

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)0108/A-II/2016-17
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-273-16-17
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-005-16-17 Dated 09.06.2016 Issued
by **Joint Commissioner STC, Service Tax, Ahmedabad**

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Karnavati Club Ltd 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
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 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 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.



(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 स्थान 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 25) 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, बशर्त 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 बशर्तें यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्जों 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,

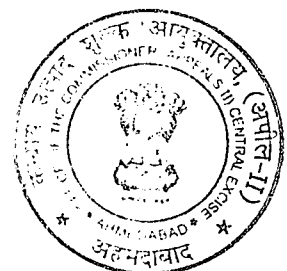
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenval Credit taken;
- (iii) amount payable under Rule 6 of the Cenval 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

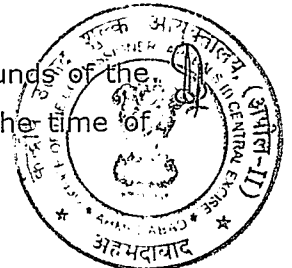
This order arises on account of an appeal filed by M/s. Karnavati Club Limited, S. G. Road, Ahmedabad (hereinafter referred to as the '*the appellants*' for sake of brevity) against Order-in-Original No. AHM-SVTAX-000-JC-005-16-17 dated 09.06.2016 (hereinafter referred to as the '*impugned order*' for the sake of brevity) passed by the Joint Commissioner, Service Tax, Ahmedabad (hereinafter referred to as the '*adjudicating authority*' for the sake of brevity).

2. Briefly stated the facts of the case are that during the course of audit, for the period from 2009-10 to 2011-12, it was observed that the appellants had received exclusive rights income of decoration from some decorators who had been given the exclusive rights of decoration by the appellants. It was further noticed that in view of granting of exclusive right by the appellants to the decorator, any client who hired the hall for any function was left with only two options i.e., either to organize the function without a decorator or to avail the services of that particular decorator who had the exclusive rights of decoration in the hall. This was, according to the audit party, nothing but marketing or promotion of business by the appellants, of that decorator who held the exclusive right of decoration in the club, and appeared to be falling under the ambit of 'Business Auxiliary Service' under Section 65(19) of the Finance Act, 1994. Thus, as ascertained by the audit party, during the financial year 2010-11, the appellants had received exclusive rights income amounting to ₹70,00,000/- from the decorators on which no Service Tax was paid by the appellants. Therefore, a show cause notice, dated 28.09.2015, was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority confirmed the Service tax demand of ₹7,21,000/- under Section 73 of the Finance Act, 1994 along with interest in terms of Section 75 of the Finance Act, 1994. The adjudicating authority also imposed penalty under Sections 77 and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellants filed the present appeal. The appellants argued that exclusive rights are not covered under the Service Tax net. In support of their claim they have quoted the judgment of Hon'ble Bombay High Court in the case of C.K.P. Mandal vs. the Commissioner of Central Excise, Mumbai. They have further contended that the entire demand is time barred and penalty under Sections 77 and 78 is not imposable.

4. Personal hearing in the case was granted on 21.02.2017 wherein Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellants and reiterated the contents of the appeal memorandum. Shri Khandhar also submitted a synopsis of his argument and stressed on the judgment of C.K.P. Mandal vs. the Commissioner of Central Excise, Mumbai.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and oral submissions made by the appellants at the time of



personal hearing. In view of the above, I find that the appellants have, time and again, taken the reliance of the judgment of Hon'ble Bombay High Court in the case of C.K.P. Mandal vs. the Commissioner of Central Excise, Mumbai. They had placed the same argument before the adjudicating authority also, which has been reflected in the impugned order. The adjudicating authority has neither countered nor tried to negate the judgment but provided very bizarre argument that the issue in C.K.P. Mandal was regarding taxability of exclusive rights income under Mandap Keeper Service whereas in the present case, the issue relates to decoration and hence, different. In this regard, I would like to replicate below the initial contents of the said judgment;

"The following substantial questions of law arise in this appeal:

*(i) Whether the consideration (donation or by whatever name called) received by the appellant from M/s.Saideep Caterers and Decorators under the two separate contracts giving M/s.Saideep Caterers and Decorators monopoly rights for catering and decoration to the hirer of the appellant's hall (mandap) for official, social and business functions is chargeable to service tax **within the meaning of Section 65(90)(m) of the Finance Act, 1994?***

*(ii) Whether in the facts and circumstances of the case, the Customs, Excise and Service Tax Appellate Tribunal was right in law in holding that the appellant was rendering catering/decoration services **within the meaning of Section 65(90)(m) of the Finance Act, 1994?**"*

Thus, from the above, it can be seen that the present issue contained the service of decoration too and hence, cannot be different from the said case of C.K.P. Mandal. However, the Hon'ble Mumbai High Court has not discussed the applicability of 'Business Auxiliary Service' in the case and case was examined from the angle of applicability of Section 65(90)(m) only. The case of the appellants and that of M/s. C.K.P. Mandal vs. the Commissioner of Central Excise, Mumbai needs to be seen in light of 'Business Auxiliary Service' and equated accordingly. Mere stating that the present case is different from C.K.P. Mandal as the latter talks about mandap keeper service and the former deals with decoration will not suffice the purpose on the part of the adjudicating authority. The adjudicating order has to be a proper speaking one discussing technically as to why the case of C.K.P. Mandal is not applicable to the present case as well as applicability of Business Auxiliary Service defined under Section 65(90)(m) of the Finance Act, 1944 . In view of the above, the case needs to be remanded back to the adjudicating authority with direction to issue a proper speaking order as to why the case should fall under the category of Business Auxiliary Service and therefore the appellants are liable for Service Tax and why the case of C.K.P. Mandal will not be applicable to it.

6. As per the above discussion, I remand back the case to the adjudicating authority with instructions mentioned above.



7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
7. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर
(उमा शंकर)

आयुक्त (अपील्स - II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

स. दुता
(S. DUTTA) 03/04/17

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD

To,
M/s. Karnavati Club Limited,
S. G. Road,
Ahmedabad- 380 059

Copy to:

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



