
	केन्द्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), GENERAL TAX	केन्द्रीय कर शुल्क भवन	7th Floor, Central Excise Building,
सत्यमेव जयते	सप्तमी मजिल: पोलिटेकनिक के पास	Near Polytechnic,
	आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
079-26305065		टेलफैक्स: 079-26305136

क फाइल संख्या : File No : **V2/3/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-003-APP-3-18-19**

दिनांक Date : **27.04.2018** जारी करने की तारीख Date of Issue **6/6/2018**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **AHM-CEX-003-AC-026-2018** Dated **20.02.2018** Issued by **Assistant Commissioner, CGST, DIV-Kalol, Gandhinagar, Ahmedabad**

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

**M/s. Advance Addmine Pvt 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 :-

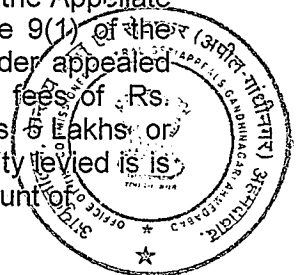
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेघाणी 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 accompany ed 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 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 **अधीक्षक** 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 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, 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 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, 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 अर्जी 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,

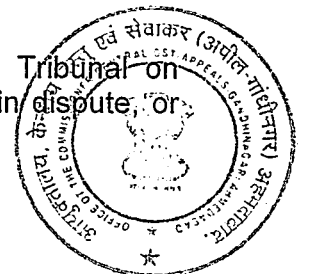
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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. Advance Addmine Pvt Ltd, Plot No.3553, Phase-IV, GIDC, Chhatral, Kalol, Gandhinagar 382 729 (henceforth, "appellant") has filed the present appeal against the Order-in-original No. AHM-CEX-003-AC-026-2018 dated 20.02.2018 (henceforth, "impugned order") issued by the Assistant Commissioner, Central GST, Kalol Division, Dist- Gandhinagar (henceforth, "adjudicating authority").

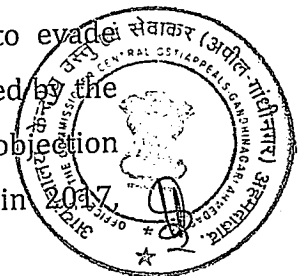
2. To state briefly, the facts of the case are that the appellant, a manufacturer of excisable goods, was audited by the central excise department in 2017, wherein, it was pointed out that the appellant company had paid certain amount to a director of the Company Shri Rashmin Patel as 'factory land rent'. It appeared that the said director had rented out his land to the appellant company to be used for commercial purpose, the renting appeared to be an activity covered under the ambit of 'service'. Further, it appeared that by renting out the immovable property to the company, the said director had provided service of renting of immovable property service to the appellant company and the appellant company, as a service recipient, was liable to pay the applicable service tax under reverse charge mechanism in terms of Notification No.30/2012-ST, as amended by Notification No.45/2012-ST.

2.1 A show cause notice was, therefore, issued on 25.04.2017 for recovery of service tax of **Rs.2,96,664/-** not paid from **2012-13 to 2015-16** on the rent paid to the said director. The adjudicating authority, in the impugned order, confirmed the demand, alongwith interest, and imposed penalty under section 78 of the Finance Act, 1994.

3. Feeling aggrieved with the impugned order, appellant has preferred this appeal on following main grounds of appeal-

3.1 Appellant states that adjudicating authority's views are based on presumptions and assumptions and contrary to the provisions. As per appellant, the undisputed fact is that Shri Rashmin Patel rented the property in his personal capacity and relationship of the director has nothing to do in the present case. Appellant submits that rent amount received from the company for each year is less than the exemption limit of Rs. 10 Lakh and hence question of payment of service tax does not arise.

3.2 With regard to the charge of suppression of facts with intent to evade payment of service tax, appellant submits that in the earlier audit conducted by the department in 2015 covering the period Apr-2012 to Feb-2015, no such objection was raised; that the issue was raised in subsequent audit conducted in



however, the transactions reflected in the books of account were then well within the knowledge of the department and therefore, confirmation of demand beyond a period of limitation is not sustainable.

3.2.1 Appellant states that since service tax payable under reverse charge mechanism was available to them as Cenvat credit, allegation of intentional non-payment of service tax is not justified.

3.2.2 Appellant has quoted number of decisions to state that when all particulars are within the knowledge of the department and no objection was raised in previous audits, extended period cannot be invoked based on objections raised in subsequent audits.

3.3 With regard to penalty of section 78, appellant submits that the department has failed to establish any of ingredients required under section 78 by positive and documentary evidence. Appellant adds that when the demand itself is not sustainable in law on the grounds of merit and limitation, the question of imposition of penalty under section 78 of charging of interest under section 75 does not arise.

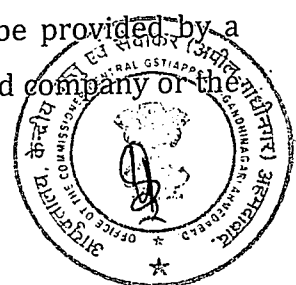
4. In the personal hearing held on 26.04.2018, Shri M A Patel, Consultant represented the appellant and reiterated the grounds of appeal. Shri Patel argued that earlier audit had dropped this point and that director's personal house was given on rent.

5. I have carefully gone through the appeal. The issue is all about tax liability of the appellant as a service recipient on the rent amount paid to the appellant company's own director Shri Rashmin Patel for the years 2012-13 to 2015-16. As per adjudicating authority, appellant company, as a recipient of 'renting of immovable property service' from its own director, is liable to pay the 100 percent tax leviable on the gross value of service received, in terms of rule 2(d)(EE) of the Service Tax Rules, 1994 read with Notification No.30/2012-ST, as amended by Notification No.45/2012-ST. Appellant's main contention is that service of renting of immovable property provided by Shri Rashmin Patel, Director of the appellant company is in his individual capacity and not in the capacity of a director of the company.

5.1 Rule 2(d)(EE) of the Service Tax Rules, 1994 reads as under -

(d) "person liable to pay service tax", -

(EE) in relation to service provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate, the recipient of service;



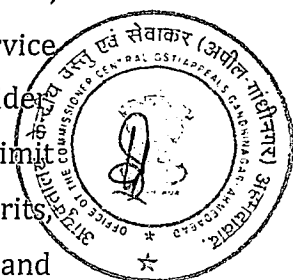
5.1.1 In terms of Notification No.30/2012-ST, as amended vide Notification No.45/2012-ST dated 07.08.2012, %age of service tax payable by any person liable for paying service tax other than the service provider is 100% *in respect of services provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate.*

5.1.2 Thus, the law is clear that in respect of services provided by a director of a company or a body corporate, recipient of service (company or body corporate) is liable to pay 100% of service tax. The dispute, however, is whether the case of renting of immovable property service provided by a director of the appellant company is covered here or not.

5.2 The fair interpretation here, in my view, is that the services provided by a director of the company, in the capacity of a director, are only covered under reverse charge mechanism because the words used are 'by a director of a company to the said company' and not 'by a person who is director of a company'. Therefore, if director of a company provided service in some other capacity, the tax liability would be of the director as an individual service provider and it will be wrong to consider the same as a service provided by a director of the company to the said company.

5.2.1 The services generally provided by a director of the company to the said company in their capacity of a director are the ones where charges payable by the companies are sitting fee, commission, bonus, travel reimbursements, etc. Hence, these charges are covered under reverse charge mechanism. However, if a company is taking on rent the premises belonging to a director, it is wrong to say that renting service has been provided by the director for being director of the company. The company in such case is paying rent to the director for being owner of the premises and director is receiving the amount not as remuneration for his services as a director but in the capacity of an owner of the property. Such a case, in my view, is not intended to be covered under the reverse charge mechanism in terms of Notification No.30/2012-ST but rather the director, as a service provider, would be liable to discharge the applicable service tax liability, if any.

5.3 The rent paid by the appellant company in the present matter, therefore, cannot be charged to service tax under Notification No.30/2012-ST. The service provider himself is liable to pay the tax in this case as an individual service provider however, if the rent income in any of the financial years is within the threshold limit of Rs. 10 Lakh, no tax liability arises on part of the service provider also. On merits therefore, the demand of service tax under reverse charge fails to sustain and

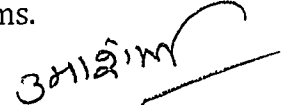


requires to be set aside. Since demand of service tax is not sustainable on merits, I am not delving into the aspect of limitation. Also, when demand itself is wrong, there is no question of charging interest or paying penalty under section 78 of the Finance Act, 1994.

6. Accordingly, I set aside the impugned order and allow the appeal.

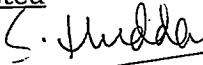
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.


(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested


(Sanwamal Hudda)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. Advance Addmine Pvt Ltd,
Plot No.3553, Phase-IV, GIDC, Chhatral,
Kalol, Gandhinagar 382 729

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central GST, Gandhinagar.
3. The Additional Commissioner, Central Tax (System), Ahmedabad South.
4. The Asstt. Commissioner, CGST, Kalol Division, Gandhinagar.
5. Guard File.
6. P.A.

