

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

क फाइल संख्या : File No : V2(ST)074/A-II/2016-17. 17/4/17
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-271-16-17
दिनांक Date : 31.03.2017 जारी करने की तारीख Date of Issue 17/4/17

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 AHM-SVTax-000-JC-039-15-16 Dated 29.03.2016 Issued
by **Joint Commissioner STC, Service Tax, Ahmedabad**

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Hazarat Khawaza Garibnawaz Haj Tours 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 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 A219क केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजी 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 34 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 निर्धारित 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 अर्जों 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.

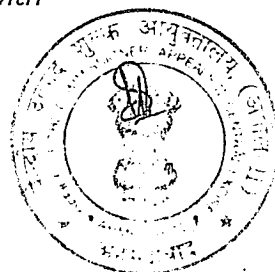


3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that they operate the Hajj tours and provide the services of Hajj pilgrims to Mecca and Madina of Saudi Arabia. The Hajj Cell of the Ministry of External Affairs, Government of India, regulates and operates facilities to the Hajj pilgrims every year through Hajj Committee and the State Committee. Saudi Arabia issues quota for pilgrims and in turn, the Hajj Committee allocates the same to State Committee and private tour operators. The appellants further claimed that they are also registered private tour operators for Hajj and are being allotted quota by Ministry of External Affairs (Hajj Cell) and accordingly, they assist the pilgrims to perform Hajj in Mecca and Madina. They admitted that it is an act of package tour they perform by providing the outbound tour operated in foreign countries. They further submitted that outbound tours are not taxable under the statutory provisions contained under the Finance Act, 1994 vide Circular number 117/11/2009-ST dated 30.10.2009.

4. Personal hearing in the matter was granted and held on 06.01.2017. Shri M. A. Patel, authorized representative and consultant, appeared before me on behalf of the appellants and reiterated the contents of appeal memo and presented further written submission.

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. There had been a long standing demand by Hajj Committee and private tour operators that Hajj pilgrims should be exempted from Service Tax at least for the transport part. Accordingly excepting their demand, The Government has exempted: *"Services by Kumaon Mandal Vikas Nigam Limited and the Hajj Committee in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India, under bilateral arrangement."* The Kumaon Mandal Vikas Nigam and Hajj Committee facilitate religious pilgrimage to Mansarovar and Hajj/Umrah respectively. As per the exemption only the services provided by the above two organizations are exempted. What about the private tour operators who actually provide the service on behalf of the Hajj Committee? Board had in Circular No. 117/11/2009 - ST, dated 30.10.2009 clarified that the amount charged to the pilgrims in India undertaking Hajj and Umrah pilgrimage, is for services provided by the Government of Saudi Arabia and the tour takes place outside India. The contents of the said circular are quoted below;

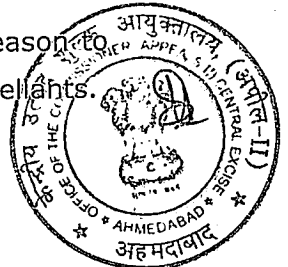
"On a reference received by the Board the matter regarding levibility of service tax on tour operator service in connection with Hajj & Umrah Pilgrimage was examined.



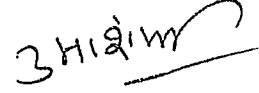
The amount charged to the pilgrims in India undertaking Hajj and Umrah pilgrimage, is for services provided by the Government of Saudi Arabia and the tour takes place outside India. As per Rule 3 (1) (ii) of the Export of Services Rules, 2005, (Circular No. 111/05/2009 - ST dated 24.02.2009), the service in respect of tour operator is export if such service is performed outside India. It is also provided therein that where such taxable service is partly performed outside India, it shall be treated as performed outside India. Therefore, it is clarified that service tax is not chargeable on the services provided in respect of tour undertaken for carrying out Hajj and Umrah Pilgrimage in Saudi Arabia by Indian pilgrims considering these as export of service, provided they fulfill the other conditions of export as provided in Export of Service Rules".

Further, as per Rule 3 (1) (ii) of the Export of Services Rules, 2005, (Circular No. 111/05/2009 - ST dated 24.02.2009), the service in respect of tour operator is export if such service is performed outside India. It is also provided therein that where such taxable service is partly performed outside India, it shall be treated as performed outside India. Therefore, it is clarified that Service Tax is not chargeable on the services provided in respect of tour undertaken for carrying out Hajj and Umrah Pilgrimage in Saudi Arabia by Indian pilgrims considering these as export of service, provided they fulfill the *other conditions* of export as provided in Export of Service Rules e.g. payment for such service is to be received by the service provider in convertible foreign exchange etc. With the introduction of the New Service Tax Regime from 1 July 2012, export of services is now governed by new provisions in the Service Tax Rules, 1994, namely, Rule 6A. For a service to be designated as export service, it must be defined under Clause 44 of Section 65B of the Finance Act, 1994. The service provider has to be located in the taxable territory and the service receiver outside India. The service should not be a specified in the negative list. The place of provision of the service is outside India. The payment for such service is received by the service provider in convertible foreign exchange. The service provider and service receiver are not merely establishments of a distinct person by virtue of item (b) of Explanation 2 of clause 44 of Section 65B of the Finance Act, 1994. The payment for Hajj pilgrimage is received by private tour operators in Indian rupees and not in convertible forex. Therefore, the services availed from private tour operators for the Hajj and Umrah pilgrimages are liable to Service Tax. Services provided by the Government are exempt from the levy of Service Tax.

6. 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 appellants.



7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
7. The appeal filed by the appellants stands 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. Hazrat Khawaza Garibnawaz Haj Tours,
171, Nr. Anjuman High School,
Opp. Chhipa Royal Tower, Astodia,
Ahmedabad-380 001.

Copy to:

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

