
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा GST Building, 7 th Floor,, कर भवन Near Polytechnic, सतवी मंजिल, पॉलिटेक्निक के पास, Ambavadi, Ahmedabad- 380015 आम्बावाडी, अहमदाबाद-380015 079-26305065	 टेलीफैक्स : 079 - 26305136
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क फाइल संख्या : File No : V2/188/GNR/2018-19 / 11333 to 11338

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-013-19-20

दिनांक Date : 25-06-2019 जारी करने की तारीख Date of Issue:

08/07/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

Cr file

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : 05/AC/ST/MEH/18-19
दिनांक : 31-12-2018 से सृजित

Arising out of Order-in-Original: 05/AC/ST/MEH/18-19, Date: 31-12-2018 Issued by:
Assistant Commissioner, CGST, Div: Mehsana, Gandhinagar Commissionerate,
Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Shreenatthji Developers

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहां रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और 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 और लगाया गया जुर्माना रुपए 50 लाख या उससे ज्यादा है वहां 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 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 filed 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, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2018(2018 की संख्या 24) दिनांक: 06.08.2018 जो की वित्तीय अधिनियम, 1998 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 रुपए 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:

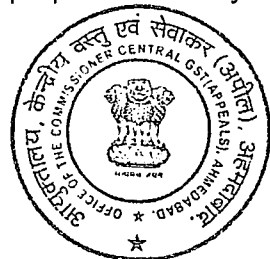
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ 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)(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.”

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



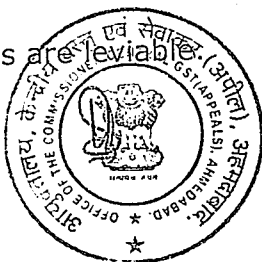
ORER-IN-APPEAL

This appeal has been filed by M/s Shreenathji Developers, C/o Shri Rajesh D Patel, AD Infracon Pvt Ltd., 185, 1st Floor, Sona Complex, Highway Road, Visnagar, Mehsana [hereinafter referred to as "the appellant"] against Order-in-Original No.05/AC/ST/MEH/18-19 dated 31.12.2018 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner of CGST [hereinafter referred to as "the impugned order"]].

2. Facts of the case is that during the course of an inquiry/correspondence initiated by the jurisdictional CGST officer, it was revealed that the appellant were engaged in providing 'Work Contract Service' and not registered with service tax department. It was further noticed that during the year 2012-13, the appellant has received taxable amount of Rs.1,99,53,000/- towards the service rendered and not paid any service tax thereon. A show cause notice dated 24.10.2017 was issued to the appellant for non-payment of service tax amounting to Rs.9,86,476/- with interest, considering the amount of Rs.1,99,53,000/- as taxable amount towards 'Work Contract Service' during the period of 2012-13. The said show cause notice also proposes for imposition of penalty under Section 78,77(1)(a) & (e) and 77(2) of Finance Act, 1994 (FA). Vide the impugned order, the adjudicating authority has confirmed the demand with interest and imposed penalties.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- The demand raised in the show cause notice is not sustainable as entire project has been completed before 2012-13; that the appellant had received the taxable value in question during 2012-13 is after BU permission; the appellant provides work contract service which falls under continuous supply of service and based on legal provisions, in case of continuous supply of service, the date of completion of an event shall be the point where the appellant is liable to pay service tax; that even though entire/partial consideration is received in 2012-13, the point of taxation falls before 2012-13 as the project was completed before the said period.
- SCN has not been issue in accordance with the instruction laid down in Department's circular No.201335/02/2017-CX dated 10.03.2017; that without recording statement of any partner of the appellant and without verifying supporting documents and evidences, the department has concluded that the appellant had received taxable income under 'Work Contract Service' during 2012-13 on the basis records of M/s AD Infracone Pvt Ltd.
- No interest and no penalties are leviable.



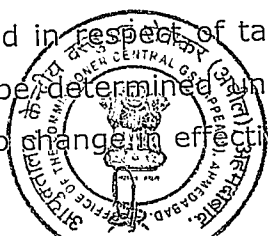
4. Personal hearing in the matter was held on 07.05.2019. Ms Bhagyashree Bhatt and Ms Nidhi Shah, Chartered Accountants appeared for the same and reiterated the grounds of appeal. They further argued that the department has not verified related documents in respect of appellant's working project and requested to remand the case.

5. Before going into the merits of the case, I find that the appellant has filed the instant appeal on 22.03.2019 against the impugned order dated 31.12.2018, received by them on 09.01.2019 i.e with a delay of 15 days from the prescribed period of two months, as stipulated under Section 85 of finance Act, 1944. The appellant has filed a condonation of delay application with request to condone the delay with a reason that the impugned order was misplaced from their Accountant's office and thereby lack of communication happened. I consider their request and in view of power entrusted under Section 85 of FA, I condone the delay.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum. The issue to be decided in the instant case is relating to non-payment of service tax on taxable amount received towards 'Work Contract service'.

6. I find that the non-payment of service tax by the appellant was noticed by the department while scrutiny of records of M/s A D Infracon Pvt Ltd; that the appellant were engaged in providing 'Work Contract service' to plot owners in scheme viz Uniyadham-1, Mehsana (Gujarat) and as per Income Tax assessment order for the year 2012-13, the appellant had accounted receipt of Rs.7,25,53,000/- in the said scheme. I find that the appellant has not disputed the category of the services provided by them and its taxability. They mainly disputed that the demand of service tax raised by the department is pertaining to the period of 2012-13 for receipt of taxable amount of Rs. 1,99,53,000/-, but the point of taxation for the said amount is before 2012-13. Therefore, the show cause notice dated 24.10.2017 issued in this regards is not sustainable as time barred. They further contended that the said show cause notice was issued without proper assessment and ignoring documentary evidences pertaining to the appellant on records.

7. I find that that 'Work Contract Service' is taxable from 01.06.2007 and the service has been defined under Section 65(105)(zzza) of FA till 30.06.2012 and from 01.07.2012, it deals under clause (54) of Section 65 B. Thus, the period under dispute, the said service is taxable which is not disputed. Rule 3 of Point of Taxation Rules 2011 deals with Determination of point of taxation; Rule 4 ibid deals with Determination of point of taxation in case of change in effective rate of tax. I find that as per CBEC's circular No.162/13/2012-ST dated 06.07.2012, the point of taxation for services provided in respect of taxable work contracts in progress on 01.07.2012 would need to be determined under Rule 4 of the Point of Taxation Rules 2011 unless there is no change in effective rate of tax. In the instant case, as



3 .Determination of point of taxation.- For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be,-

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

(i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;

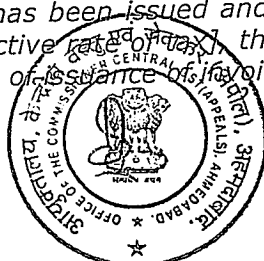
(a). *Explanation .- For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.*

(a) in case a taxable service has been provided before the [change in effective rate of tax], -

(ii) where the invoice has also been issued prior to [change in effective rate of tax] but the payment is received after the [change in effective rate of tax], the point of taxation shall be the date of issuing of invoice; or

(b) in case a taxable service has been provided after the [change in effective rate of tax],-

(ii) where the invoice has been issued and the payment for the invoice received before the [change in effective rate of tax], the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or



(iii) where the invoice has also been raised after the [change in effective rate of tax] but the payment has been received

8. As per contention of the appellant, point of taxation will be applicable as per Rule 3 (a) ibid. i.e "the time when the invoice for the service provided or agreed to be provided is issued: Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service". The adjudicating authority has held that the service rendered by the appellant falls under "original Work" and liable for service at the appropriate rate. I feel that the adjudicating authority has not considered appellant's above referred argument while confirming the duty. Further, I find that the adjudicating authority has worked out taxable value for 2012-13 by reducing receipt of gross value for the year 2010-11 and 2011-12 as it hits by Point of Taxation Rules. However, there was no discussion regarding how the receipt taxable amount for 2012-13 did not hit by Point of taxation Rules especially the appellant has placed above mentioned argument. Further the appellant at the time of personal hearing has also contested that their working was not considered by the adjudicating authority and further requested to remand the case.

9. In view of above discussion, I feel that the matter needs to be verified again as per Point of Taxation Rules supra and the contention raised by the appellant. Therefore, I remand the matter to the adjudicating authority.

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

उमाशंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : 05.2019

Attested

(Mohan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.



BY R.P.A.D

To,

M/s Shreenathji Developers,
C/o Shri Rajesh D Patel, AD Infracon Pvt Ltd.,
185, 1st Floor, Sona Complex, Highway Road, Visnagar, Mehsana

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Gandhinagar.
3. The Additional Commissioner, CGST, Gandhinagar
4. The Asstt. Commissioner, (Systems), CGST, Hq., Gandhinagar
5. The Assistant Commissioner, Gandhinagar Division.
6. Guard file.
- ✓ 7. P.A file.

