रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065

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)146 /A-II/2015-16** /1931 to 1936

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-SVTAX-000-APP-090 -16-17**

दिनाँक Date : **19.09.2016** जारी करने की तारीख Date of Issue 28/09/16

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 _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original No SD-02/23/AC/2015-16 Dated 30.12.2015

Issued by Assistant Commissioner, Div-II, Service Tax, Ahmedabad

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

M/s. IRM 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 हास्पिटल 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 विरूद्ध 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 वहां 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 वहां 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–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,, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ **(OIA)**(उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय 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 शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 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, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 होगे।

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.

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-II) OFFICE OF THE COMMISSIONER (APPEALS-II) CENTRAL EXCISE AHMEDABAD अहमदाबाद

ORDER IN APPEAL

1. M/s. I.R.M. Ltd., 5/6, Sun Complex, Nr. Stadium Circle, C.G. Road, Ahmedabad *(hereinafter referred to as 'the appellants')* have filed the present appeal against Order-in-Original No. SD-02/23/AC/2015-16 dated 30.12.2015 *(hereinafter referred to as 'impugned order')* passed by the Asst. Commissioner Commissioner, Service Tax, Div-II, Ahmedabad.

2. The facts of the case, in brief, are that the Appellants are engaged in the activity of booking of airlines ticket which include domestic as well as international tickets covered under the definition of "Air Travel Agent Service, Rent-a-Cab Service, Business Auxiliary Service, Banking and Financial Services, Outdoor Catering Service, Maintenance & Repair Service and Business Support Service", for which they are holding Service Tax Registration No. AAACI3678MST003. Intelligence gathered revealed that some of the Air Travel Agents were engaged in evasion of Service Tax by way of not paying Service Tax on fuel surcharge which should be included in the taxable value i.e. Basic Fare for the purpose of discharging their Service Tax liability. Thus, detailed inquiry was conducted with the airline companies regarding their commission policies as regards to the Air Travel Agents on Basic Fare including Fuel Surcharge. Therefore, detailed scrutiny of the appellants was carried out and it was observed that they were paying Service Tax under the category of "Air Travel Agent Service" at the rate of 0.6% of Basic Fare in case of Domestic Air Ticketing and 1.2% of Basic Fare in case of International Air Ticketing. A statement of Shri Darshan Kumarpal Shah, Partner and Authorised Signatory of the appellants, was recorded on 03.02.2012 wherein he admitted that though they are collecting commission amount including Fuel Surcharge, they are paying Service Tax on the Basic Fare value which does not include fuel surcharge. Thus, a Show Cause Notice, dated 09.04.2014, covering period 2009-10 to 2012-13 for demanding Rs. 11,41,104 was issued to them. The Joint Commissioner, The adjudicating authority confirmed the said notice vide order Original No. AHM-SVTAX-000-JC-001-2015-16 dated 16.04.2015. OIA No. AHM-SVTAX-001-APP-136-15-16 dated 28.01.2016 has rejected the OIO dated 16.04.2015.

3. Periodical subsequent Show Cause Notice, dated 13.04.2015, covering period 2013-14 demanding Rs. 76,822/- was issued to them. The adjudicating authority confirmed the said notice vide the impugned order. The Asst. Commissioner Div-II, The adjudicating authority confirmed the recovery of Service Tax amount of Rs. 76,822/- , as demanded in the show cause notice, under Section 73(1) read with Section 68 of the Finance Act, 1994. He also ordered for the recovery of interest under Section 75 of the Finance Act, 1994 and imposed penalty under Sections 77 and 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order the appellants have preferred the present appeal. They denied that they have contravened the provisions of Sections 65, 66, 68, 70 and 73(a) of the Finance Act, 1994. They further stated that the adjudicating authority has interpreted the definition of basic fare including every part other than the basic fare. They further stated that as per Rule 6(7) of the Service Tax Rules, 2002, the Air Travel Agent has to pay Service Tax on the basic fare i.e. that part of the air fare on which commission is normally paid by the airlines to the agents. The appellants had already discharged the duty on it in due course and so the department's demand of Service Tax on fuel surcharge is not part of the basic fare and not sustainable. The appellant has also stated that the entire demand is time barred. The issue covers the period from 01.04.2013 to 31.03.2014 and the show cause notice was issued on 13.04.2015. The show cause notice has invoked extended period of limitation alleging that the appellant has suppressed the information from the department. But there is no suppression or willful wrong statement on the part of the appellant as the appellants had been in the *bonafide* belief that Service Tax has been paid by them on basic fare only and not on any other component.

5. Personal hearing in the matter was granted and held on 17.08.2016. Shri Vipul Khandhar, Chartered Accounant, and Rachna Khandhar, Chartered Accounant, appeared before me and reiterated the contents of appeal memo. He further stated that OIA in the identical issue of same appellant

but of just preceding period has been issued wherein OIO has been rejected.

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. The issue to be decided in the present case is whether or not basic fare inclusive of fuel surcharge i.e. YQ will be taken into consideration for the purpose of calculation of Service Tax under Rule 6(7) ibid. I find that there is no dispute that the appellants have opted for payment of Service Tax under Rule 6(7) and also to the facts that they are being paid commission on the amount of basic fare. For better appreciation of the issue, said Rule is reproduced as under;

sub-rule 7 of Rule 6 of Service Tax Rules,1994 says; *"(7) The person liable for paying the service tax in relation 2 [of booking of tickets for travel by air] provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of 3 [0.6%] of the basic fare in the case of domestic bookings, and at the rate of 4[1.2%] of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax 5[at the rate of specified in 6[Section 66B] of Chapter V of the Act] and the option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.*

Explanation- For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline."

From plain reading of the above provisions of the law, it transpires that Service Tax at the prescribed rate shall be calculated on the basic fare and as per the explanation basic fare means the airfare on which commission is normally being paid by the airlines. I find that in the present case the adjudicating authority has taken into account the gross amount as commission received by the appellants from the airline agencies. I find that sub-rule 7 of Rule 6 of Service Tax Rules, 1994 is very clear that the Service Tax at the rate specified in the rule is not chargeable on the gross basic fare

but is chargeable only on that part of the basic fare on which the commission is normally paid by the airline agencies i.e. basic fare exclusive of fuel surcharge.

7. Recently, in the case of Kafila Hospitality & Travels Ltd. vs Commissioner of Service Tax, New Delhi Hon'ble Tribunal, Principal Bench, New Delhi has very categorically held that fuel surcharge is not a part of basic fare. According to the Tribunal; '*In our view, the term "basic fare", in terms of its definition in Rule 6(7), is not the gross fare including fuel surcharge, but is that part of the gross airfare on which the concerned Airlines normally pay the commission to the Air Travel Agent. Therefore, what is relevant for the purpose of Rule 6(7) is as to on which part of the airfare, the commission was being normally paid by the Airlines to the Air Travel Agents*'. This supports my findings as detailed at para 6 above.
Thus, it can be seen in the column of Explanation, that basic fare means the air fare on which commission is being paid normally. This means the amount of commission paid excluding that of fuel surcharge is to be taken into account.

In the case of M/s. Bajaj Travels Ltd vs CCE, the CESTAT, Principal Bench, New Delhi also echoed the same "*.....to the Air Travel Agents to pay Service Tax on the "basic fare" as defined in this sub-rule, at the rate specified under that sub-rule. The term 'basic fare', defined for the purpose of this rule as that part of the air fare on which commission was payable to the agent by the airline.*"

Therefore, it has now become quite clear that the basic fare would include only basic fare excluding fuel surcharge.

8. Thus, it has been clarified that the appellants had rightly discharged their Service Tax liability on the amount of basic fare received by them from the airline agencies as commission. The view of the adjudicating authority, taken in the impugned order, is hereby rejected.

9. In view of my foregoing conclusions, I reject the impugned order and allow the appeal in above terms.

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

ATTESTED

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

To,
M/s. I.R.M. Ltd.,
5/6, Sun Complex, Nr. Stadium Circle,
C.G. Road,
Ahmedabad- 380 006

Copy to:

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