रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, आंबावाडी, अहमदाबाद– 380015.

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क फाइल संख्या : File No : **V2(ST)064/A-II/2016-17** 1344 1348

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-SVTAX-000-APP-256-16-17**

दिनाँक Date : **23.03.2017** जारी करने की तारीख Date of Issue 5/4/17

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 _____

_____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original No 35/STC/SD-01/AR-I/CKG/15-16 Dated **28.03.2016** **Issued by Supdt AR-I Div-I,** Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता **Name & Address of The Appellants**

M/s. Chelna K Gandhi 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 विरूद्ध 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 वहां 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 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.

(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 A2I9k 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 शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 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 वर्णित 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, 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 –

(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. Chelna Kamlesh Gandhi, 107, Anusthan Bungalows, Science City Road, Science City, Ahmedabad *(hereinafter referred to as 'the appellant')* has filed the present appeal against the Order-in-Original number 35/STC/SD-01/CKG/2015-16 dated 28.03.2016 *(hereinafter referred to as 'the impugned order')* passed by the Superintendent, Service Tax, Range-I, Division-I, Ahmedabad *(hereinafter referred to as 'the adjudicating authority')*.

2. The facts of the case, in brief, are that the appellant is engaged in providing services under the category of 'Renting of Immovable property Service' and holding a Service Tax Registration number ABWPG1304QSD001. From the available records, it was established that the appellant had failed to file ST-3 returns for the financial year 2014-15 from the periods April 2014 to September 2014 and October 2014 to March 2015, as required under Section 70 of the Finance Act, 1994, read with Rule 7 of the Service Tax Rules, 1994 as amended.

3. Accordingly, a show cause notice was issued to the appellant. The said show cause notice was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority ordered to recover late fee amounting to maximum ₹40,000/- (₹20,000/- for each of the ST-3 returns late filed) under Section 70(1) of the Finance Act, 1994 and imposed penalty of ₹1,000/- under Section 77 of the Finance Act, 1994.

4. Being aggrieved with the impugned orders the appellant has preferred the present appeal. In the appeal memo, the appellant stated that the penalty imposed on is excessive and disproportionate in nature. It is further pleaded that the appellant is a medical practitioner and is not aware of the technical requirement of Finance Act, 1994. The appellant had availed the services of Chartered Accountant practicing in the field. However, the appellant was not properly advised and the delay in filing the returns has occurred. The appellant also claimed that the delay was unintentional and has not caused any revenue loss to the department. Thus, the penalty of ₹ 40,000/- is excessive and unreasonable and is required to be waived or substantially reduced. The penalty under Section 77 also cannot be imposed and requires to be set aside.

5. Personal hearing in the matter was granted and held on 21.02.2017 wherein Shri S. J. Vyas, 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 appellant at the time of personal hearing. I find that the adjudicating

authority has ordered to recover late fee amounting to maximum ₹40,000/- for not/late filing of ST-3 returns and imposed penalty of ₹1,000/- under Section 77 of the Finance Act, 1994. The appellant pleaded that due to ignorance and lack of proper guidance from the Chartered Accountant, the ST-3 returns could not be filed on time and also the issue is revenue neutral and therefore, requested to set aside the impugned order. Under the existing scheme of law, Rule 7 of the Service Tax Rules, 1994, read with its sub-rules, deals with the provisions relating to the filing of Service Tax return, prescribes the penalty which an assessee has to pay if there is delay in filing of service Tax Return.

Where the return prescribed under Rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of Central Government, from the date prescribed for submission of return i.e. 25th of the month following the particular half year till the date of furnishing of the said return, the following penalty;

Period of Delay	Penalty/late fee before finance ACT 2011	Penalty/late fee After finance ACT 2011
for delay up to 15 days	₹ 500/-	₹ 500/-
for delay beyond 15 days but up to 30 days	₹ 1,000/-	₹ 1,000/-
for delay beyond 30 days	₹ 1,000/- + ₹100/- per day (from 31st day subject to a maximum amount of ₹2000/-.	₹1,000/- + ₹ 100/- per day (from 31st day subject to a maximum amount of ₹20000/-.

It is clear from the above the above that penalty is subject to maximum specified in Section 70. Section 70(1) Specify the maximum penalty of ₹ 2,000/- in respect of return filed up to 31st March 2011. This amount of maximum penalty is been increased to ₹ 20,000/- w.e.f. 01.04.2011. Provided also that where the gross amount of Service Tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty. However, in the present case, that is not the case. Hence, the adjudicating authority has very rightly imposed penalty as per procedure.

In the grounds of appeal, the appellant has stated that the delay for filing the ST-3 returns was caused due to ignorance. This is a very rudimentary

excuses on the part of the appellant. Ignorance of law cannot be treated as an excuse to escape from penal provisions.

Further, the appellant has stated that the issue is revenue neutral as she had discharged the Service Tax liability, though late. In this regard, I would like to quote the recent judgment of Hon'ble Karnataka High Court in the matter of K. Madhav Kamath Brother & Co. v. Asst. Comm. of Central Excise. In the said case, the Hon'ble High Court pronounced that even if Service Tax is paid prior to Show Cause Notice, still the penalty shall be leviable under Sections 76/78 and 77 of Finance Act 1994. The matter pertains to the period January 2006 to October 2006. The department issued show cause notice for non-filing of return and non-payment of Service Tax along with the levy of penalty on the same (within the show cause notice itself) under Sections 76/78 and 77 of the Finance Act 1994. However, the assessee deposited the Service Tax liability before issuance of show cause notice. The assessee contended that since there was no intention to evade Service Tax on their part and non-filing of returns/ non-payment of tax was merely bonafide mistake, hence, penalty could not be levied. On appeal being filed before the Hon'ble CESTAT, Bangalore, the Hon'ble Tribunal rejected the plea of the assessee and upheld the levy of penalty. Subsequently, appeal was filed before the Hon'ble High Court. The Hon'ble High Court also held that even if Service Tax was paid prior to issuance of show cause notice, it does not preclude from the levy of penalty under Sections 76/78 and 77 *ibid*. Thus, the argument of the appellant that the issue is revenue neutral, as she has already paid the Service Tax, does not hold any ground.

7. 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 appellant.

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

8. 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. Chelna Kamlesh Gandhi,

107, Anusthan Bungalows,

Science City Road, Science City,

Ahmedabad- 380 060

Copy to:

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