

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)025/A-II/2016-17
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-233-16-17
दिनांक Date : 22.02.2017 जारी करने की तारीख Date of Issue 28/02/17

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

G. file

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-02/32/AC/2015-16 Dated 29.02.2016 Issued
by **Assistant Commr STC, Service Tax, Ahmedabad**

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. N J Devani Builders Pvt 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 :-

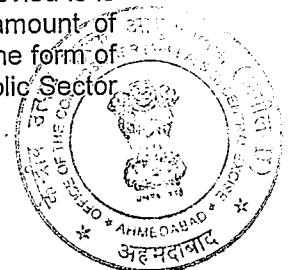
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ 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 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 is 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34फ 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 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,

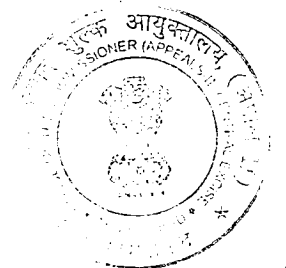
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

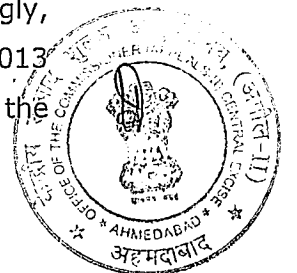


ORDER-IN-APPEAL

M/s. N. J. Devani Builders Pvt. Ltd., B/h Ishwar Bhuvan, Navrangpura, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against the Order-in-Original number SD-02/32/AC/2015-16 dated 29.02.2016 (*hereinafter referred to as 'the impugned order'*) passed by the Assistant Commissioner, Service Tax, Div-II, Ahmedabad (*hereinafter referred to as 'the adjudicating authority'*).

2. The facts of the case are that the appellants are engaged in providing services under the categories of "Work Contract service and transport of Goods" and were registered with Service Tax Department having Service Tax Registration number AAACN4952DST001. During the course of audit for the period from 2010-11 to 2012-13, it was noticed that the appellants had provided taxable service to M/s. Indian Institute of Management and got contract receipt of ₹40,00,000/- for the year 2012-13 on 31.03.2013 but failed to pay Service Tax in due month i.e. march 2013 and instead paid Service Tax on 04.12.2013 but did not pay interest on such late payment. It was further noticed that the appellants had received ₹2,06,09,699/- from M/s. Gujarat Power Education Research Foundation, Mehsana as contract receipt for the year 2012-13 on 31.03.2013 but paid the Service Tax on 05.06.2013 and did not pay interest on such late payment. Thus, the interest for both the instances was calculated to be ₹56,815/- (₹25,213/- + ₹31,602/-). A show cause notice dated 29.09.2015 was issued to them which was decided against the appellants vide the impugned order issued by the adjudicating authority. The adjudicating authority confirmed the demand of interest amounting to ₹56,815/- under Section 75 of the Finance Act, 1994.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that they were having contracts with M/s. Indian Institute of Management and M/s. Gujarat Power Education Research Foundation, Mehsana and as per the terms and contract; payment was receivable and received by the appellants, for the works done, only after certification by a specified certification agency. Accordingly, as per the terms, they received ₹40,00,000/- from M/s. Indian Institute of Management in the month of November 2013 and ₹2,06,09,699/- from M/s. Gujarat Power Education Research Foundation, Mehsana in the month of May 2013 and accordingly, they paid the Service Tax in the months of December 2013 and June 2013 respectively. In support of their claim, they submitted photocopies of the

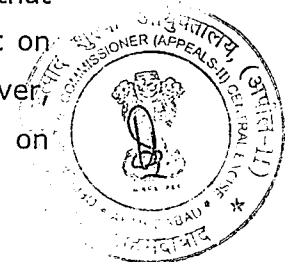


cheques received from M/s. Indian Institute of Management and M/s. Gujarat Power Education Research Foundation, Mehsana. Also, they submitted a certificate received from B. H. Mangarolia & Co., Chartered Accountants stating that the appellants actually received the payments on May 2013 and November 2013. Thus, according to them, they were not required to pay any interest and accordingly, requested to set aside the impugned order.

4. Personal hearing in the matter was granted and held on 06.12.2016. Smt. Shilpa P. Dave, Advocate, appeared on behalf of the appellants for hearing and reiterated the contents of appeal memorandum.

5. I have carefully gone through the impugned order, appeal memorandum as well as oral submission made at the time of personal hearing. Now I will examine the issue on the basis of available documents and contention of the appellants submitted before me.

6. I find that the adjudicating authority has confirmed the demand on the basis of the ledgers received from the appellants which shows the amounts received on 31.03.2013. In this regard, the appellants have stated that they were having work contract with M/s. Indian Institute of Management and M/s. Gujarat Power Education Research Foundation for continuous supply of service for a long period and as per the principles of accounting, the appellants were required to book the amounts for the work done in the books of account and therefore, the amounts of such work done by them were booked in the ledger during the FY 2012-13. The adjudicating authority has drawn his conclusion on the basis of the ledgers only. However, only ledger should not have been the only document to be verified before coming to the conclusion. The appellants have submitted before me photocopies of the cheques received from their clients and the dates shown in the said cheques are 01.11.2013 (issued by M/s. Indian Institute of Management) and 24.05.2013 (issued by M/s. Gujarat Power Education Research Foundation). They have also submitted a copy of the payment voucher number 18 dated 24.05.2013 amounting to ₹ 2,01,97,505/- (Gross ₹ 2,06,09,699/- less TDS @ 2% ₹ 4,12,194/-) issued by M/s. Gujarat Power Education Research Foundation in the name of the appellants. Further, the appellants have also submitted a certificate received from B. H. Mangarolia & Co., Chartered Accountants, stating that the appellants had credited the amounts in question in their account on 31.03.2013 as receivable from their above mentioned clients. However, the actual payments of the said amounts were received only on



01.11.2013 and 24.05.2013. There is no reference of these documents by the adjudicating authority in the impugned order. After looking at the two cheques and the CA certificate, I am convinced that the appellants need no other proof to substantiate that the said amounts were received by them not on 31.03.2013 but much later as mentioned by them.

7. In view of my foregoing conclusions, I set aside the impugned order and allow the appeal in above terms.

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

8. The appeal filed by the appellants stands disposed off in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

(S. DUTTA)

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD

To,

M/s. N. J. Devani Builders Pvt. Ltd.,
B/h Ishwar Bhuvan, Navrangpura,
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.

