

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)0126/A-II/2016-17
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-257-16-17
दिनांक 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
_____ दिनांक : _____ से सृजित

Arising out of Order-in-Original No SD-01/05/AC/Chirag/2015-16 Dated 19.11.2016 Issued
by Supdt AR-IV Div-I, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Chirag K patel 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 :-

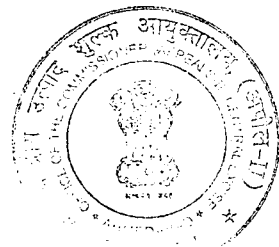
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल
हॉस्पिटल 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 रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 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.



:: 2 ::

(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 (सीस्टैट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34फ के अंतर्गत वित्तीय (संख्या-2) अधिनियम 2014 (2014) की संख्या 24) 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,

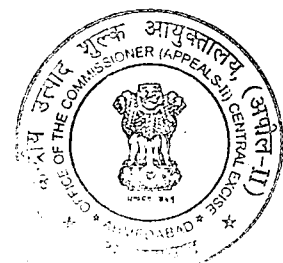
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

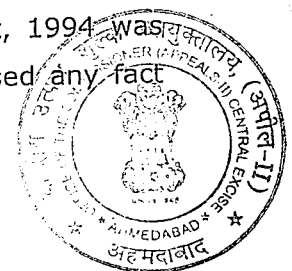


ORDER-IN-APPEAL

M/s. Chirag K Patel, 231, Shanti Arcade, Opp. Pushpak Flat, Nr. Aakash-III, 132 Ft. Ring Road, Naranpura, Ahmedabad (*hereinafter referred to as 'the appellant'*) has filed the present appeal against Order-in-Original No. SD-01/05/AC/Chirag/2015-16 dated 19.11.2015 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-I, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that intelligence gathered by the DGCEI showed that the appellant had provided services (laying/ installation, construction, testing & commissioning of MDPE/PE 100 Polyethylene Gas Pipelines Network service under 'Commercial or Industrial Construction Services') and wrongly availed abatement provided in Notification number 1/2006-ST dated 01.03.2006, as amended, without adding the value of free materials by his clients. Thus, an inquiry against the appellant was initiated and various documents were called for and statement of the partner of the company was recorded. Accordingly, after the completion of the inquiry, a show cause notice dated 04.07.2014 was issued to the appellant which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax amounting to ₹1,46,510/- under Section 73 of the Finance Act, 1994. However, since the appellant had already paid the amount, he ordered for appropriation of the said amount against the demand. The adjudicating authority further ordered for the recovery of interest under Section 75 of the Finance Act, 1994 and as the interest was already been paid by the appellant, the said amount was appropriated against the demand of interest. The adjudicating authority imposed penalty under Section 78 and of the Finance Act, 1994 and proclaimed that as they had already paid the duty along with interest, the penalty payable would be reduced to 25% of ₹1,46,510/-. Further, as the appellant had already paid 15% of the penalty, the adjudicating authority ordered for the appropriation of the same against the demand of the penalty.

3. Being aggrieved with the impugned order, the appellant filed the present appeal along with a request letter for condonation of delay in filing the appeal before me. In the request letter for condonation of delay, the appellant stated that he received the impugned order on 01.12.2015 but filed the appeal on 27.07.2016 as the accountant of the firm was not aware of the provisions of Service Tax and due to lack of knowledge he was not able to understand the importance of the time limit for further procedure and therefore, the company was unable to take decision and could not file the appeal within time limit prescribed by the act. Regarding the charges framed in the impugned order, the appellant stated that the imposition of penalty by the adjudicating authority under Section 78 of the Finance Act, 1994 was wrong in the eye of the law as the appellant had not suppressed any fact

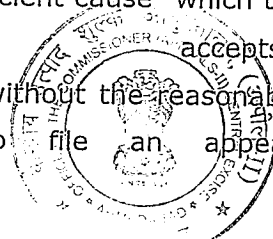


willfully and there had been no fraud, collusion or contravention of any provision of the law with intention to evade payment of Service Tax. The appellant further relied upon the provisions as shown in Section 76(1) of the Finance Act, 1994 which declares that if Service Tax is not paid for any reason, other than fraud, collusion etc., then the appellant would be liable to penalty not exceeding 10% of amount of Service Tax. Also, if the said Service Tax is paid within 30 days from the date of issue of show cause notice, no penalty would be payable by the appellant. In view of the above argument, the appellant requested to admit the appeal and set aside the impugned order.

4. Personal hearing in the case was granted on 16.03.2017 wherein Shri Kalpesh Patel, CA, on behalf of the appellant appeared before me and reiterated the contents of appeal memorandum. He also requested for condonation of delay.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellant and oral submission made at the time of personal hearing. To begin with, I find that there has been a delay occurred in filing the appeal by the appellant. The appellant has filed an application for condonation of delay stating that he has received the impugned order on 01.12.2015 and has filed the appeal before me on 27.07.2016. The reason for delay, claimed by the appellant, is the accountant of the firm was not aware of the provisions of Service Tax and due to lack of knowledge he was not able to understand the importance of the time limit for further procedure and therefore, the company was unable to take decision and could not file the appeal within time limit prescribed by the act. The Service Tax, being complicated on many issues and interpretations, often lead to confusion. Therefore, the Government has also provided certain facilities, time to time, for the convenience of the assessee. Knowingly or unknowingly, if one fails to comply with the Service Tax provisions, then there are rules to facilitate the assessee under certain terms and conditions. Assessee, if not satisfied with the demand, may prefer appeal to the higher authorities [in this case, the Commissioner (Appeals)] **within 2 months** from the date of receipt of order from such adjudicating authority. The Commissioner (Appeals) **may** allow a further period of **1 month**, if sufficient cause for late filing of appeal is shown and proved to him. The word "**sufficient cause**" is an important phrase in this case. Since the section is not a matter of right for the party who pleads the condonation, but it depends on the discretion of the appellate authority. The authority must be satisfied that the delay is caused due to a genuine reason. Now the question arises what can be the "sufficient cause" which the appellate authority

accepts:-
* Illness it is the sufficient cause when it is proved without the reasonable cause that the appellant was not able to file an appeal.



* Imprisonment-The imprisonment of the appellant can be a sufficient cause.

* Mistake of fact-It should be real and unintentional.

* Delay in obtaining copies of judgement can also be sufficient cause.

In this regard, I find that the delay is of more than one month and also there is no sufficient cause to condone the delay. In view of the above, I reject the appeal on the ground of limitation itself; however, as per the principles of natural justice, I would like to discuss the case on merit also.

6. Now, I take the contention of the appellant that no penalty should be imposed on them as there has been no suppression of facts. They have also relied upon the provisions as prescribed in Section 76(1) of the Finance Act, 1994. For more ease, I quote the concerned lines of the section as below;

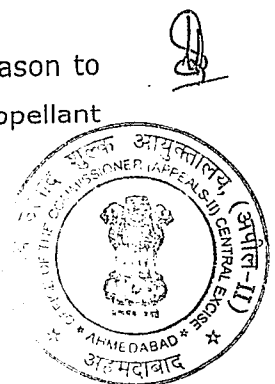
Section 76. (1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent. of the amount of such service tax:

Provided that where service tax and interest is paid within a period of thirty days of-

- (i) the date of service of notice under sub-section (1) of section 73, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to have been concluded;

In this regard, I find that the adjudicating authority, in the impugned order, has alleged that there has been willful violation of the Notification number 1/2006-ST dated 01.03.2006 to avail the benefit of abatement on the part of the appellant. However, the appellant, in the appeal memorandum, could not counter the allegation along with authenticated documentary evidence. Merely saying that there has been no suppression or willful misstatement, without any evidence, will not suffice the purpose of the appellant and as an appellate authority, I would definitely ask for evidences backing the statement which is a legal requirement.

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 on limitation as well as merit.



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

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

(Handwritten Signature)

(उमा शंकर)

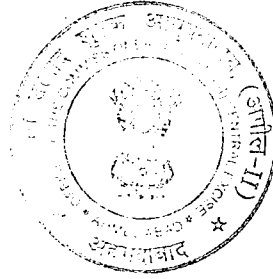
आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

(Handwritten Signature)
(S. DUTTA)

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



BY R.P.A.D.

To,

M/s. Chirag K Patel, 231,

Shanti Arcade, Opp. Pushpak Flat, Nr. Aakash-III,

132 Ft. Ring Road, Naranpura,

Ahmedabad-380 013

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Asstt./Deputy Commissioner, Service Tax, Div-I, Ahmedabad.
4. The Assistant Commissioner (systems), Service Tax, Ahmedabad.
5. The Dpty./Assistant Commissioner, Service Tax, Division-V, Ahmedabad.
6. Guard File.
7. P.A. File.