

 केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
वस्तु एवं सेवा कर भवन	GST Building 7 Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015	
सतवा मंजिल पॉलिटेक्निक के पास आम्बावाडी-अहमदाबाद-380015		
टेलीफोन : 079-26305065		टेलीफैक्स : 079-26305136

क फाइल संख्या : File No : **V2(CICS)68/AHD-III/2016-17** 528/532

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-078-17-18**

दिनांक Date : **28.08.2017** जारी करने की तारीख Date of Issue: **13-9-17**

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
GNR-STX-DEM-DC-26/2016 दिनांक : **21.12.2016** से रूजित

Arising out of Order-in-Original: **GNR-STX-DEM-DC-26/2016**, Date: **21.12.2016** Issued by: Assistant Commissioner, Central Excise, Div: Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Aneesh Engineers

A. file

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

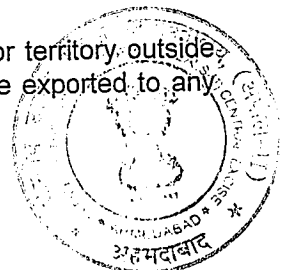
(i) A revision application lies to the Under Secretary to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (C) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- णबी/35-इ के अंतर्गत:-

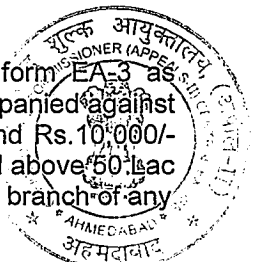
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रुपए 5 लाख या 50 लाख तक हो तो रुपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रुपए 50 लाख या उससे ज्यादा है वहाँ रुपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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 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 अर्जी एवं अपील को लागू नहीं होंगे।

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,

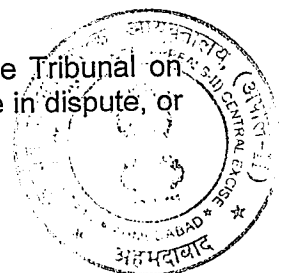
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

(6)(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।

(6)(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. Ansh Engineers, 3, Aman Park, Opp. Aradhna Society, Kalol, Dist. Gandhinagar (hereinafter referred to "as the appellants") against the Order-in-Original number GNR-STX-DEM-DC-26/2016 dated 21.12.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise, Gandhinagar Division (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case are that the appellants are engaged in providing taxable service viz. Construction Services other than residential complex, including commercial/industrial building or civil structure and Work Contract Service and are holding Service Tax registration number ADIPS1897AST001. 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 appellants 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.

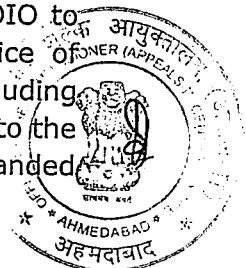
2.1. Thus, a show cause notice dated 27.09.2014 was issued to the appellants for recovery of Service Tax amounting to ₹ 2,89,904/- (₹ 2,00,158/- for Construction Services other than residential complex, including commercial/industrial building or civil structure and ₹ 28,746/- for work contract service) 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) Sl 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 appellants were 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 Sl.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.

The said show cause notice was adjudicated by the then adjudicating authority, vide OIO number GNR-STX-DEM-DC-37/2015 dated 29.03.2015, by confirming the demand with interest and penalty under Sections 73, 75 and 76 respectively of the Finance Act, 1994.

2.2. Being aggrieved, the appellants filed an appeal before the undersigned. The undersigned, vide Order-in-Appeal number AHM-EXCUS-003-APP-16-17 dated 16.05.2016, had uphold the above mentioned OIO to the extent of the Service Tax confirmed in respect of taxable service of construction services other than residential complex, including commercial/industrial buildings or civil structures. However, as regards to the Service Tax in respect of services of works contract service, I had remanded



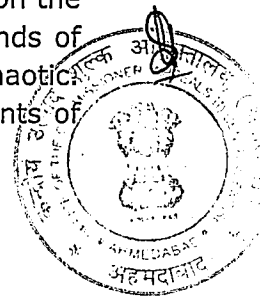
back the case for fresh decision after verification of fresh documentary evidence as requested by the appellants.

2.3. The adjudicating authority, as per my direction, followed the principles of natural justice by offering the appellants the benefit of personal hearing and allowing the appellants to submit revised reply. The adjudicating authority, vide the impugned order, confirmed the demand of Service tax of ₹ 28,746/- under Section 73 and ordered for payment of interest under Section 75 of the Finance Act, 1994. He also imposed penalty under Section 76 of the Finance Act, 1994.

3. Being aggrieved, the appellants have filed the present appeal on the grounds that they have correctly discharged Service Tax under the category of works contract service as per valuation rules given in notification number 24/2012-ST and 30/2012-ST. They further claimed that they were liable for Service Tax on 40% of total amount of bill being original work as per serial number 2A(ii)© supra. They have discharged Service Tax as per valuation rule and hence there is no short payment of Service Tax on the part of the appellants. They claimed that their only mistake occurred during filing of ST-3 return where wrong notification was mentioned as the appellants were ignorant about the laws.

4. A personal hearing in the matter was held on 21.08.2017 and Shri Vipul Khandhar, Chartered Accountant appeared for the same. He reiterated the grounds of appeal and claimed that in the remand proceeding, new grounds were added which is wrong on the part of the adjudicating authority.

5. I have carefully gone through the facts of the case on records, appeal memorandum and submissions made by the appellants at the time of personal hearing. Now, the only issue appears before me is that whether the adjudicating authority has adhered to my directions as placed in my previous OIA or otherwise. Before the issue of my previous OIA, during the course of personal hearing, the representative of the appellants had requested to remand the case back to the adjudicating authority on the ground that the appellants would like to produce evidence (additional document) that ₹ 3,83,966/- was gross amount and not the taxable amount. I accepted their request and accordingly, remanded this part of the case back to the adjudicating authority to verify the said additional evidence. However, I find that instead of submitting any noteworthy evidence, they have submitted a copy of a bill number 5/2012-13 which has no significance at all. During the course of personal hearing, the representative of the appellants has claimed that new grounds were added which is wrong on the part of the adjudicating authority. However, I found nothing new in the impugned order. The adjudicating authority, in the impugned order, has time and again claimed that the appellants have not submitted any substantive documentary evidence to claim that ₹ 3,83,966/- was gross amount and not the taxable amount. Moreover, the appellants, in their grounds of appeal, have mentioned nothing about the non-submission of required documents for which they previously requested to remand the case back. Instead, they have stated, in paragraph 3.2 of their grounds of appeal, that they had mistakenly shown wrong notification in their ST-3 return. Now, this is a new ground submitted by the appellants as this excuse was not submitted before me at the time of the previous appeal. This, I believe, an afterthought on the part of the appellants and is not at all acceptable to me. In the grounds of appeal submitted by the appellants, the contentions are vague and chaotic. They have side stepped from the actual issue and preached the contents of valuation rules by beating behind the bush.



6. In view of above discussions, I up held the impugned order passed by the adjudicating authority and reject the appeal filed by the appellants.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

7. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

9/8/17
(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.

BY R.P.A.D

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

Copy to:-

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

