

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.

क फाइल संख्या : File No : V2(ST) 19/RA/A-II/2016-17
ख अपील आदेश संख्या Order-In-Appeal No. AHM-SVTAX-000-APP-0272-16-17

दिनांक Date : 31.03.2017 जारी करने की तारीख Date of Issue _____

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 Date : 29.03.2016
Issued by JC HQ STC Abad, Service Tax, Ahmedabad

घ प्रतिवादी का नाम / Name & Address of the Respondent
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,
मेघानी नगर, अहमदाबाद-380016
The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal
(CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound, 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 रूपे 5 लाख या उससे कम है वहाँ रूपे 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 5 लाख या 50 लाख तक हो तो रूपे 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 50 लाख या उससे ज्यादा है वहाँ रूपे 10000/- फीस भेजनी होगी। स्टे के लिये आवेदन- पत्र के साथ रूपे 500/- 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 accompanied 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. Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



(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 39 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) 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।

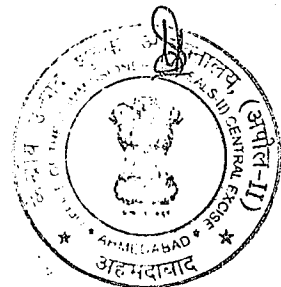
4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.



ORDER IN APPEAL

The Deputy Commissioner, Service Tax, Division-V, Ahmedabad (hereinafter referred to as '*the appellant*'), has filed the present appeal against the Order-In-Original number AHM-SVTAX-000-JC-039-15-16 dated 29.03.2016 (hereinafter referred to as '*the impugned order*') passed by the Joint Commissioner, Service Tax, Ahmedabad (hereinafter referred to as '*the adjudicating authority*') pertaining to M/s. Hazrat Khawaza Garibnawaz Haj Tours, 171, Nr. Anjuman High School, Opp. Chhipa Royal Tower, Astodia, Ahmedabad (herein after referred to as '*the respondents*').

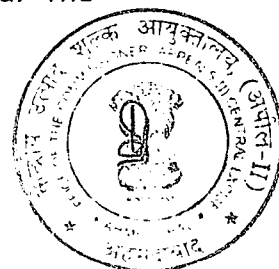
2. The facts of the case, in brief, are that the respondents are holding Service Tax Registration number AAHPT4935GSD001 with the Service Tax Commissionerate, Ahmedabad under the categories of "Tour Operator Service, Business Auxiliary Service and Air Travel Agent Service". They had filed Form VCES-I with the department for the period July 2012 to December 2012 towards Business Auxiliary Service and Tour Operator Service. They had also filed ST-3 returns for the years 2012-13 (from 2nd quarter) and 2013-14. During the course of investigation by the officers of DGCEI, it was revealed that the respondents were engaged in offering service of package tour to Hajj pilgrimage and Umrah pilgrimage which included planning, scheduling, organizing and arranging tours including arrangements for accommodation, food, sightseeing, tourist guide, insurance, airfare, entry fees to Saudi Government etc. However, from the audited balance sheets of the respondents for the years 2009-10 to 2012-13 and ST-3 returns filed during the year 2013-14, it was found that they were providing services relating to package tour to Hajj and Umrah pilgrimage but no Service Tax registration was obtained for Tour Operator Service at the relevant time. It was further observed that for the years 2009-10 to 2012-13 (up to June 2012), under the category of package tour, the respondents had neither filed ST-3 returns nor paid Service Tax. Therefore, a show cause notice, dated 06.08.2014, was issued to them demanding Service Tax amounting to ₹ 40,38,412/-. The said show cause notice was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority confirmed the Service Tax demand of ₹ 21,22,169/-, out of total demand of ₹ 40,38,412/-, under Section 73(1) of the Finance Act, 1994 and dropped the remaining amount of ₹ 19,16,244/-.



3. The impugned order was reviewed by the Principal Commissioner of Service Tax, Ahmedabad and issued a Review Order No. 16/2016-17 dated 24.06.2016 for filing an appeal under section 84 of the Finance Act, 1994. The appellant alleged that the adjudicating authority, while passing the impugned order, has mainly relied upon the Tribunal's order in the case of Cox & Kings India Ltd. In the said order, as claimed by the appellant, CESTAT has left open as to whether the out bound service amounts to Export of Services and immune to levy of Service Tax under the Export of Service Rules, 2005. The condition for treating the service as export of service was specified in sub-section (2) of Rule 3 of Export of Service Rules, 2005 which says that payment for such service is received by the service provider in convertible foreign exchange. The appellants, requested to set aside the impugned order to the extent of dropping the amount of ₹19,16,244/-.

4. Personal hearing in the matter was granted and held on 06.01.2017. Shri Ashok Kumar Meena, Superintendent, AR-II, Div-V, Service Tax, Ahmedabad, appeared before me on behalf of the appellant and reiterated the contents of appeal memo. Shri M. A. Patel, authorized representative and consultant, appeared before me on behalf of the respondent and presented 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;

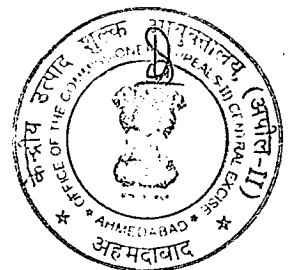


"On a reference received by the Board the matter regarding leviability of service tax on tour operator service in connection with Hajj & Umrah Pilgrimage was examined.

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".

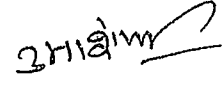
Circular 117/11/2009 dated 30th Oct 2009 was issued to give relief to tour operators providing services to Hajj Pilgrimage. As per the above text of the Circular, the said activity will be exempt if it satisfies all the conditions to call them Export of Services. Now, Rule 3(2)(b) of Export of Service Rules, 2005 i.e. "payment for such service is received by the service provider in convertible foreign exchange" is not satisfied by tour operators because Indian tourists will pay to private tour operators in INR. If that is the case this activity of tour operators will become taxable. As per Rule 3 (1) (ii) of the Export of Services Rules, 2005, (Circular number 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. 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.

6. In view of my above discussions and findings, the appeal filed by the Department is allowed and I set aside the impugned order to the extent of dropping the amount of ₹19,16,244/- only. I order to recover ₹19,16,244/- along with interest and appropriate penalty from the respondents.



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.

