designated Authority, the appellant had filed the appeal memorandum on 09.05.2016 followed with written submission on the grounds that time limit of 30 days is prescribed for giving notice of intension to reject declaration and as per circular 174/9/2013-ST dated 25.11.2013 it should be ensured strictly.

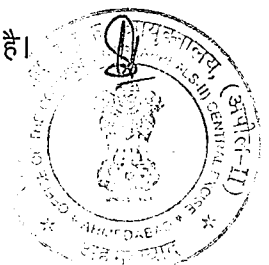
6. Personal Hearing in the matter was held on 21.12.2016, wherein Shri Kunal Desai, CA on behalf of the appellant appeared before me and reiterated the grounds of the appeal memorandum.

7. I have gone through the issue in appeal, alongwith the impugned letter issued by the Désignated Authority. Short question to be decided is to where SCN can be issued after 30 days of filing in contravention circular prescribing time limit of 30 days.

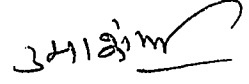
8. I find that VCES-1 declaration dated 27.12.2013 is received appellant and, therefore, the notice dated 17.07.2014 for rejection was time barred. Inasmuch as CBE&C vide Circular 170/5/2013-ST dated 8.8.2013 has clarified that the designated authority, if he has reason to believe that the declaration is covered by Section 106(2), shall give the notice of intention to reject the declaration within 30 days of filing of the declaration, stating the reasons for proposed rejection. Not having followed the Circular, the SCN dated 17.07.2014 is time barred.

9. It has been held in several rulings by the Tribunal and High Court that the circular and instructions of CBE&C are binding on the departmental officers and as such the Circular is also binding on the designated authorities.. The appeal is allowed. The Designated Authority is directed to issue acknowledgement as provided under Section 107(7) of the Finance Act, 2013 under the VCES Scheme, 2013, within a period of 15 days from receipt of this order.

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)

ATTESTED



(R.R. PATEL)

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

ATTESTED

BY R.P.A.D.

To.

M/s Sorath Builders,
92, City Center,
Near Swastik Cross Road,
Navrangpura, Ahmedabad

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. Assistant Commissioner (Designated Authority), VCES Cell, Service Tax Commissionerate, Ahmedabad.
4. The Assistant Commissioner, Service Tax, Division-IV, Ahmedabad.
5. The Assistant Commissioner, Systems, Service Tax Commissionerate, Ahmedabad.
6. Guard File.
7. P.A. File.



