

रजिस्टर्ड डाक ए.डी. द्वारा

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

क फाइल संख्या : File No : V2(GTA)45/STC-III/2016/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-276-16-17
दिनांक Date 27.03.2017 जारी करने की तारीख Date of Issue 30/3/17

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-12/2016 dated 15.07.2016 Issued by:
Assistant Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

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

M/s. IRIS Automation Private Limited

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 :-

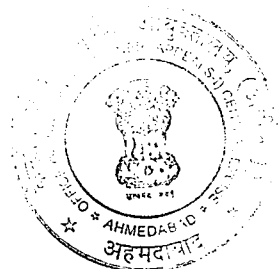
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैन्टल हास्पिटल
कम्पाउण्ड, 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 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) 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 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)(i) 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."



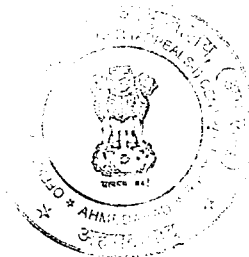
ORDER-IN-APPEAL

M/s IRIS Automation Pvt. Ltd., Plot No.164/6 & &, Behind Bharat Aluminium, Santej, Taluka: Kalol, District: Gandhinagar (hereinafter referred to as 'the appellant') are holding Central Excise Registration No.AACC10763MXM001 and Service Tax Registration No.AACCL0763MSD001 under the category of GTA and Security services and are engaged in the manufacture of Control Panel & Panel Accessories falling under Chapter 85 of the first Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). The appellant has filed the present appeal being aggrieved by **Order-in-original No.GNR-STX-DEM-DC-12/2016** dated 15/07/2016 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Service Tax Division, Gandhinagar, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority').

2. During the course of audit of the records of the appellant such as Balance sheets and Ledgers for the years 2012-13, 2013-14 and TB for 2014-15, it was observed that the appellant had received '**Engineering & Consultancy service**' from M/s IRIS Engineering Co. (hereinafter referred to as 'the proprietorship concern'), which was a proprietorship concern of Shri Chittranjanbhai D. Badheka, who was also one of the Directors of the appellant concern. The proprietorship concern did not have a separate PAN number and hence it appeared that the services provided by the proprietorship concern to the appellant was as good as services provided by the Director to the appellant and that the appellant was liable to pay Service Tax under reverse charge mechanism as recipient of Service Tax in terms of Rule 2(1)(d)(EE) of Service Tax Rules, 1994 read with Notification No.30/2012-ST dated 20/06/2002. It appeared that the appellant had failed to pay Service Tax amounting to **Rs.2,19,693/-** as recipient of services from the proprietorship concern during 07/08/2012 to 31/03/2013 in F.Y. 2012-13; in F.Y. 2013-14 and in F.Y.2014-15. Therefore, a Show Cause Notice F.No.VI/1(b)-17/IA/15-16/AP-3/C-I dated 28/12/2015 (hereinafter 'the SCN') was issued to the appellant demanding Service Tax of **Rs.2,19,693/-** under proviso to Section 73(1) of the Finance Act, 1994 (hereinafter 'FA, 1994'), invoking extended period, along with interest under Section 75 of FA, 1994 and proposing penalties under Section 77(2) & Section 78 of FA, 1994. In the impugned order, the adjudicating authority has confirmed the demand and interest as proposed in the SCN and imposed a penalty of **Rs.2,19,693/-** under Section 78 of FA, 1994 and a penalty of **Rs.10,000/-** under Section 77(2) of FA, 1994.

3. The main grounds of appeal in the appeal filed by the appellant are as follows:

- 1) Service Tax under Notification No.30/2012 read with Rule 2(1)(d)(EE) of Service Tax Rules, 1994 is payable by the recipient Company on services that are provided or agreed to be provided by a Director of that company in his individual capacity as Director of that company. Merely because Shri Chittranjanbhai D.



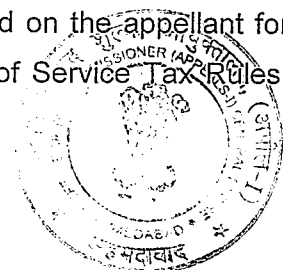
Badheka was proprietor of M/s IRIS Engineering Co. did not mean that service rendered by the proprietorship concern was rendered by the proprietor.

2) Service rendered by M/s IRIS Engineering Co. is by person who is Director of the appellant company, whereas the service covered under Notification No. 30/2012-ST pertains to service provided by Director. Rule 2(1)(d)(EE) read with Section 68(2) of FA, 1994 specifies services provided by a Director of a company to the said company and not by a person who is a Director of the company. The liability of Service Tax was on M/s IRIS Engineering Co. who is the service provider as no service is provided by the Director. The proprietorship concern of Shri Chittranjanbhai D. Badheka is in existence since March, 2008 whereas the appellant company i.e. M/s IRIS Automation Pvt. Ltd. came into existence in April, 2009. As the annual turnover of M/s IRIS Engineering Co. was below 10 Lacs, it was claiming small service provider exemption and not paying Service Tax.

4. Personal hearing in the appeal was held on 17/02/2017. Ms. Sonal Jain, C.A. appeared on behalf of the appellant and reiterated the grounds of appeal. She submitted that it is the proprietorship firm which is providing the service and not the Director himself. She submitted the Profit & Loss Account.

5. I have carefully gone through the facts of the case on records and submissions made by the appellant. The issue for decision before me is whether the appellant company was liable to pay Service Tax under reverse charge mechanism in terms of Rule 2(1)(d)(EE) of Service Tax Rules, 1994 read with Notification No.30/2012-ST dated 20/06/2002 towards Engineering & Consultancy service received from M/s IRIS Engineering Company. M/s IRIS Engineering Company, the service provider is a sole proprietorship concern of Shri Chittranjanbhai D. Badheka, who also happens to be a Director of the appellant company. The disputed aspect in the instant case is whether the services provided by M/s IRIS Engineering Company can be considered as services provider by the Director of the appellant company to the appellant company.

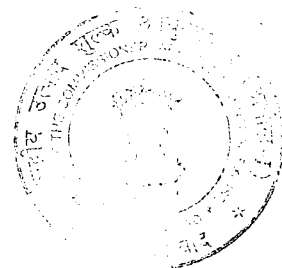
6. In terms of Rule 2(1)(d)(EE) of Service Tax Rules, 1994, as amended vide Notification No. 46/2012 dated 07/08/2012, the person liable for paying tax in relation to service provided or agreed to be provided by a Director of a company to the said company is the recipient of such service. Further in terms of Notification No.30/2012-ST dated 20/06/2002, as amended vide Notification No. 45/2012-S.T. dated 07/08/2012, in respect of services provided or agreed to be provided by a Director of a company to the said company, 100% of the tax is payable by the person receiving the service. The demand along with interest has been confirmed in the impugned order and penalty under Section 77(2) & Section 78 of FA, 1994 has been imposed on the appellant for failure to pay Service Tax in accordance with Rule 2(1)(d)(EE) of Service Tax Rules.



1994 read with Notification No. 46/2012 dated 07/08/2012 with regards to such services that were provided by the sole proprietorship concern since Shri Chittranjanbhai D. Badheka, the sole proprietor was a Director of the appellant company and it has been held that such services amounted to services provided by a Director of the appellant company to the appellant company.

7. The contention of the appellant in the grounds of appeal is that merely because Shri Chittranjanbhai D. Badheka was proprietor of M/s IRIS Engineering Co., it did not mean that service provided by M/s IRIS Engineering Co. to the appellant company was rendered by Shri Chittranjanbhai D. Badheka in his capacity as Director of the appellant company. The appellant has also contended that the liability of Service Tax was actually on the service provider but the tax was not paid as the service provider had not exceeded the stipulated turnover limit of exemption under small service provider exemption scheme.

8. It is settled law that a sole proprietorship concern is not a separate legal entity from the proprietor, for legal or tax purposes. The sole proprietorship is the same as the proprietor who runs the business. In the case of *ANILKUMAR MAHENSARIA vs. COMMISSIONER OF CUSTOMS – 2008 (228) E.L.T. 166 (Del.)*, Hon'ble High Court of Delhi had upheld the plea that the proprietor and the proprietorship firm were not different entities and ruled that only one set of penalty could be imposed either on the proprietor or the proprietorship firm. Similar ratio has been upheld by Hon'ble High Court of Bombay in the cases of *COMMISSIONER OF CUSTOMS CSI AIRPORT, MUMBAI vs GYANCHAND JAIN – 2015 (321) E.L.T. 199 (Bom.)* and in the case of *COMMISSIONER OF CUSTOMS vs. KAMLESH KHICHA – 2015 (315) E.L.T. 590 (Bom.)*. In view of the settled legal position, the services provided by M/s IRIS Engineering Company, a proprietorship concern were services provided by Shri Chittranjanbhai D. Badheka, the proprietor. The contentions of the appellant to differentiate the status of Shri Chittranjanbhai D. Badheka as proprietor of the service provider as compared to his status as Director of the service recipient is not correct or sustainable because there can be no dispute that the services provided by the proprietorship concern were provided by none other than its proprietor Shri Chittranjanbhai D. Badheka and such services were received by the appellant company, where Shri Chittranjanbhai D. Badheka was a Director Thus the services were provided by the Director of the appellant company to the appellant company, whereby the appellant company was liable to pay the impugned Service Tax. Thus the impugned Service Tax, that has not been paid is recoverable from the appellant company along with interest. The failure to pay Service Tax and follow procedures has rendered the appellant liable to penalty. In the grounds of appeal, the appellant has only challenged its liability to pay duty under the reverse charge mechanism. There is no contention in the grounds of appeal against the penalty provisions invoked in the impugned order.



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Therefore, the impugned order is liable to be upheld. Accordingly, the appeal filed by the appellant is rejected.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in the above terms.

उमाशंकर

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 27/03/2017

Attested

(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.

To
M/s IRIS Automation Pvt. Ltd.,
Plot No.164/6 & 7,
B/h Bharat Aluminium,
Santej-Vadsar Road,
Village: Santej, Taluka: Kalol, District: Gandhinagar-382 721



Copy to:

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III.
3. The Additional Commissioner, Central Excise (System), Ahmedabad-III.
4. The Deputy Commissioner, Service Tax, Gandhinagar Division, Ahmedabad-III.
5. Guard File.
6. P.A.