

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)121 /A-II/2015-16/1270 to 1274
ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-061 -16-17
दिनांक Date : 04.08.2016 जारी करने की तारीख Date of Issue 8/8/16

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 SD-02/13/AC/2015-16 Dated 29.09.2015

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

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

M/s. Bharat Sanchar Nigam Limited 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1988 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 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,

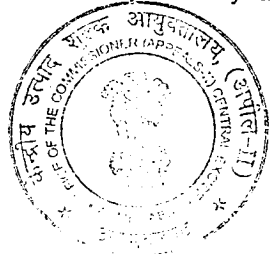
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

This order arises on account of an appeal filed by M/s Bharat Sanchar Nigam Limited , 7th Floor, B Wing, NERP-Central Statement Cell, O/o The CGMT, Telephone Bhavan, C. G. Road, Ahmedabad-380 006 (hereinafter referred to as 'the Appellants') against Order-in-Original NO.SD-02/13/AC/2015-16 Dated 29.09.2015 (hereinafter referred to as the 'impugned order' for the sake of brevity) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (hereinafter referred to as the 'Adjudicating Authority' for the sake of brevity).

2. Brief facts of the case are that the appellants are engaged in providing the services under the category of "Telegraph Authority- Telephone Connection" besides so many other services and holding Service Tax Registration No. AABCB5576GST438. During the course of Audit of the records of 'the Appellants', on scrutiny of input service tax credit documents for the period April,2013 to September,2014, it was noticed that the appellants had availed Cenvat Credit of ₹2,95,111/- for the Services Tax Paid on the hiring of Vehicle under **Rent-A-Cab Services**.

The definition of 'Input service' was amended vide Notification No. 8/2012-CE (NT) dated 17.03.2012 (w.e.f 01.04.2012). The definition of "Input Service", is defined under Rule 2(1) of the CENVAT Credit Rules, 2004, is reproduced here under:

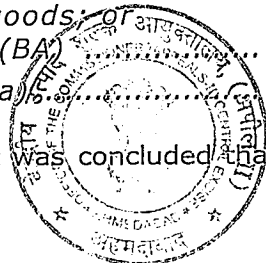
((I) "Input Service" means any services,-

(i) used by a provider of (output service) old (taxable service) for providing an output services or

(ii) used by manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating such factory or premises, advertisement or sales promotion, market research ,storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer services network^{ing}, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; [but excludes] ^{old}[but excludes . taxable services],-

[(A) .

[(B) [services provided by way of renting of a motor vehicle] in so far as they relate to a motor vehicle which is not a capital goods; of

[(BA) 

(a) 

From above, it was concluded that the service provided by way of renting of the

motor vehicle in so far as they relate to a motor vehicle which is not a capital good and has specifically been excluded from the definition of 'Input Service' vide exclusion (B) of clause (ii) of the said definition and therefore the credit of Service tax paid on Rent-a-cab service was not allowable to the appellants as the same has been excluded from the definition "input service" and thereby made it ineligible for availing of CENVAT credit. Accordingly, a show cause notice dated 10.03.2015 was issued to the appellants. The Adjudicating Authority had disallowed the CENVAT credit of ₹2,95,111/- and confirmed the recovery of the said amount under the proviso to section 73(1) of the Finance Act, 1994 read with Rule 14 of CCR, 2004. He also ordered the appellants to pay interest at appropriate rate under Section 75 of the Finance Act, 1994 and also imposed penalty under Section 78 of the Finance Act, 1994 for suppressing the facts from the department.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal followed with written submission on the grounds which are interalia mentioned as under:-

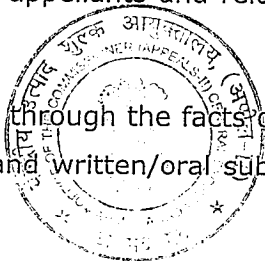
The appellants claimed that they are a service receiver of rent-a-cab service and have contracts with the service provider to provide rent-a-cab service. They stated that the definition of capital goods as prescribed in Rule 2(a) of CCR, 2004, includes motor vehicles designed to carry passengers including their chassis, registered in the name of the provider of service and when used for providing output service of;

- (i) transportation of passengers; or
- (ii) renting of such motor vehicle; or
- (iii) imparting motor driving skills.

The appellants claimed that they have verified that all the vehicles used by the service provider are owned and registered in the name of the service provider. Such motor vehicles are also used by the BSNL on rent. Thus fulfilling the conditions mentioned in the above definition. Moreover, the said motor vehicles were used by the Appellants for providing out-put services. The renting of motor vehicle services had direct or indirect connection with out-put services provided by appellants. The said vehicles were neither used for the private purpose of the officers nor forming part of perks of the officers. The vehicles were used for departmental purpose during working hours only.

4. Personal hearing was granted on 04.07.2016 wherein Shri Chirag Patel, Chartered Accountant and Shri Sagar Parmar (JAO CSCX Taxation) appeared before me on behalf of the appellants and reiterated the contents of the appeal memorandum.

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



8

at the time of personal hearing. I find that the appeal has been filed on 30.12.2015 after receipt of the impugned order on 09.10.2015 by the appellants. As per the provisions of Section-85 (3) of the Finance Act, 1994 as amended vide the Finance Act, 2012 made effective from 28.05.2012; an appeal was required to be presented before the Commissioner, Central Excise (Appeals) within two months from the date of receipt of the impugned order. The appeal should have been filed within two months from 09.10.2015 but the same was filed on 30.12.2015 and thus, there is a **delay of 21 days** in filing the appeal. Further, the Proviso to Section-85 (3) of the Finance Act, 1994 empowers the Commissioner, Central Excise (Appeals) to allow the appeal to be presented within a further period of one month if the appellate authority is satisfied that the appellants were prevented by sufficient cause from presenting the appeal within aforesaid period of two months. I find that for the said delay in filing appeal, the appellants have neither filed any application for Condonation of Delay nor pleaded during the personal hearing held before me. Further, the appellants have also not mentioned anything about the said delay neither in the appeal memorandum nor in the written submission filed before me. Thus, in view of the above facts, the appeal filed by the appellant is time barred.

7. Accordingly, the appeal filed by the appellant is rejected being time barred.



(UMA SHANKER)
COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S Dutta) 05/09/16

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

BY R.P.A.D.

M/s Bharat Sanchar Nigam Limited,
7th Floor, B Wing, NERP-Central Statement Cell,
O/o The CGMT, Telephone Bhavan, C. G. Road, Ahmedabad-380 006

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Deputy/Assistant Commissioner, Service Tax, Div.II, Ahmedabad.
4. The Assistant Commissioner, System-Ahmedabad
5. P.A. File.
6. Guard File.



