

	केन्द्रीयकर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
सत्यमेव जयते	वस्तु एवं सेवा कर भवन	GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad 380015	
	सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015		
 079-26305065			टैलेफैक्स: 079-26305136

क फाइल संख्या : File No : **V2/105,106&107/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-113-115-18-19**

दिनांक Date : **09-10-2018** जारी करने की तारीख Date of Issue:

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 :
PLN-AC-STX-02/2018 दिनांक : 30-05-2018 से सृजित

Arising out of Order-in-Original: PLN-AC-STX-02,03&04/2018, Date: 30-05-2018 Issued by: Assistant Commissioner, CGST, Div: Palanpur, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Gujarat Energy Transmission Corp Ltd

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।

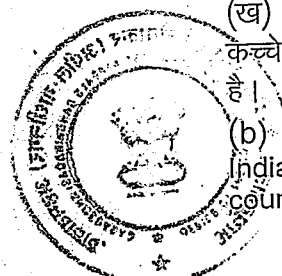
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 प्रकिया 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 के माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित

(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:-

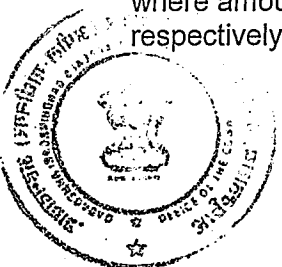
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 इ.ए-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 रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 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



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 पढी 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 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 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 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,

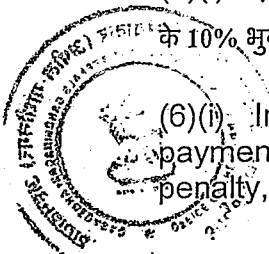
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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)(ii) 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."

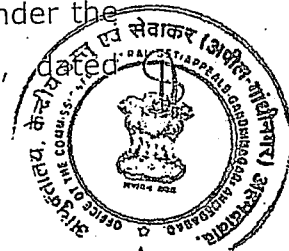
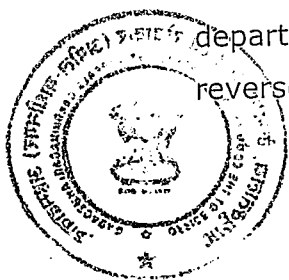


ORDER IN APPEAL

This order arises out of the following three appeals filed by the Transmission Division- Deesa, Transmission Division- Deodar and Construction Division- Deesa of M/s. Gujarat Energy Transmission Corporation Limited, Banaskantha (*hereinafter referred to as the 'appellants'*) against the following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed by the Assistant Commissioner, Central Excise & Central GST, Palanpur Division, Gandhinagar (*hereinafter referred to as 'adjudicating authority'*). Since the issue involved in all these appeals is common, I take up for disposal by a common order.

Sr. No.	Name of the Appellant	OIO No.	Period Covered	Appeal No.	Amount Confirmed in OIO (₹)
1	M/s. Gujarat Energy Transmission Corporation Limited, Transmission Division-Deesa	PLN-AC-STX-02/2018 dated 30.05.2018	From July 2012 TO March 2016	V2/105/G NR/18-19	ST- Rs. 1,55,652/- , Interest- at appropriate rate, Penalty- Rs. 1,55,652/-
2	M/s. Gujarat Energy Transmission Corporation Limited, Transmission Division-Deodar	PLN-AC-STX-04/2018 dated 30.05.2018	From July 2012 TO March 2016	V2/106/G NR/18-19	ST- Rs. 2,62,695/- , Interest- at appropriate rate, Penalty- Rs. 2,62,695/-
3	M/s. Gujarat Energy Transmission Corporation Limited, Construction Division-Deesa	PLN-AC-STX-03/2018	From July 2012 TO March 2016	V2/107/G NR/18-19	ST- Rs. 2,10,959/- , Interest- at appropriate rate, Penalty-Rs. 2,10,959/-

2. The facts of the case, in brief, are that the appellants are engaged in the activity of providing and receiving various Services. During the course of Audit, it was observed that there was a difference between the income reflected in the financial records (for the period from July 2012 to March 2016) vis-à-vis figures reflected in the ST-3 returns filed by the appellants. Further, it was noticed that the taxable value under the category of Manpower Supply Services and legal services (Legal services short payment issue was observed in Construction Division- Deesa case only) were covered under reverse charge mechanism and the taxable value under the category of Rent-a-cab service was covered under partial reverse charge as shown in the ST-3 returns filed by appellants were less than the taxable value worked out from the financial records of the appellants on the basis of expenses incurred by them under the above heads for the respective period. The department found that the services availed by them were covered under the reverse charge mechanism as per Notification No. 30/2012-ST, dated



20.06.2012, as amended and they were liable to pay service tax. Therefore, Show Cause Notices were issued to the appellants for the contravention of the provisions of Notification No. 30/2012-ST dated 20.06.2012, under proviso to sub section (1) of Sec. 73 of the Finance Act, 1994 by invoking the extended period of limitation. The Adjudicating authority confirmed the demands raised in the Show Cause Notices along with interest and also imposed penalties.

3. Aggrieved of the same, the appellants filed these Appeals. In the grounds of appeal the appellants mainly submitted that:

(a) As per CBEC notification No. 30/2012-ST dated 20.06.2012, Service tax is payable by service receiver on specified services as specified percentage under Finance Act, 1994.

(b) As per Point of Taxation Rule, 2011, in case of payment of service tax under reverse charge mechanism, point of taxation for payment of service tax is date of payment to the contractors by service receiver. Their books of accounts are prepared by the company on accrual basis. It amounts to difference in value as per book of accounts and as per service tax return.

(c) They were not claiming any Cenvat credit on service tax paid by them for input services/as a service receiver. Hence, cost of services as per book value is inclusive of service tax whereas value shown in the service tax return was taxable value on which service tax was payable i.e. without service tax.

(d) In certain cases expenses related to other accounts were wrongly booked under Manpower service and Rent cab service account head.

(e) They are providing petty cash to various employees for petty occasional expenses like petty material expenses, office expenses, travelling expenses, grass removing work etc and showing these expenses in their account under relevant different account head. Since there is not any formal contract with vendor for such a petty expenses, service tax is not payable by them.

(f) By mistake, they have shown abated value instead of gross amount in service tax return. Since service tax was payable on abated value and they had paid the same, there was no short payment of service tax.

(g) The adjudicating authority has not considered the reconciliation sheet for difference in value.



(h) There was no short payment of service tax or suppression of facts. Hence, no interest is payable and not any penalty is imposable.

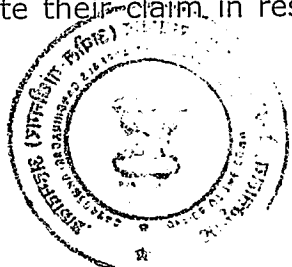
4. Personal hearing was conducted on 12.09.2018, wherein Shri Dinesh C. Bagthariya, CA, along with Shri Jitesh Vaishnav, account officer, appeared before me on behalf of the appellants and reiterated the contents of appeal memo. They added that service tax was paid on the basis of trial balance and actual figure. They further added that their explanation was not accepted nor mentioned in the O-I-Os. They requested me to give them some time to submit additional submissions in support of their claims. Accordingly, they submitted their submissions on 27.09.2018 & 01.10.2018.

5. I have carefully gone through the records of the case, the submissions given in the grounds of appeal and citation referred in the appeal. I have also gone through the additional submissions made by the appellants.

6. In the present case, I find that the appellants are engaged in the activity of providing and receiving various Services. During the course of Audit, the audit team had noticed the difference between the income reflected in the financial records (for the period from July 2012 to March 2016) vis-à-vis figures reflected in the ST-3 returns filed by the appellants. Further, the department found that the disputed services availed by them were covered under the reverse charge mechanism as per Notification No. 30/2012-ST, dated 20.06.2012, as amended and they were liable to pay service tax under reverse charge mechanism. Further, I find that the appellants have nowhere objected the payment of service tax under the reverse charge mechanism for the said services. The present dispute has arisen for mismatch in value of taxable services as per their book of accounts in comparison with the ST-3 returns filed by them.

7. The adjudicating authority, under discussions and findings in the impugned orders, has found that the appellants could not produce the corroborative documents to specifically linked so as to explain the difference in value of taxable service mentioned in the book of accounts and that mentioned in ST-3 returns. Further, the appellants could not produce any evidence to show that the book value of the services is inclusive of service tax. Whereas the appellants have argued that there was no short payment of service tax; the adjudicating authority has not considered the reconciliation sheet for difference in value.

8. The appellants have submitted here Certified reconciliation statements/sheets signed by Shri Vijay N. Tewar(Chartered Accountants) along with relevant corroborative documents(service wise and year wise) to substantiate their claim in respect of difference in value of taxable services



as per their book of accounts in comparison with the ST-3 returns filed by them. They have submitted the reconciliation statements for all the above mentioned three units/appeals. Since the appellants have submitted the CA certified reconciliation statements (submitted 6 folders and 4 files containing CA certified reconciliation statements) in r/o all the above mentioned three units/appeals for consideration, the cases need to be remanded back to the adjudicating authority for verification of the said reconciliation statements and supportive documents.

9. Thus, in view of the above findings and in the fitness of things, it would be just and proper to remand the matter to the Adjudicating Authority to decide afresh, after verifying and examining all the submissions of the appellants. The submitted Certified reconciliation statements (total 6 folders and 4 files containing CA certified reconciliation statements) are also sent herewith to the adjudicating authority for proper verification and examination. Needless to say that in case any other documents/details are required by the adjudicating authority, the adjudicating authority shall give proper opportunity to produce the documents/details, before passing the order. The appellants are also directed to provide all possible assistance to the adjudicating authority in relation to the above.

10. In view of the foregoing the aforementioned appeals are disposed of by remanding the matter back to the adjudicating authority in terms of the discussion held above.

11. अपीलकर्ता द्वारा दर्जकी गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Attested

S. Dutta
(S. Dutta) 25/10/18
Supdt.(Appeals)
Central GST, Ahmedabad.

BY SPEED POST TO:

1. M/s. Gujarat Energy Transmission Corporation Limited,
Transmission Division- Deesa, Banaskantha, Gujrat-385535.



2. M/s. Gujarat Energy Transmission Corporation Limited,
Transmission Division- Deodar, Banaskantha, Gujrat-385530.
3. M/s. Gujarat Energy Transmission Corporation Limited,
Construction Division- Deesa, Banaskantha, Gujrat-385535.

Copy to:

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Gandhinagar (RRA Section).
- (3) The Asstt. Commr(System), CGST , Gandhinagar.
(for uploading OIA on website)
- (4) Guard file
- (5) P.A. file.
- (6) Individual file.

