

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद— 380015.

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क फाइल संख्या : File No : V2(ST)101 /A-II/2015-16 / 1461 जो 1465

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-069 -16-17

दिनांक Date : 12.08.2016 जारी करने की तारीख Date of Issue 26/08/16

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 VCES/21/DA/MDS/2015-16 Dated 29.09.2015

Issued by **Additional Commissioner VCES, Service Tax, Ahmedabad**

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

M/s. On Dot Courier & Cargo 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
हॉस्पिटल 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 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.



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(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, केंद्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केंद्रीय 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, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टैट) के प्रति अपीलों के मामलों में केंद्रीय 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 23 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

केंद्रीय 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 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,

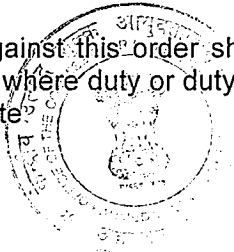
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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(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. On Dot Courier & Cargo Ltd., 2, Centaur House, Opp. C. G. Road, Opp. Hotel Classic Gold, Ellisbridge, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against Order-in-Original No. VCES/21/DA/MDS/2015-16 dated 29.09.2015 (*hereinafter referred to as 'impugned order'*) passed by the Designated Authority, VCES Cell, Ahmedabad.

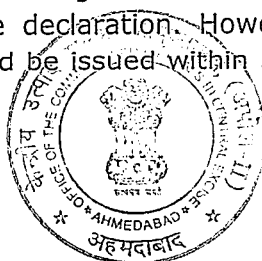
2. The facts of the case, in brief, are that the appellants are a Courier & Cargo Company and are holding Service Tax registration No. AAACC3526CST015. The appellants had filed declaration under Section 107 (1) of Chapter VI of the Finance Act, 2013 under Service Tax Voluntary Compliance Encouragement Scheme, 2013 (*hereinafter referred to as VCES, 2013*) on 11.12.2013 for the period October 2011 to December 2012 amounting to ₹13,54,763/-. The Deputy Commissioner (Preventive), Service Tax, Ahmedabad, vide letter dated 03.02.2014, communicated to the designated authority that an inquiry had been initiated against the said appellants as early from 2007 and the same was going on for the period 2011-12 and 2012-13.

3. Thus, a show cause notice (Notice of Intention) was issued to the appellants on 18.07.2014. The said show cause notice was adjudicated by the designated authority vide the impugned order by rejecting the VCES application of the appellants.

4. Being aggrieved with the impugned order the appellant has preferred the present appeal. The appellants have submitted that the Notice of Intention was time barred. They stated that the rejection has to take place within 30 days from the date of application or else the same shall not be liable to be rejected. The appellants also stated that the Preventive inquiry was of roving nature and accordingly will not invalidate the VCES application. The VCES application, according to the appellants is valid as per Section 107 of Chapter VI of the Finance Act and not liable for rejection.

5. Personal hearing in the matter was granted and held on 21.07.2016 wherein Dr. Nilesh V. Suchak, Chartered Accountant, appeared before me and reiterated the contents of appeal memo and requested to set aside the impugned order citing the contents mentioned in Circular No. 170/5/2013-ST dated 08.08.2013 and Circular No. 174/9/2013-ST dated 25.11.2013.

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 contention of the appellants that the preventive inquiry was of roving nature, I would like to say that an inquiry of roving nature does not result to the issuance of so many letters and summons, as described in the impugned order. Also, the contents of the letter of the Deputy Commissioner (Preventive), Service Tax, Ahmedabad dated 03.02.2014, as mentioned in the impugned order, proves that the inquiry was of specific nature. It is seen that when the VCES application was made by the appellants, the preventive inquiry was still going on. As per Section 106 of the Finance Act, 2013, if any kind of inquiry, investigation or audit is pending as on 01.03.2013, then the designated authority should reject the declaration. However, a notice of intention to reject the declaration should be issued within 30 days of the date of filing of



the declaration. The appellants have submitted this issue before the designated authority during the course of personal hearing however; I find that the designated authority cites a very strange argument in support of his rejection. He states that there is no time limit of issuance of show cause notice prescribed under Section 106(2) and the Circulars have been issued by way of administrative measures only and cannot over-ride the Section. I do agree that the Section 106(2) does not speak of time limit but the Circulars mentioned above are issued to strengthen the said Section. The Circulars are issued to install additional terms and conditions in Section 106(2). The CBEC has clarified that the defective applications are not to be rejected and if at all any condition for rejection arises, a mandatory show cause notice has to be issued within 30 days of filing the declaration. *'.....The said conditions are to be construed strictly and narrowly. It is also reiterated that the designated authority, if he has reasons to believe that the declaration is covered by section 106(2), shall give a notice of intention to reject the declaration within 30 days of the date of filing of the declaration stating such reasons to reject the declaration. Commissioners should ensure that this time line is followed scrupulously'*. Thus, the above mentioned Circulars have been approved by the Board and accordingly, are very much binding to Section 106(2). Even Hon'ble Supreme Court has outlined this in their order in the case of M/s. Arviva Inds. (India) Ltd. as reported in 2007 (209) ELT 5 (SC).

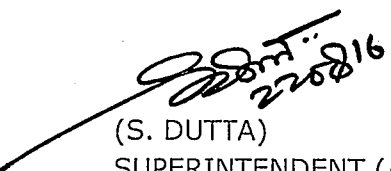
"Departmental clarifications - Circulars issued by CBEC - Binding nature of - Circular issued by CBEC binding on Department - Department cannot be permitted to urge that such circulars are not binding on it - Held by Supreme Court in several cases that circulars issued under Section 119 of Income Tax Act, 1961 and Section 37B of Central Excise Act, 1944 are binding on the Revenue - Section 37B of Central Excise Act, 1944."

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

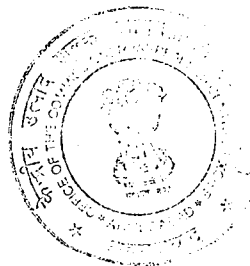

(UMA SHANKER)

COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA)

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



To,
M/s. On Dot Courier & Cargo Ltd.,
2, Centaur House, Opp. C. G. Road,
Opp. Hotel Classic Gold, Ellisbridge,
Ahmedabad- 380 006

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad.
- 3) The Dy./Asst. Commissioner, Service Tax, Division-II, Ahmedabad.
- 4) The Asst. Commissioner(System), Service Tax Hq, Ahmedabad.
- 5) Guard File.
- 6) P. A. File.



