

रजिस्टर्ड डाक ए.डी. द्वारा

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

क फाइल संख्या : File No : **V2(CS)27/STC-III/2015/Appeal-I**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-014-16-17**  
दिनांक Date **16.05.2016** जारी करने की तारीख Date of Issue **18/5/16**

**श्री उमाशंकर**, आयुक्त (अपील-I) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by **Shri Uma Shankar** Commissioner (Appeals-I) Central Excise  
Ahmedabad

ग \_\_\_\_\_ आयुक्त केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश सं  
दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No **GNR-STX-DEM-DC-37/2015** dated : **29.06.2015** Issued by:  
Deputy Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

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

**M/s. Aneesh Engineers**

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 :-

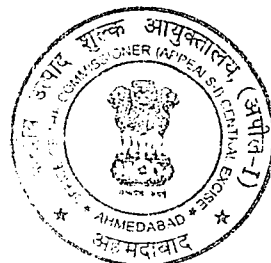
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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, 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।

(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-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, 1984 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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 हैं

- (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,

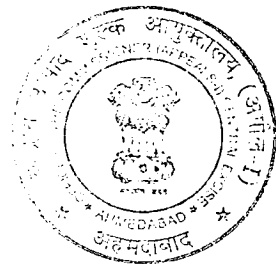
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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**

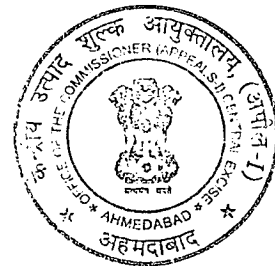
This appeal has been filed by **M/s Anness Engineers, 3, Aman Park, Opp. Aradhna Society, Kalol, Dist. Gandhinagar** (hereinafter referred to "as the appellant") against the Order-in-Original No.GNR-STX-DEM-DC-37/2015 dated 29.06.2015 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner of Central Excise, Gandhinagar Division (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case are that the appellant is engaged in providing taxable service viz. Construction Services other than residential complex, including commercial/industrial building or civil structure and Work Contract Service. They were carrying out the work of laying of pipeline to M/s ONGC and M/s IFFCO. During scrutiny of ST-3 returns for the period from July 2012 to September 2012, it appeared that they had paid service tax amounting to Rs.85,783/- on the value of taxable service amounting to Rs.23,13,432/- by availing benefit of Serial No.12 of Notification No.26/2012-ST dated 20.06.2012 for the service of Construction Services other than residential complex, including commercial/industrial building or civil structure. It also appeared that the appellant had provided work contract service and paid Service Tax amounting to Rs.18,983/- for the value of taxable service on which service payable under partial reverse charge of Rs.3,83,966/-, by availing benefit of Notification No.30/2012-ST dated 20.06.2012

2.1 A show cause notice dated 27.09.2014 was issued to the appellant for recovery of service tax amounting to R.2,89,904/- (**Rs.2,00,158/-** for Construction Services other than residential complex, including commercial/industrial building or civil structure and **Rs.28,746/-** for work contract service) for denying the benefit of Notification No.26/2012-ST and 30/2012-ST with interest and imposition of penalty on the following grounds:

(i) SI No.12 of Notification No.26/2012-ST exempts taxable service of Construction of complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority. As the appellant was engaged in providing taxable service of laying of pipe line to M/s ONGC and M/s IFFCO, they were not eligible for availing the benefit of said notification.

(ii) Partial reverse charge under SI.No.9 of Notification 30/2012-ST is applicable only on the service portion of works contract, therefore, the appellant was required to pay full rate of service tax.



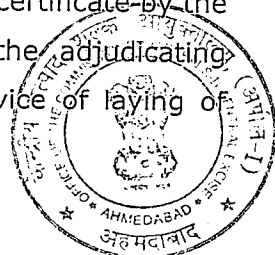
2.3 The said show cause notice was adjudicated by the adjudicating authority by confirming the demand with interest and imposed penalty of Rs.22,890/- under Section 76 of Finance Act, 1994 (FA).

3. Being Aggrieved, the appellant had filed the present appeal on the grounds that the appellant was involved in undertaking composite contracts for supply and construction and for the said purpose, they obtained an order from the customer, take measurements at site, procure the construction material and other material from the market and construct the site; that for the said composite contract a lump sum consideration is charged from the customer. During the relevant period, the appellant had opted for the execution of work of M/s ONGC in relation to laying of the pipe line under valuation rule, vide notification No.24/2012-ST. After adopting the said valuation rule vide notification No.24/2012-ST and reverse charge method provision under notification No.30/2012-ST the appellant had discharged the correct service tax liability for work contract service; that they engaged in execution of work with material and labour of M/s IFFCO for construction of the original work and discharged service tax as per valuation rule vide notification 24/2012-ST. Therefore, there was no short payment in the matter. No penalty is imposable in the matter as the issue involved is interpretation of statutory provisions.

4. A personal hearing in the matter was held on 13.04.2016 and Shri Vipul Khandhar, Chartered Accountant appeared for the same. He reiterated the grounds of appeal and submitted that service tax cannot be revised at this stage and therefore, the claim of abatement should be verified from the records of the appellant and allows the benefit.

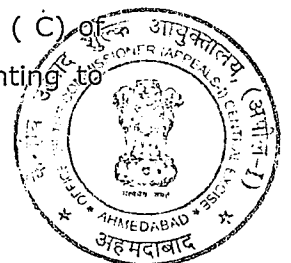
5. I have carefully gone through the facts of the case on records, appeal memorandum and submissions made by the appellant at the time of personal hearing. The limited point to be decided in the matter is whether the appellant is eligible for availment of benefit of (1) Serial No.12 of Notification No. 26 /2012-ST dated 01.06.2012 for providing taxable service of "Construction Services other than residential complex, including commercial/industrial building or civil structure" and (2) Serial No.9 of Notification No.30/2012-ST dated 01.06.2012 for "work contract service" or otherwise.

5.1 As regards availment of benefit under Notification No.12/2012-ST, I find that the serial no.12 of the said notification grants exemption to the taxable service of "construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority. In the matter, the contention of the adjudicating authority was that the appellant had provided taxable service of laying of



pipeline to M/s ONGC, M/s IFFCO during the relevant period and they were claimed exemption under different classification of service. Therefore the appellant is not eligible for such benefit under the above said notification. In this regard, I find that that the appellant has not disputed the fact that they were providing taxable service of laying of pipeline to M/s ONGC etc and filed ST-3 return under different classification of service as mentioned above. It is the contention of the appellant that during the relevant period they had opted for the execution of work of M/s ONGC etc under Rule 2A(ii) ( C ) of Service Tax(Determination value of ) Rule, 2006 (amended vide notification No..24/2012 dated 01.07.2012) and were providing service of laying of pipeline with material and labour; that they were wrongly classified the said service under construction of commercial & industrial service and paid duty accordingly. As per the said Valuation Rules, I find that the appellant was liable for service tax on 60% of total amount charged. The said argument of the appellant does not appear to be correct and acceptable, looking into the facts and circumstances of the instant case. The above said Rule 2 A specifies for "Determination of value of service portion in the execution of a works contracts". As per the said Rule, the valuation of service and liability to discharge service tax pertains under "Work Contract Service". In the instant case, I find that the appellant has filed ST-3 return for the relevant period by classifying the service as "Construction Services other than residential complex, including commercial/industrial building or civil structure" though they have provided taxable service of "laying of pipe line" and availed the benefit of Sl.No.12 of notification a No.26/2012-ST and paid only 4.8% service tax on total amount charged. Such argument of the appellant is made after thought as held by the adjudicating authority, especially in a situation where they have never come forward with such argument except at the time of personal hearing before the adjudicating authority and did not revise their ST-3 return to that extent. This situation clearly indicates that the appellant had availed more benefit under the said notification No.26/2012 by wrong classification of service. Hence, the contention made by the adjudicating in para 11.2 and 11.3 that the appellant is not eligible for the benefit of notification No.26/2012-ST and availed inappropriately, appears as proper and correct and do not require any interfere in the said discussion.

5.2 As regards availment of the benefit of Serial No.9 of Notification No.30/2012-ST dated 01.06.2012 for "work contract service", it was the contention of the adjudicating authority that the appellant had provided service of "work Contract" service during the relevant period and the partial reverse charge under Sl.No.9 of the Notification No.30/2012-ST is applicable only on the service portion in execution of works contract. It was the submission of the appellant that they have availed 40% abatement on total value of the contract amounting to Rs.3,83,966/-, under Rule 2 A(ii) ( C ) of Service tax valuation Rules, on which service tax @12.36% amounting to



Rs.18,893/- was paid. Hence there was no short payment and the only mistake was made by mentioning wrong notification No. in the ST-3 return.

5.2.1 It is not disputed that in ST-3 return for the relevant period, the appellant had shown value of taxable service amounting to Rs.3,83,966/- as amount on which service tax payable under partial reverse charge. This fact is quite contradictory to the submission of the appellant that the said amount is the value of the total contract. The appellant has requested at the time of personal hearing that the benefit of abatement may be given to them after due verification of their records. I find merit consideration in their request, especially, in the circumstance where the adjudicating authority has also denied the benefit on the basis of non submission of substantiate documentary evidences which proves that the said value is total contract value and not the total amount on which service tax is payable. In the circumstances, I remand back the matter to the adjudicating authority to verify afresh and decide the matter accordingly. The appellant is also at liberty to submit necessary evidences to the above extent.

6. In view of above discussions, I up held the order passed by the adjudicating authority so far as it is concerned to the amount of Rs.2,00,158/- with interest in respect of taxable service of construction service other than residential complex, including commercial/industrial building or civil structure. As regards the amount of Rs.28,746/- in respect of taxable service of work contract service, I remand back the case to the adjudicating authority as mentioned at para 5.2.1 above for fresh decision after following principles of natural justice.


7. As regards imposition of penalty, I do not find any interference of discussion made in para 11.7 of the impugned order by the adjudicating authority. Since, the appeal is partially up held, the penalty is also to be reduced. Therefore, I reduce the penalty to Rs.20,000/- from Rs.22,890/-.

8. The appeal is accordingly disposed off.



(UMA SHANKER)  
COMMISSIONER (APPEAL-I)  
CENTRAL EXCISE, AHMEDABAD

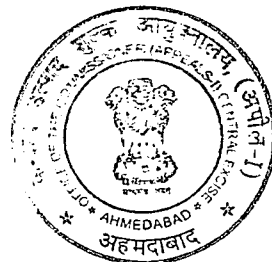
Attested

  
(Mohanan V.V.)  
Superintendent (Appeal-I)  
Central Excise, Ahmedabad

Date: 16/05/2016

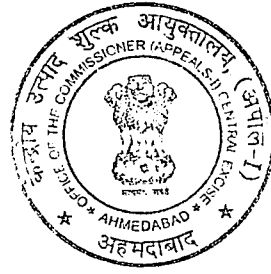
**BY R.P.A.D**

To,  
M/s Ansh Engineers,  
3, Aman Park, Opp. Aradhna Society,  
Kalol, Dist. Gandhinagar



**Copy to:-**

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, Division- Gandhinagar, Ahmedabad-III
5. Guard file.
6. P.A file.



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