

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)24/A-II/2016-17 / 232 to 237
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-39-16-17
दिनांक Date : 19.07.2016 जारी करने की तारीख Date of Issue 20/07/16

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 MP/28/ST/DEM/2009 Dated 29.03.2010
Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Abhinandan Travels 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 :-

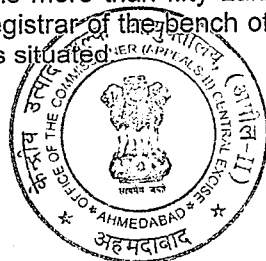
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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-धारा (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/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For 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 or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise 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 adjuration 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, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) 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, 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 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 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,

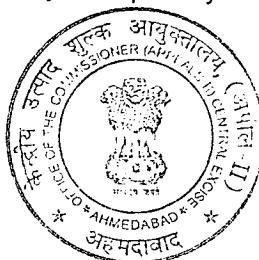
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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)(i) 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)(i) 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

1. This order arises out of the appeal filed by M/s. Abhinandan Travels, 707, New Cloth Market, Nr. Raipur Gate, Raipur, Ahmedabad (hereinafter referred to as the "said appellants") against the Order-In- Original No. MP/28/STDEM/2009 dated 29.03.2009 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner of Central Excise, Div-II, Ahmedabad-II (hereinafter referred to as the "adjudicating authority").
2. The facts of the case, in brief, are that the appellants were engaged in providing services of 'Rent-a-cab' and are also registered with the Service Tax department holding a valid Service Tax Registration number ACAPK2624FST001. Intelligence gathered that the appellants were not paying Service tax properly on the taxable services charged and collected by them. Hence, search proceedings were initiated against the appellants and during the course of investigation, it was revealed that they were engaged in providing rent-a-cab service since long and obtained Service Tax registration on 26.04.2004. They were providing vehicles, mainly taxis, to their various clients like M/s. Cadila Health Care Ltd., M/s. Fascel Ltd., M/s. Reliance Communication Ltd. etc. and were raising invoices along with Service Tax. From the documents and details, it was revealed that during the period from 2004-05 to 2006-07 they had made uneven payment. It was further seen that during the year 2004-05, the appellants had short paid an amount of ₹1,74,097/- and during the years 2005-06 and 2006-07, they had paid excess Service Tax of ₹96,304/-. After the adjustment of excess payment, an overall short payment of ₹77,793/- was worked out during the period from 2004-05 to 2006-07. Accordingly, in view of the said short payment of Service Tax, a show cause notice dated 08.04.2008 was, therefore, issued to the appellants. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax of ₹77,793/- under Section 73(1) of the Finance Act, 1994 and ordered the recovery of interest under Section 75 of the Act. He also imposed penalties under Sections 76, and 78 of the Act.
3. Being aggrieved with the impugned order, the appellants preferred an appeal before the then Commissioner (Appeals-IV) who, vide Order-In-Appeal number 340/2010(STC)/MM/Commr.(A)/Ahd. dated 28.09.2010, set aside the impugned order and remanded back the case to the adjudicating authority with direction to re-examine the issue after going through the contract as well as case laws cited by the appellants.



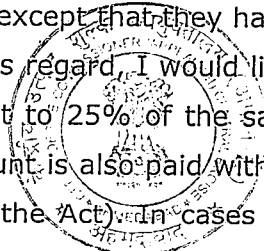
4. Being aggrieved with the said OIA, the department filed an appeal before the Hon'ble CESTAT, West Zonal Bench, Ahmedabad. The Hon'ble CESTAT, vide order number A/1037/WZB/AHD/2012 dated 06.07.2012, remanded back the case to the Commissioner (Appeals) for a proper decision afresh.

5. In view of the above judgment of the Hon'ble Tribunal, I take up the case to be decided on merit.

6. Personal hearing in the case was granted on 22.06.2016 and Shri Nagesh Belsare, CA, appeared before me. Shri Belsare reiterated the grounds of appeal and submitted that before the show cause notice was issued, they had paid the tax arrears and paid 25% of penalty under Section 78 of the Act after the impugned order. He requested that as per Section 73(1)(a) no penalty should be imposed and in support he tabled before me certain citations.

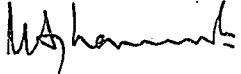
7. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum and written submissions made by the appellants. I find that the appellants have accepted the verdict of the adjudicating authority their only request placed before me is to set aside the penalty portion, under Section 76 of the Act, of the impugned order.

The amount of penalty is generally imposed over and above the amount of service tax and interest to be paid by the assessee and the purpose of imposing a penalty is to penalize the defaulter. However, payment of penalty is not mandatory under Service Tax provisions. In CCE v. Pioneer Plastic Products it was held that the penalty under Sections 76 & 77 of the Finance Act, 1994 is not mandatory. If the assessee is able to prove that there was reasonable cause for the failure for which a penalty is being imposed, he can avoid the penalty under Section 80 of the Act. In CCE v. Sanchar Bharti (P) Ltd., it was held that if reasonable cause exists for delay in depositing service tax, penalty can be reduced or even waived as per Section 80 of the Finance Act, 1994. The penal provisions under Service Tax are provided under Sections 76, 77 and 78 of Finance Act, 1994. Although the penalty is liable to be imposed for the circumstances covered under the said provisions, Section 80 of the Finance Act, 1994, provides provisions not to impose penalty, for any failure referred to in the said provisions, if the Service Tax assessee proves that there was sufficient cause for such failure. In this case, the appellants have failed to provide any reasonable cause except that they have paid 25% of penalty under Section 78 of the Act. In this regard, I would like to quote that the benefit of reduced penalty equivalent to 25% of the said Service Tax is available only if such lesser penalty amount is also paid within thirty days (First and second proviso to Section 78 of the Act) in cases of



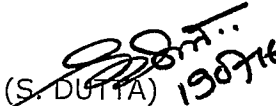
Service Tax determined during the course of audit, investigation or verification, even if those cases are covered by extended period of limitation, if the service tax along with interest and penalty equal to 1% of such tax, for each month, for the period during which the default continues, up to a maximum **penalty of 25% of the tax amount, is paid before the issue of show cause notice u/s 73(1)**, then proceedings in respect of such tax paid shall be deemed to be concluded. In the present case the appellants have paid 25% of the penalty only after the impugned order was issued hence, their request cannot be accepted.

8. In view of above, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.


(UMA SHANKER)

COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA) 190716

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

BY R.P.A.D.

M/s. Abhinandan Travels,
707, New Cloth Market,
Nr. Raipur Gate, Raipur,
Ahmedabad-380 015

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Additional Commissioner, Service Tax, Ahmedabad
4. The Assistant Commissioner, Service tax, Div-V, Ahmedabad
5. The Assistant Commissioner, Systems, Service Tax, Ahmedabad
6. Guard File.
7. P.A. File.



