

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)0109/A-II/2016-17 ^{10/58/1063}
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-252-16-17
दिनांक Date : 21.03.2017 जारी करने की तारीख Date of Issue 24/3/17

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

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-008-16-17 Dated 10.05.2016 Issued
by ADC STC, Service Tax, Ahmedabad

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

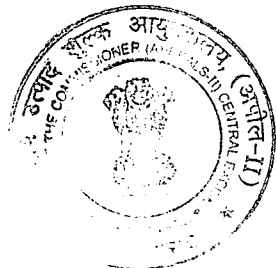
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 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 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, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 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 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,

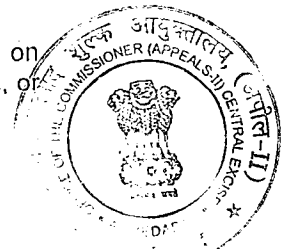
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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. Utopia Holidays, 404, Abhigam Complex, Opp- Doctor House, C.G.Road- Ahmedabad 380 006 (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number AHM-SVTAX-000-ADC-008-16-17 dated 31.03.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Additional Commissioner, Service Tax HQ, Ambawadi, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

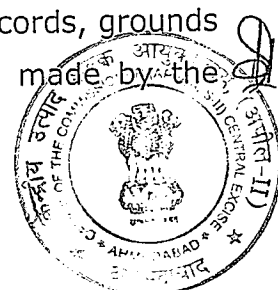
2. The facts of the case, in brief, are that the appellants, holding Service Tax registration number AACF U1349N ST001, were engaged in providing taxable service under the category of 'Tour operator Service-65(105)(n). Appellant engaged in tour operator service, whereby service being provided included outbound tour and outside India hotel booking. Appellant has claimed exemption on the basis of rule 3 of Export of service Rule, 2005 and not paid service tax of Rs. 26,44,320/- during 2009-10 to 2012-13 on bundle of taxable service in relation to foreign tour (provided to India base tourist) and service tax of Rs. 19,849/- during 2009-10 to 2012-13 on foreign Hotel Booking service tour (provided to India base tourist). Total service tax not paid is Rs. 26,64,169/-

3. Department is of view that since the receipt of income by the appellant-assesses is in Indian currency and not in convertible foreign currency, it is not export of service in terms of Rule 3(2)(b) of Export of service Rule, 2005, hence exemption from payment from service tax is not available to appellant. Adjudicating authority confirmed the demand of Rs. 26,64,169/- under section 73(2) of FA, 1994 and ordered to recover with interest under section 75 of FA, 1994. Also imposed penalty of Rs. 26,64,169/- and Rs. 10,000/- under section 78 and 77(2) of FA Act, 1994 respectively.

4. Being aggrieved with the impugned order, the appellants preferred an appeal on 29.06.2016 before the Commissioner (Appeals-II) wherein it is contended that Service tax is not payable on such service provided to outbound Indian tourist in terms of CBEC letter F. No. B/43/10/97-TRU dated 22.08.1997 Trade Notice No. 110/97, dated 28.08.1997. Service provided to outbound tour and hotel booking out side India is export of service. Appellant is silent on how Rule 3(2)(b) of Export of service Rule, 2005 are not applicable them.

DISUSSION AND FINDINGS

5. 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. Short question to be decided is whether tour operator service and foreign hotel booking service rendered to outbound Indian tourist is export of service or not.

6. I find that notice has been issued on ground that since the receipt of payment is in Indian Rupees and not in convertible foreign currency, it is not the export of service. One of the criteria for export of service as per Rule 3(2)(b) of Export of Service Rule, 2005 is that, the payment should be in convertible foreign currency which is not so in present case, therefore it is not export of service. Moreover the location of service provider and receiver is in taxable territory; therefore service of tour booking and hotel booking is rendered in taxable territory. Consequently appellant is liable to pay the service Tax.

7. Adjudicating authority confirmed the demand raised on ground of SCN itself and has further added that the Tour commences and terminates in India and as per definition of tour given in Section 65(113) Tour means a journey from one place to another irrespective of the distance between such place (i.e it is not specifically mentioned that places should be India itself). It is observed by adjudicating authority that appellant is purchasing whole package from M/s Star Holiday Mart Pvt. Ltd., Singapore (the Foreign Service provider) under tax invoice issued by M/s Star Holiday Mart Pvt. Ltd and remittance is made in foreign currency by appellant to Foreign Service provider, Singapore. And said packages are sold to outbound Indian tourist on appellants own invoices for which payment is collected in Indian Rupees. So there is no remittance of foreign currency from abroad to India, therefore it is not export.

8. Appellant has contended that Service tax is not payable on such service provided to outbound Indian tourist in terms of CBEC letter F. No. B/43/10/97-TRU dated 22.08.1997 Trade Notice No. 110/97, dated 28.08.1997. Appellant is silent on how Rule 3(2)(b) of Export of service Rule, 2005 are not applicable them.

8.1 I find that said letter was issued much before the introduction of Export of Service Rule, 2005 issued in exercise of the powers conferred by section 93 & 94 of the Finance Act, 1994 (32 of 1994). Export Rules, 2005 issued under section 93 and 94 of FA, 1994 have precedence or have more force over simple letter issued by Board or Trade Notice. Said letter or Trade Notice may be relevant at that time in absence of specific Export Rules. I find that in whole appeal memo, appellant has not answered as to why



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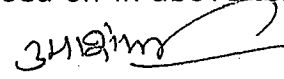
criteria or condition of receipt of convertible foreign currency as stated in Rule 3(2)(b) of Export of Service Rule, 2005 is not applicable to them for considering their said service as Export.

9. Appellant has not disclosed said income in ST-3 return. It was at the instance of department said issue has come out. I uphold imposition penalty under section 78 and 77(2) and also uphold recovery of demand with interest.

10. In view of above, appeal filed by the appellants is rejected.

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

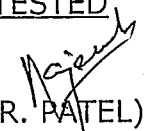
11. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED


(R.R. PATEL)

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

To,

M/s. Utopia Holidays,
404, Abhigam Complex,
Opp- Doctor House,
C.G.Road-

Ahmedabad- 380 006 **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-III, APM mall, Satellite, Ahmedabad.
- 5) The Asst. Commissioner(System), C.Ex. Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.

