

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) 17/RA/A-II/2015-16 / 774 to 778  
ख अपील आदेश संख्या Order-In-Appeal No. AHM-SVTAX-000-APP-0044-16-17  
दिनांक Date : 20.07.2016 जारी करने की तारीख Date of Issue 20/7/16

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-41/ADC/2009 Date : 29.10.2009

Issued by Asstt. Commr., Div-II, Service Tax, Ahmedabad

ध प्रतिवादी का नाम / Name & Address of the Respondent

M/s. Gujarat Steel Distributor, 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 :-

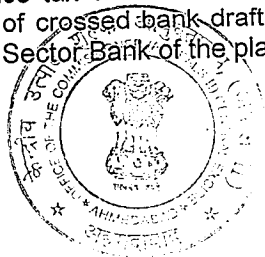
सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-  
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

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, 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 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। स्टे के लिए आवेदन- पत्र के साथ रूपए 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.



(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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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 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 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 होगा।

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,

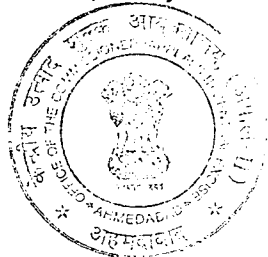
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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. The Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'the appellant'*) has filed the present appeal against the Order-in-Original number STC-41/ADC/2009 dated 29.10.2009 (*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 respondents 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 respondents, it was found that the respondents 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(d)(v) of the Service Tax Rules, 1994, during the period from October 2007 to September 2008. As per the details obtained from the respondents, it is noticed that they have paid the amount of ₹2,87,60,095/- 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 ₹8,88,687/- (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 20.03.2009 was issued to the respondents demanding the Service Tax amount of ₹8,88,687/- 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 ₹8,88,687/- 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.

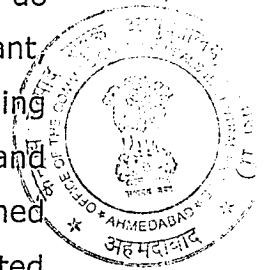
3. The impugned order was reviewed by the Commissioner of Service Tax, Ahmedabad and issued Review Order No. 08/2009 dated 08.12.2009 for filing an appeal under section 84(1) of the Finance Act, 1994 on the grounds that the adjudicating authority has failed to impose penalty under Section 76 of the Finance Act, 1994. 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.

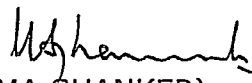
4. Personal hearing in the case was granted on 03.05.2016 and Smt. Shilpa P. Dave, Advocate, appeared before me and submitted arguments to counter the appeal.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum and written submissions made by the appellant. The appellant has pleaded that the adjudicating authority has failed to impose penalty under Section 76 of the Finance Act, 1994 in the impugned order. In view of the above, I will first of all discuss whether the respondents are liable to pay any amount as Service Tax or otherwise. The respondents were providing Clearing & Forwarding Agent's service to M/s. RINL and in lieu of the service rendered by the respondents, M/s. RINL was paying C&F charges to the appellants and accordingly, as a registered provider, they were paying Service tax on the receipt under the category of C&F Agent's service. In the matter of transportation charges paid by the respondents, I find that the scope of work required to be performed, as per clause 5 of the Annexure VII of the agreement, was that the respondents (in the role of consignment agent) shall be required to do all the works involved from the stage of dispatch from the plant, receipt and clearing of consignments arriving by rail/ road, unloading and loading into trucks/ trailers, transportation, stacking etc. and delivery to the customers. The rate is fixed on all the above mentioned works. Also, in the Master Circular number 96/7/2007 dated 23.08.2007, quoted by the appellants, it is clarified that where a series of services are rendered by a person to a client in a continuous and uninterrupted manner, involving overlapping of two or more services from one whole bundle of services rendered, the principal activity is to be considered for deciding as to under which taxable category the service would be classified. The adjudicating authority seems to have



overlooked this point. As per the dictum of the said circular, the appellants, though, have provided services other than what is mentioned in Clearing & Forwarding Agent's service, have paid Service Tax under the category of C&F Agent's service. The said Service Tax paid by the appellants also includes GTA which they have paid without availing abatement. Therefore, I am inclined to believe that the department has not lost any revenue and on the contrary this has been a revenue gain for the department. I trust that it will be only of academic nature to debate that Service Tax was not paid under the head of GTA and will give rise to unnecessary litigation, nothing else. I find that there is no dispute in the matter that the respondents had not paid Service Tax on the entire amount received by them from M/s. RINL. The expense of transportation was one type of reimbursement charges which were inclusive of the C&F charges received by the appellants. Demand of Service tax on transportation expenses would lead to double taxation on the part of the respondents. I find that there is considerable force in respondent's contention when they argued that they have paid Service Tax on GTA without availing abatement of 75%. Thus, since no tax liability on the respondents arises, there is no question of imposition of any kind of penalty under any Section of the Act. In view of the facts and discussions hereinabove, I reject the appeal filed by the Department.

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

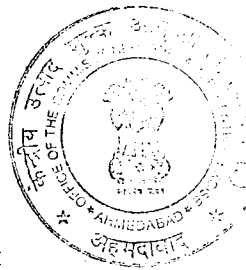
  
(UMA SHANKER)

COMMISSIONER (APPEAL-II)  
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

  
(S. DUTTA)

210716  
SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.



**BY R.P.A.D.**

M/s. Gujarat Steel Distributors,  
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Nr. H. K. House, Ashram Road,  
Ahmedabad

**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, Systems, Service Tax, Ahmedabad
5. Guard File.
6. P.A. File.

