

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)3/A-II/2016-17/2976 to 2981
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-32-16-17
दिनांक Date : 01.06.2016 जारी करने की तारीख Date of Issue 08/06/16

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-024-15-16 Dated 08.02.2016
Issued by Joint Commissioner STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

M/s. Madhu Indurries Pvt 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 :-

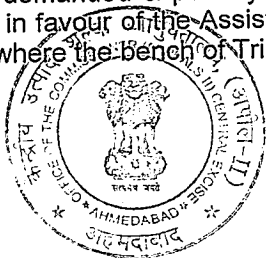
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल 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 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 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, 1994 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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 रूपए 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 बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी 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,

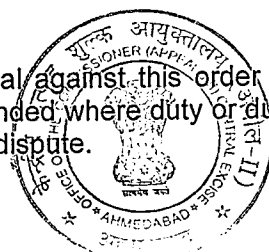
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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. Madhu Industries Pvt. Ltd., Plot No. 39, Phase-I, GIDC, Vatva, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against Order-in-Original No. AHM-SVTAX-000-IC-024-15-16 dated 08.02.2016 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Service Tax, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants are engaged in receiving/ providing various taxable services and holding Service Tax Registration No. AAABM0027DST001. The officers of Audit Branch, Service tax, Ahmedabad carried out the audit of their records for the period from 2008-09 to 2012-13 and raised various objections. It was noticed that the appellants did not pay Service tax on expenditures incurred in foreign currency in the following services;

- (a) Expenditures incurred in Foreign Bank Charges;
- (b) Expenditures incurred for receipt of Legal Service;
- (c) Expenditures incurred for receipt of Intellectual Property Rights;
- (d) Expenditures incurred for payment of commission to overseas commission agents under BAS;
- (e) Expenditures incurred towards receipt of GTA service classifiable under Section 65(105)(zzp) of the Finance Act, 1994.

On being pointed out, the appellants agreed to all the above objections except non-payment of Service Tax under Reverse Charge Mechanism for the expenditures incurred for payment of commission to overseas commission agents under Business Auxiliary Service as mentioned above as (d). They paid Service Tax along with interest and penalty as demanded by the audit party. However, it was alleged that in certain cases, they have either not paid or partially paid the Service tax.

3. Thus, a show cause notice was issued to the appellants on 22.10.2014. The said show cause notice was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority confirmed the demand of ₹36,79,759/- (Service Tax not paid) under the head of Business Auxiliary Service and ordered to appropriate the amount of ₹3,97,129/- already paid by the appellants, under Section 73(1) of the Finance Act, 1994. He also ordered the appellants to pay interest on the entire Service Tax liability under Section 75 of the Finance Act, 1994 and ordered to appropriate the amount of ₹2,25,577/- paid by the appellants against the interest liability. The adjudicating authority further imposed penalty under Sections 77(1)(a),



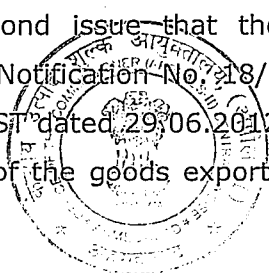
77(2) and 78 of the Finance Act, 1994 and ordered to appropriate the amount of ₹99,282/- paid by the appellants against the penalty liability.

4. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that the adjudicating authority has wrongly denied them the exemption available under Notification No. 18/2009-ST dated 07.07.2009 and Notification No. 42/2012-ST dated 29.06.2012 on commission paid to foreign based agents in respect of the goods exported. Also, the adjudicating authority has erred in confirming the recovery of Service Tax and imposing penalties in respect of Banking and Financial Service charges, Legal Consultancy charges, Intellectual Property Rights Service charges and Goods Transport Agency charges as they had paid entire amount along with interest and 15% penalty prior to the issuance of the show cause notice.

5. Personal hearing in the matter was granted and held on 23.05.2016. Shri Gunjan Shah, Chartered Accountant, appeared before me and reiterated the contents of appeal memo and stated that except Service Tax related to commission paid to foreign based agents under Business Auxiliary Service, in all the objections, duty along with interest and penalty has been paid before the issuance of the show cause notice. Regarding the issued involved pertaining to Business Auxiliary Service, the impugned order is not specific about which condition they have not fulfilled. Shri Gunjan Shah showed me copies of shipping bills, EXP-1,2,3 and 4.

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 appellants at the time of personal hearing. Regarding the allegation in the impugned order about short payment of Service Tax and non-payment of interest and penalty, the jurisdictional Deputy Commissioner, vide letters number STC/Div-V/O&A/Misc/2014-15 dated 25.05.2016 and 30.05.2016, has confirmed before me about the payment of the same. The adjudicating authority, it seems, has forgotten that no penalty could be imposed when the amount of Service tax has been paid along with interest before issuance of show cause notice. As per the provisions of Section 73(3) of the Finance Act, the SCN was not required to be issued when Service tax, along with interest has been paid by the appellants before issuance of SCN. Thus, I held that although the SCN was issued to the appellants which was not at all required to be issued as per Section 73(3) of the Finance Act, no penalty could be imposed.

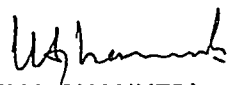
7. Regarding the second issue that the appellants cannot avail the exemption benefit under Notification No. 18/2009-ST dated 07.07.2009 and Notification No. 42/2012-ST dated 29.06.2012 on commission paid to foreign based agents in respect of the goods exported I held that the adjudicating



authority cannot deny the same to the appellants. The adjudicating authority, in the impugned order, has not stated anything specifically as to why the benefit should be denied to the appellants. The adjudicating authority has quoted the letters of the jurisdictional Assistant Commissioner where the latter has stated that the appellants have not submitted required information in proper format. I find that by the word 'proper format' the adjudicating authority means submission of information in EXP-1, EXP-2, EXP-3 and EXP-4. The appellants have submitted before me all the copies (endorsed by the concerned jurisdictional Division) of EXP-1, EXP-2, EXP-3 and EXP-4 and I have gone through the same and could not find any ambiguity in them. The argument of the adjudicating authority totally falls flat in this regard as he could not substantiate his own argument. In this regard I would like to quote the judgment of the CESTAT, South Zonal Bench, Chennai in the case of Teyard International vs. Commissioner of Central Excise, Trichy as below;


"6.3 Commission paid to the overseas agents is in respect of service provided by that agent to the appellant to export its goods and thereby sales is promoted. That is an activity incidental or auxiliary to processing of textile goods and covered by Business Auxiliary Service and Clause (d) of the notification extracted above covers the case of the appellant bringing the export promotion activity abroad as incidental and auxiliary to the activity of production as is meant by Section 65(19) of Finance Act, 1994. Appellants are accordingly entitled to the benefit of exemption under the notification and not liable to the payment of Service Tax under reverse charge."

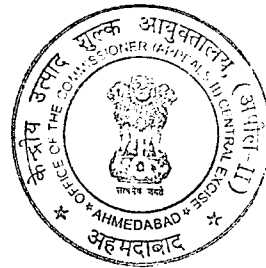
8. In view of the discussion held above, the impugned order is set aside and the appeal is allowed.


(UMA SHANKER)

COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA) 020616
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.



To,
M/s. Madhu Industries Pvt. Ltd.,
Plot No. 39, Phase-I,
GIDC, Vatva,
Ahmedabad

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.

