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

6123 to 6127

क फाइल संख्या :File No : **V2/94/GNR/2018-19**

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-79-18-19**

दिनाँक Date :**31.08.2018** जारी करने की तारीख Date of Issue: 6/9/2018

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

G.Jl

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

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **02/D/GNR/NK/2018-19** दिनाँक : **24-04-2018** से सृजित

Arising out of Order-in-Original: **02/D/GNR/NK/2018-19,** Date: **24-04-2018** Issued by: Assistant Commissioner,CGST, Div:Gandhinagar, Gandhinagar Commissionerate, Ahmedabad.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. ONGC

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 पूवोक्त 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 कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

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, मेघाणी 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 न्यायाधिकरणें की गई अपील के विरूद्व 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 रेखाकिंत 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 रू.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 beer a court fee stamp of Rs.6.50 paisa 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 in 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 होगे।

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. Oil and Natural Gas Corporation Ltd., Second Floor, Avani Bhavan, Chandkheda, Ahmedabad (hereinafter referred to as *"the appellants"*) against the Order-in-Original number 02/D/GNR/NK/2018-19 dated 24.04.2018 (hereinafter referred to as *"the impugned order"*) passed by the Assistant Commissioner of Central GST, Gandhinagar Division, Gandhinagar (hereinafter referred to as *"the adjudicating authority"*).

2. Brief facts of the case are that the appellants were holding Service Tax registration number AAACO1598AST034 under the categories of "Transport of Goods through Pipeline service, Transport of Goods by Road service, Technical Inspection & Certification Agency service, Manpower Supply Agency service, Consulting Engineer service, Business Support service, Rent-a-cab Scheme Operator service, Works Contract service, Legal Consultancy service, Renting of Immovable Property service, Sponsorship service, Scientific & Technical Consultancy, Business Auxiliary service, Maintenance or Repair service and Other Taxable services- Other than the 119 listed. During the course of audit, it was noticed that the appellants had short paid Service Tax amounting to ₹13,40,753/- under the category of Legal Consultancy service during the period July 2012 to December 2014. As per Notification No.30/2012-ST dated 20.06.2012, as amended, w.e.f. 01.07.2012, the recipient of Legal Consultancy service is liable to pay 100% Service Tax i.r.o. the legal services provided by an advocate to a business entity. Being pointed out by the audit team, the appellants agreed to the said observation and paid the short paid Service Tax along with interest. However, they paid the above amount under protest and did not pay the penalty. It was further noticed that the appellants did not pay ₹11,01,927/- against the facilities provided to the CISF (₹10,79,863/- against free accommodation + ₹ 22,064/- against other facilities provided to CISF) for the period from July 2012 to December 2014.

3. Thus, a show cause notice dated 31.03.2016 was issued to the appellants which was adjudicated by the adjudicating authority, vide the impugned order. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax of ₹24,42,680/- (₹13,40,753/- + ₹ 11,01,927/-) under Section 73 and as part of the said amount was already paid by the appellants, he ordered to appropriate the same against the said demand (₹13,40,753/- + ₹22,064/-). The adjudicating authority further asked the appellants to pay interest under Section 75 of the Finance Act, 1994 and as interest amounting to ₹3,95,871/- (₹3,82,462/- + ₹13,409/-) was already paid by the appellants, he ordered the same to be appropriated against the total interest liability. The adjudicating authority also imposed

penalty of ₹10,000/- under Section 77 and ₹24,42,680/- under Section 78 of the Finance Act, 1994.

4. Being aggrieved, the appellants have filed the present appeal on the grounds that they do not agree with the findings of the adjudicating authority. They argued that the Service Tax provisions are directed to the contractual arrangements between service provider and service receiver. The consideration accruing to service provider under the contractual arrangements alone is liable to Service Tax. They further contended that Section 67 talks about the value of taxable service provided by the service provider and not about the value of product resulting from such service. They argued that they are providing accommodation, medical facilities, arms and ammunition, telephone facilities, uniform etc. to the CISF personnel as per the CISF norms. Hence, according to the appellants, it cannot be treated as part of the consideration for providing security services.

5. A personal hearing in the matter was held on 29.08.2018 wherein Shri Pranab Mandal, CM (F&A) and Shri Deepak Dohre, Sr. Executive (F&A), appeared before me and reiterated the contents of grounds of appeal. Shri Dohre submitted that they had not charged any amount for accommodation and further contended that since legal fees issue has been settled (tax and interest paid), the show cause notice should not have been issued.

6. 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. After verifying all the verbal and written statements, I proceed to finalize the case purely on merit.

7. Now, the first issue appears before me is that whether the adjudicating authority has rightly confirmed the demand of Service Tax of ₹13,40,753/- on legal service, or otherwise. I find that the appellants had received legal services and short paid Service Tax arising out of it under Reverse Charge Mechanism. When the issue of short payment was raised by the audit team, the appellants, without any argument, paid the amount along with interest (under protest) as they were well aware of the issue. Genuine confusion is always followed by arguments and counter arguments till the confusion is cleared. But here, it seems that the moment the issue was raised, the payment, under protest, was made. As if, they were well prepared to pay the amount whenever the department pointed out the folly. The appellants, in their grounds of appeal, did not mention as to why they short paid Service Tax on the service received. A confusion regarding taxability of a certain service should pertain to the entire value of the service and not a part of that. This is sufficient enough to establish that their intention was to evade payment of Service Tax as long as the department does not point it out. Had there been no departmental auditing of their documents, the issue would

have remained undetected and the appellants would have continued with the said practice of non-payment of Service Tax on legal services. Moreover, the appellants have not produced any documentary evidence to show that the matter was agitated or referred to the Central Excise department or the ministry. They are a Public Sector Unit and expected to behave and conduct in a more responsible and transparent manner. Thus, this is enough to establish suppression in the said act of the appellants. In view of the above, I consider that the adjudicating authority has very rightly imposed penalty under the Section 78 of the Finance Act, 1994.

8. Now comes the second issue that is whether the free of cost accommodation, which is not included in the bills by the service provider, shall form part of the taxable value, for calculating service tax or otherwise. The adjudicating authority's findings in this regard is that the appellants had provided rent free accommodation/quarters to the staff of service providing agency; that the service provider had not recovered the cost of HRA; that Service Tax should be levied on value of consideration received for the provision of service which includes both monetary consideration and equivalent money value of non monetary consideration; that the appellants had not included the amount of HRA because rent free accommodation was provided; the portion of monetary consideration which was not taken into account shall be considered to be gross amount charged, for the purpose of calculating the taxable value. As the issue revolves around Section 67 of the Finance Act, 1994, the relevant extracts is reproduced below for ease of reference:

Finance Act, 1994

Section 67. Valuation of taxable services for charging service tax. —

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —

(i).....;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation. — For the purposes of this section, —

(a)"consideration" includes any amount that is payable for the taxable services provided or to be provided;

9. The facts are that the appellants, a recipient of security from CISF [Government body], was discharging Service Tax under Reverse Charge Mechanism on the amount charged by CISF under 'support services'. The service provider was charging the cost of deployment of personnel from the level of Commandant to the level of class 4 staff; that the cost of services included (i) salary viz Basic pay plus grade pay plus dearness allowance plus holiday pay of each official (ii) Leave salary contribution of each official and (iii) pension contribution [including new pension scheme] of each official. The dispute is whether the appellants are required to add HRA, to the amount charged by CISF for computing the value of taxable services under Section 67 of the Finance Act, 1994? On going through Section 67 of the Finance Act, 1994, sub-clause (i) states that where service tax is chargeable on any taxable service with reference to its value then such value shall in a case when the provision of service is for consideration in money be the gross amount charged by the service provider for such service. Sub-clause (ii) states that where provision of service is for a consideration not wholly or partly consisting of money, the value shall be such amount in money as with the addition of service tax charged, is equivalent to the consideration. Sub-clause (iii) further states that whether the provision of service is for a consideration which is not ascertainable, the amount may be determined in the prescribed manner. The explanation to the Section 67 of the Finance Act, 1994, purports to define the expressions *consideration*, *money* and *gross amount charged*. In this case, the equivalent money value of non monetary consideration [free of cost accommodation] could be easily determined on the basis of House Rent Allowance entitlement of the officers, deployed by CISF for providing security to the appellants. Hence, in terms of Section 67 of the Finance Act, 1994, it is clear that HRA, towards free accommodation provided by the service recipient to the service provider, is a part of the consideration and therefore, should have been included in the gross amount charged, on account of the benefit accruing to the service provider. The appellants should have discharged Service Tax under Reverse Charge Mechanism, after adding the cost towards accommodation to the gross amount charged by CISF. Even otherwise, the appellants were paying

HRA to CISF in respect of locations where they are not able to provide free accommodations.

10. I would now like to discuss the two case laws relied upon by the appellants, viz.;

[a] *Bhayana Builders Private Limited [2013(32) STR 49]*. The larger bench of the Tribunal, while deciding the question of inclusion of free supplies of goods to construction service provider, in the value of taxable services under Section 67 of the Finance Act, 1994, held that:

- *the non monetary consideration must still be consideration accruing to the benefit of the service provider from the service recipient;*
- *Section 67 deals with valuation of taxable services and intends to define what constitutes the value received by the service provider as consideration from the service recipient for the service provided, implicit in this legislative architecture is the concept that any consideration whether monetary or otherwise should have flown or should flow from the service recipient to the service provider and should accrue to the benefit of the later;*
- *the value of free supplies by a construction service recipient for incorporation in the construction would not constitute non monetary consideration to the service provider nor form part of the gross amount charged for the services provided;*
- *Section 67 does not require inclusion of free supplies in the gross value charged for computation of the value of taxable services;*
- *the goods and materials used must connote those goods and materials as are charged on the service recipient; that only a benefit, monetary or non monetary accruing to the service provider from the taxable service provided constitutes the value of taxable service and that value alone is legitimately susceptible to the levy of service tax;*
- *the value of goods and material supplied free of cost by a service recipient to the provider of the taxable construction service being neither monetary or non monetary consideration paid by or flowing from the service recipient accruing to the benefit of service provider would be outside the taxable value or the gross amount charged within the meaning of later expression in Section 67 of the Finance Act, 1994.*

The present dispute however, is different from the facts of the above case, in so much so that in the dispute at hand, there was no free supply of goods. Providing rent free accommodation clearly shows that consideration which has flown from ONGC [service recipient] to CISF [service provider] also led to accrued benefit to the service provider, thereby satisfying the legislative architecture, as pointed out in the aforementioned judgement. Had ONGC not provided free accommodation to the personnel of service provider, the cost component would have been incorporated by the service provider in the

bill. The case law therefore stands distinguished, since the facts are not similar.

[b] *Intercontinental Consultants and Technology Private Limited [2013(29) STR 9]*. The Hon'ble High Court of Delhi, in this judgement while holding Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 to be ultra vires, held that there can be no inclusion of expenditure and costs which are incurred by the service provider in the course of providing taxable service. This case law stands distinguished on facts since in this case, Rule 5(1) of the Service Tax (Determination Of Value) Rules, 2006, is nowhere in picture. Further, there is no proposal in this dispute of including expenditure incurred by the service provider into the taxable value.

11. In view of the foregoing, I find this to be a unique and typical case. I further find that that the cost accommodation [HRA], provided by the service recipient to the service provider and which was not included in the bills raised by the service provider, shall form part of the taxable value under Section 67 of the Finance Act, 1994, for calculating Service Tax. I therefore, find no reason to interfere with the order of the adjudicating authority in so far as demand of duty and interest is concerned. As far as imposition of penalty on the appellant is concerned, I find that the appellant had suppressed facts with the intent to evade payment of service tax and therefore, penalties imposed on the appellant are upheld.

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

13. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

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

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

05.09.18

(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.

To,

M/s. Oil and Natural Gas Corporation Ltd.,

Second Floor, Avani Bhavan,

Chandkheda,

Ahmedabad.

Copy to:-

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