

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)104/A-II/2015-16 / 201 to 205
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-042-16-17
दिनांक Date : 19.07.2016 जारी करने की तारीख Date of Issue 25/07/16

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 STC-09/Jt Commr/09 Dated 22.10.2007

Issued by Joint Commissioner, Service Tax, Ahmedabad

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

M/s. Premchand Gokaldas 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 :-

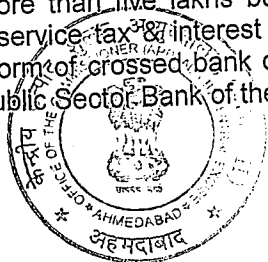
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 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 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,

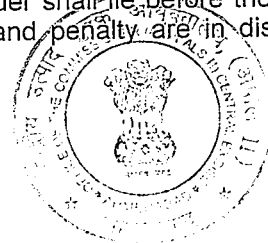
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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)(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."

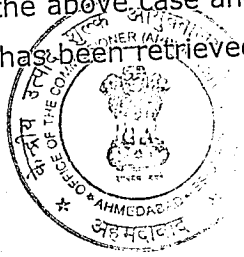


ORDER-IN- APPEAL

1. This order arises out of the appeal filed by M/s. Gujarat Steel Distributors, 3rd Floor, Mrudul Tower, Nr. H. K. House, Ashram Road, Ahmedabad (hereinafter referred to as the "said appellants") against the Order-In- Original No. STC/08/ADC/2009 dated 31.07.2009 (hereinafter referred to as the "impugned order") passed by the Additional Commissioner of Service Tax, Ahmedabad (hereinafter referred to as the "adjudicating authority").

2. The facts of the case, in brief, are that the appellants are engaged in providing services as "Clearing and Forwarding Agent" and hold a valid Service tax Registration number AFBPS2161NST001. During the course of internal audit of the records of the appellants, it was found that the appellants had not paid any Service Tax on the amount paid to various transporters as transportation charges/ shifting charges and crane charges which is taxable under the category of GTA service as a recipient of service as per Rule 2(1)(d)(v) of the Service Tax Rules, 1994, during the period from January 2005 to September 2007. As per the details obtained from the appellants, it is noticed that they have paid the amount of ₹10,80,37,450/- as transportation charges/ shifting charges to various transporters and Service Tax on the above amount and Service Tax on the above amount was worked out to ₹30,35,018/- (including cess) after allowing abatement of 75%. In view of the non-payment of Service tax on the above amount, a show cause notice dated 06.10.2008 was issued to the appellants demanding the Service Tax amount of ₹30,35,018/- along with interest and penalties. The said show cause notice was adjudicated vide the impugned order. The adjudicating authority confirmed the demand of Service tax of ₹30,35,018/- under Section 73(1) of the Finance Act, 1994 and ordered the recovery of interest under Section 75 of the Act. She also imposed penalties under Sections 77 and 78 of the Act.

3. Being aggrieved with the impugned order, the appellants preferred an appeal before the then Commissioner (Appeals-IV). However, the then Commissioner (Appeals-IV) directed the case to be transferred to Call Book on the basis of the case of M/s. Premchand Gokuldas where the department had preferred an appeal before the Hon'ble Tribunal against the verdict of the then Commissioner (Appeals-IV), vide Order-In-Appeal number 79/2008(STC)RAJU/Commr.(A)/Ahd. dated 15.05.2008. As Hon'ble CESTAT has delivered verdict in the above case and the department has accepted the same, the present case has been retrieved from Call Book and I take up the case on merit.



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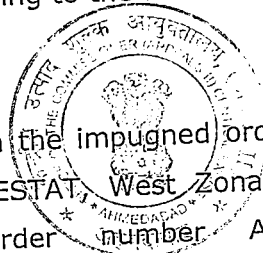
ORDER-IN- APPEAL

1. This order arises out of the appeal filed by M/s. Premchand Gokaldas, Premchand House, 172/1, Ashram Road, High Court Way, Ahmedabad (hereinafter referred to as the "said appellants") against the Order-In-Original No. STC/09/Joint Commr/2007-08 dated 22.10.2007 (hereinafter referred to as the "impugned order") passed by the Joint Commissioner of Service Tax, Ahmedabad (hereinafter referred to as the "adjudicating authority").

2. The facts of the case, in brief, are that the appellants are engaged in providing services as "Clearing and Forwarding Agent" and hold a valid Service tax Registration number AACFP1740LST001. During the course of internal audit of the records of the appellants for the period from 2001-02 to 2005-06, it was found that the appellants had received freight charges from their clients while providing services as C&F agents but did not pay Service Tax on the freight amount so received. It appeared that such services were covered under the ambit of the definition of "Clearing and Forwarding Agents" as defined under Section 65(25) of the Finance Act, 1994 (hereinafter referred to as the "Act") and the amount received by the appellants against such services as freight charges constitute the value of taxable service as per the provisions made under Section 67 of the Act. It was noticed that the appellants had received ₹66,65,715/- in the year 2005-06 and ₹1,42,63,070/- during the period from 2001-02 to 2004-05 as freight charges and their Service Tax liability was worked out to be ₹6,79,903/- and ₹12,78,114/- respectively. For the year 2005-06, a show cause notice was issued to the appellants on 01.11.2006 and for the period from 2001-02 to 2004-05, a show cause notice was issued on 11.10.2006. Both the show cause notices were adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority confirmed the demand of Service Tax amounting to ₹19,83,357/- under Section 73 of the Act and directed the appellants to pay interest thereon under Section 75 of the Act. He also imposed penalties under Section 76 and Section 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 157/2009(STC)/LMR/Commr.(A)/Ahd. dated 18.05.2009, rejected the appeal, without going to the merits of the appeal, on the ground of limitation.

4. Being aggrieved with the impugned order, the appellants filed an appeal before the Hon'ble CESTAT, West Zonal Bench, Ahmedabad. The Hon'ble CESTAT, vide order number A/2038/WZB/AHD/2009 &



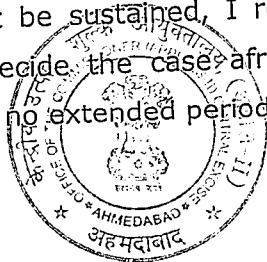
S/1437/WZB/AHD/2009 dated 27.09.2009, Set aside the said Order-In-Appeal and remanded back the case to the Commissioner (Appeals) with direction to conclude the appeal on the merits. Being aggrieved with the judgment of the Tribunal, the department preferred an appeal before the Hon'ble High Court of Gujarat. The Hon'ble High Court of Gujarat set aside the appeal of the department and upheld the verdict of the Tribunal directing to decide the case on merit.

5. Meanwhile, in similar issue, involving the same appellants, for the period 2006-07, the department preferred an appeal before the Hon'ble Tribunal against the verdict of the then Commissioner (Appeals-IV), vide Order-In-Appeal number 79/2008(STC)RAJU/Commr.(A)/Ahd. dated 15.05.2008. As the issue was *subjudice*, the present appeal, being of similar nature, was transferred to Call Book. Lately, the Hon'ble Tribunal, vide order number A/11652/2015 dated 21.10.2015 upheld the Order-In-Original and set aside the above said Order-In-Appeal of the then Commissioner (Appeals-IV). However, the Hon'ble CESTAT pronounced that the demand of Service tax for the extended period of limitation and penalty cannot be sustained. Accordingly, the Hon'ble Tribunal remanded back the case to the original adjudicating authority to decide the case afresh with the view that demands for extended period is not invocable.

6. In view of the above judgment of the Hon'ble Tribunal, the present case has been retrieved from Call Book and I take up the case on merit as per the judgment and directions of the Hon'ble Tribunal and Hon'ble High Court of Gujarat.

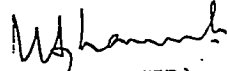
7. Personal hearing in the case was granted on 04.05.2016 and Shri N. K. Oza, Advocate, appeared before me. Shri Oza argued that the issue pertains to prior to 2006 when determination of taxable value was not there and therefore, the decision of S. K. Enterprises, [2008 (10) STR 171 (para 4)] should be allowed. He made additional submissions and citations.

8. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum and written submissions made by the appellants. In light of the judgment of the Hon'ble Tribunal (Order number A/11652/2015 dated 21.10.2015), I upheld the impugned order and reject the appeal filed by the appellants. However, as per the order of the Hon'ble Tribunal that demand of Service tax for the extended period of limitation and penalty cannot be sustained, I remand the case back to the adjudicating authority to decide the case afresh after recalculation of the demand of Service Tax as no extended period would be invocable in it.



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9. The appeal is disposed off in terms of the discussion held above.


(UMA SHANKER)

COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA) 20/8/16

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

BY R.P.A.D.

M/s. Premchand Gokaldas,
Premchand House,
172/1, Ashram Road, High Court Way,
Ahmedabad-380 009

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Joint Commissioner, Service Tax, Ahmedabad
4. The Assistant Commissioner, Systems, Service Tax, Ahmedabad
5. Guard File.
6. P.A. File.

