दूरभाष: 26305065

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)099/A-II/2016-17	
ख	अपील आदेश संख्या : Order-In-Appeal No <u>AHM-SVTAX-000-APP-247-16-17</u>	
	दिनाँक Date : $17.03.2017$ जारी करने की तारीख Date of Issue $24/3/17$	
	<u>श्री उमा शंकर</u> , आयुक्त (अपील–॥) द्वारा पारित	
	Passed by Shri Uma Shanker Commissioner (Appeals-II)	
ग -	आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं	
	से सृजित	
	Arising out of Order-in-Original No 7/Supdt. AR-V/AKA/2015-16 Dated 21.03.2016 Issued	
	by Supdt AR-V Div-IV, Service Tax, Ahmedabad	

ध <u>अपीलकर्ता का नाम एवं पता Name & Address of The Appellants</u> M/s. The Mobile Store & Electronics 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 रिजस्ट्रार के नाम से रेखांकित बैंक द्रापट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/— फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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 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.

- एवं (2ए) के अंतर्गत अपील सेवाकर वित्तीय अधिनियम,1994 की धारा 86 की उप—धाराओं एगा, नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्भ 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 A210k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने कं निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।
- 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.
- यथारांशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तो पर अनुसूची—1 के अंतर्गत निर्धारित किए लगा होना चाहिए।
- 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.
- सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय ऱ्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संग्रंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।
- 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.
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 है –

- धारा 11 डी के अंतर्गत निर्धारित रकग
- सेनवेंट जमा की ली गई गलत राशि (ii)
- सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम (iii)
- ದು आगे बशर्ते यह कि इस धारा के प्रावधान वितीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपोलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।
- 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:

- amount determined under Section 11 D;
- amount of erroneous Cenval Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules. (ii) (iii)
- 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.
- 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।
- 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

3

M/s. Mobile Stores and Electronics, Chhikniwala Complex, Shop No. 19, Municipal No. 309, Alka Road, Dholka, Ahmedabad- 387 810 (hereinafter referred to as 'appellants') have filed the present appeals against the Order-in-Original number 7/Supdt.AR-V/AKA/2015-16 dated 21.03.2016 (hereinafter referred to as 'impugned orders') passed by the Superintendent, AR-V, Service Tax Div-VI, APM Mall, Satellite, Ahmedabad (hereinafter referred to as 'adjudicating authority');

- 2. The facts of the case, in brief, are that the appellants holding Service Tax registration number ATRP P7124Q SD002 had not filed seven ST-3 returns for the period 2012-2013, 2013-2014, and 2014-2015 as the taxable income was only 2-3 lakhs during Notice period.
- 3. Adjudicating Authority vide impugned OIO had imposed penalty of Rs. 2000/- under Section 77(2) of FA, 1994 for not submitting return under prescribed under Section 70. It was also ordered to recover late fees u/s 70(1) of Rs. 20,000/- for each seven returns separately (total late fees 1,40,000/-)
- 4. Being aggrieved with the impugned order, the appellants preferred an appeal on 20.06.2016 before the Commissioner (Appeals-II) wherein it is contended that-
 - Appellant is not required to file ST-3 as he was within threshold limit of small service provider.
 - II. In Amrapali Barter case, CESTAT has held that if no service is provided then ST-3 return is not required to be filed for that period as per CBEC Circular No. 97/8/2007-ST dated 23.08.2007. further it is held that in case if NIL return is filed after considerable delay, then also no penalty u/s 77 or fees under rule 7C of STR, 1994 imposable.
- III. CESTAT Judgement in case of M/s Suchak Marketing Pvt. Ltd. [2013(6) TMI 641- CESTAT KOLKATTA] is squarely applicable
- 5. Personal hearing in the case was granted on 21.02.2017. Shri Mitul V. Dholakiya, CA, appeared before me and reiterated the grounds of appeal.

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DISUSSION AND FINDINGS



- 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.
- 7. As per section 70 every person liable to pay the service tax is required to furnish to the Superintendent of Central Excise, with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return. As per Rule 7C there will be levied following fees for delayed filing of service tax return. A mandatory penalty has been prescribed under Rule 7C of the Service Tax Rules,

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

- 8. Section 77 is regarding penalty for contravenes any of the provisions of Finance act or any rules made there under for which no penalty is separately provided. For non-filing of ST-3 penalty under section 77(2) is imposable. Penalty is mentioned under section 70 and the Fees is mentioned under Rule 7C.
- 9. Text of para 6.1 of CBEC Circular 97/8/2007 dated 23.08.2007 is reproduced as below-
 - "6.1 The service tax return is required to be filed under Section 70 of the Act read with rule 7 of the Rules, by "any person liable to pay the service tax". This return is required to be filed on a half yearly basis, in Form ST-3. For the periods from April to September and October to March, it must be filed by the 25th October and the 25th April respectively. Further, 'Input Service Distributor' is also required to file this return. Persons who are not liable to pay service tax (because of an exemption including turnover based exemption), are not required to file ST-3 return."
- 10. I have perused documentary evidences like form 26 AS , IT returns and A/c. I find that appellant was eligible for turnover based exemption. I hold that in terms of above CBEC circular appellant was not required to file ST+3

return. When return itself is not required to be filed there is no question of imposing penalty u/s 77 of FA, 1994 and late fees u/r 7C of STR, 1994. Judgments cited by appellant are squarely applicable to appellant. I set aside the impugned OIO.

- 11. In view of above, appeal filed by the appellants is allowed.
- 12. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।
- 12. 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.

To,

M/s. Mobile Stores and Electronics, Chhikniwala Complex, Shop No. 19, Municipal No. 309, Alka Road, Dholka, Ahmedabad- 387 810

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad-.
- 3) The Additional Commissioner, Service Tax, Ahmedabad
- 4) The Asst. Commissioner, Service Tax Div-IV, APM mall, Satellite, Ahmedabad.
- 5) The Asst. Commissioner(System), C.Ex. Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.



