

- (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- षोबी/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 रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और 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 और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ 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 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 is 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 29) 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 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)(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.



ORORDER-IN-APPEAL

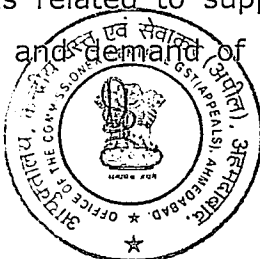
This appeal has been filed by M/s Bluemax Services, 1st floor, Parag Shopping Centre, Nr. B.K.Cinema, Mehsana-384002 (hereinafter referred to as "the appellant") against Order-in-Original No.04/AC/ST/MEH/18-19 dated 31.12.2018 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, CGST, Mehsana (hereinafter referred to as "the adjudicating authority").

2. During the course of audit, it was observed that the appellant was discharging service tax liability under the category "Business Auxiliary Service" till January-2014 and thereafter, the category of service has been changed and the appellant started discharging service tax liability under the category "Man Power Recruitment/Supply Service Agency" and paid service tax liability on 25% taxable service provided by them to HCL (service recipient), though there is no material changed in the content or nature of services. As the appellant has discharged their service tax liability in "Man Power Recruitment/Supply Service Agency" in place of "Business Auxiliary Service", they short paid the service tax amounting to Rs. 25,20,163/-.

2.1 Further, while scrutinizing the financial records of the said appellant and while comparing the same with ST-3 returns filed by them, it was observed that during the financial year 2015-16, the appellant had issued an invoice no. BMS/MDM/15-16/001 dated 16.06.2015 to HCL Services Ltd. Ahmedabad regarding Manpower Supply Services provided during the months of March-2015, April-2015 and May-2015, but in view of the provisions of Notification No. 30/2012-St dated 20.06.2012 neither service tax was charged therein nor it was paid for the month of March-2015. Total taxable value for the month of March, 2015 is Rs. 11,49,075 and Service Tax thereon @ 3.09 (being 25% of 12.36%) amounting to Rs. 35,506/-, which has not been paid by the said service provider and is required to be recovered from them with interest and penalty.

2.2 Therefore, a show cause notice dated 18.04.2017.20016 was issued to the appellant for demand of service tax amounting to 25,55,669/- [(Rs. 25,20,163/-service tax short paid on account of Business Auxiliary Services)+(Rs.35,306/- service tax short paid on amount of Man Power Supply Services for the month of March 2015)] under Section 73(1) of the Finance Act, 1994 with interest and penalty. Vide the impugned order, the service tax amount was confirmed with interest and imposed a penalty equal to the service tax amount confirmed.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that agreement was related to supply of manpower service, the classification of such service and demand of service tax thereon under the



category of " Business Auxiliary service was not sustainable. Purchase Order has been stating that, it pertain to supply of the manpower under the supervision of the M/s HCL. Appellant has followed the rule 4 of the Point of Taxation Rule and discharge service tax obligation them demand of service tax on the basis of the rule 3 of Point of Taxation Rule is not sustainable. They have issued the invoice on 16.06.2015 and payment thereof was received thereafter for the service rendered in the month of March 2015 in question; that with effect from 01.04.2015, no service tax is required to be paid by them in view of amended notification No.07/2015-ST dated 01.03.2015; that as per provisions of Rule 4 of Point of Taxation Rule, 2011, no service tax is leviable from them for the said period in such situation. They further submitted that as per the amended notification, the recipient has already been paid the tax in question and accordingly, the appellant is only liable for the differential interest for the delayed payment; that service tax cannot be charged twice for the same service. No penalty under Section 78 imposable in the present case. The appellant cited various case laws in support of their argument.

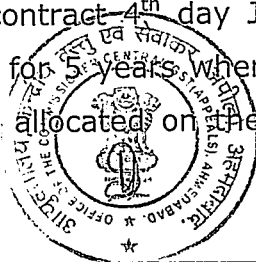
4. A personal hearing in the matter was held on 08.05.2019 and Mr. Vipul Khandhar, Chartered Accountant appeared for the same. He reiterated the Grounds of Appeal and stated that the service recipient has discharged 100% service tax liability under Manpower services. He further submitted additional submission in this regard and furnished copy of OIA No. AHM-EXCUS-003-APP-267-16-17 dated 31.03.2017 in respect of M/s Bluemax Services decided by the Appellate Authority.

5. I have carefully gone through the facts of the case and the submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The main issue to be decided in the matter is as under:

- (i) Whether service provided by the appellant to service recipient M/s HCL is Business Auxiliary service or Manpower service.
- (ii) Whether there is short payment of service tax amounting to Rs.35,506/- by the appellant as a service provider under notification No.30/2012-ST for the month of March 2015.

Issue-I : Whether service provided by the appellant to service recipient M/s HCL is Business Auxiliary service or Manpower service.

6. The appellant has submitted there is no question of differing from original contract, original contract 4th day January-2012 was pertaining to selection of service agency for 5 years where as work allocation during the impugned period has been allocated on the basis of Purchase Order issue



from time to time, Service requisition and value has been defined in Purchase Order which has been ultimately required to be classifiable for service tax purpose. Further appellant has submitted that in original contract dated 21.08.2014 whereby the description of service has been specify that, "Deployment of the manpower service" and the service @ 25% of service tax vendor and 75% of service tax HCL liabilities. Further, the appellant has argued that there is no revenue loss to the Government. It is revenue neutral situation. If the appellant would have paid service tax then M/s HCL (service recipient) was not liable for that amount;

6.1 I have gone through the Purchase Order No. 7000028017 dated 21.08.2014, invoice dated 15.12.2014, 11.03.2015, 15.06.2015, 07.09.2015, 03.12.2015 and 04.03.2016 with Annexure and prima facie, it seems "Manpower Services".

6.2 The adjudicating authority has given the reference of agreement dated 04.01.2012 only. However, invoices issued for the service held from December, 2014 to March, 2016. The adjudicating authority did not discuss about any agreement or purchase order from January 2014 onwards and even not discussed about the purchase order dated 21.08.2014.

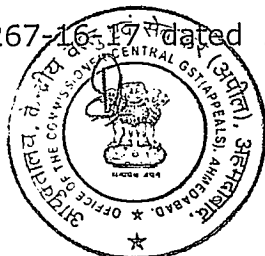
6.3 Further, the Hon'ble Tribunal in case of M/s Kakinada Seaports Ltd [2015 (40) STR 509-Tri. Bang] has been held that once tax paid by the service provider under reverse charge mechanism, service tax cannot be demanded.

6.4 Looking into above facts, I find merit consideration in the argument of the appellant. If the appellant paid the service tax in question for the month of March 2015, the recipient is eligible for refund of the amount so paid and to that extent net liability of service tax shall stand neutral, therefore, it is an exercise of revenue neutral. Hence the demand on tax which has already paid does not exist.

6.5 In view of the above circumstances, both the facts, (i) nature of services and (ii) revenue neutrality is to be verified properly by the adjudicating authority.

Issue- II: Whether there is short payment of service tax amounting to Rs.35,506/- by the appellant as a service provider under notification No.30/2012-ST for the month of March 2015.

7. In this regard, I have already decided the same matter, vide my OIA No. AhM-EXCUS-003-APP-267-16-17 dated 23.3.2017 in the case of M/s



Blumax Service. The relevant paras of OIA dated 23.03.2017 is reproduced below:

8. For the sake of clarity, the relevant provisions of said Rules is reproduced and read as under:

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

(a) 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.

(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 :

Provided that for the purposes of clauses (a) and (b), -

(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;

(ii) wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a).

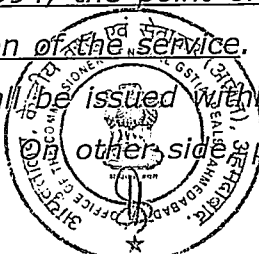
Explanation - For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

Rule 4. Determination of point of taxation in case of change in effective rate of tax. - Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change in effective rate of tax in respect of a service, shall be determined in the following manner, namely :-

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

(i) where the invoice for the same has been issued and the payment received after the change in effective rate of tax, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or

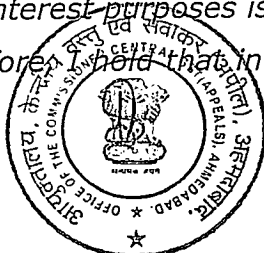
9. In the instant case, I observe that the appellant, after completion of the service pertaining to March 2015, had issued invoice on 16.06.2015 and received payment later on. This fact was not disputed. The provisions of Rule 3 ibid clearly stipulates that where the invoice is not issued within the 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. As per Rule 4A of Service Tax Rules, the invoice shall be issued within thirty days from the date of completion of service. On other side provisions of Rule 4 a(i) which



stipulates that where the invoice for the same has been issued and the payment received after the change in effective rate of tax, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier. Rule 4 refers a situation in case of change in effective rate of tax. Due to amendment in notification No.30/2012-ST with effect from 01.04.2015, vide notification No.07/2015-ST, service tax of 25% of the value of taxable service to be paid by the service provider has been withdrawn, instead service tax of 100% of the value of taxable service to be paid by the service recipient. In the circumstances, I am of the considered view that there is no change in effective rate of service tax but only the percentage of tax to be paid by the service provide and service recipient is changed. Therefore, for payment of service tax for the month of March 2015, the notification applicable in the instant case is notification No.30/2012-ST and determination of point of taxation shall be as per Rule 3 of Point of Taxation Rules, 2011.

However, in the instant case a situation arisen that the appellant had issued a combined invoice for the month of March 2015 to May 2015 on 16.06.2015 and payment of service tax on 100% of the value of taxable service was paid by the recipient as per provisions of notification No.07/2015-ST dated 01.03.2015 (effective from 01.04.2015). In this regard, the appellant has argued that as far as receipt of service tax concerned, there is no losing to the revenue. However, the adjudicating authority has held that as per law prevails, the person who is liable to pay tax shall pay the tax. The appellant has relied on case law of Hon'ble Tribunal in case of M/s Kakinada Seaports Ltd [2015 (40) STR 509-Tri. Bang], wherein, it has been held that once tax paid by the service provider under reverse charge mechanism, service tax cannot be demanded.

10. Looking into above facts, I find merit consideration in the argument of the appellant. If the appellant paid the service tax in question for the month of March 2015, the recipient is eligible for refund of the amount so paid and to that extent net liability of service tax shall stand neutral, therefore, it is an exercise of revenue neutral. Hence the demand on tax which has already paid does not exist. However, the issue remains for deciding whether interest and penalties are to be demanded. Simply because a situation leads to revenue neutrality does not imply that tax need not be paid on time. When law requires tax to be paid it has to be paid as per time specified. The time to be considered for interest purposes is between the due date and the payment day. Therefore, I hold that interest is payable under Section



75 of the Finance Act. As regards penalty, I observe that the payment of service tax was missed due to interpretation of prevailing notification and intention to evade payment of duty is not on the part of the appellant. Therefore penalty is set aside.

11. In view of the foregoing, I set aside the demand and penalty and hold to pay interest. The appeal stands disposed of accordingly.

8. In view of the above facts and discussions held in the above paragraph, I remand the case back to verify the fact in fresh in the light of discussion held above and my earlier OIA No. AhM-EXCUS-003-APP-267-16-17 dated 23.3.2017 in the case of M/s Blumax Service.

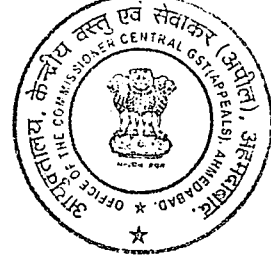
9. The appeal filed by the department stands disposed of in above terms.

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

(Signature)
(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date: 06.2019



Attested

(Signature)
(Mohan V.V)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

To
M/s Bluemax Services,
1st floor, Parag Shopping Centre,
Nr. B.K.Cinema, Mehsana-384002 (Gujarat)

Copy to:- 1. The Chief Commissioner of CGST, Ahmedabad Zone, Ahmedabad.

2. The Commissioner of CGST, Gandhinagar
3. The Assistant Commissioner (RRA), Gandhinagar
4. The Additional Commissioner, CGST (System), Gandhinagar
5. The Assistant Commissioner, Mehsana Division, Mehsana.
6. Guard file.
- ✓ 7. P.A.

