
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन सतवी मजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 टेलीफोन : 079-26305065	 GST-Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलीफैक्स : 079 - 26305136
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क फाइल संख्या : File No : V2/172/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-024-19-20 /12257 TO 12262
 दिनांक Date : 30-08-2019 जारी करने की तारीख Date of Issue: 09/09/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Gopi Nath Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : 20/D/GNR/NK/2018-19
 दिनांक : 03-12-2018 से सृजित

Arising out of Order-in-Original: 20/D/GNR/NK/2018-19, Date: 03-12-2018 Issued by:
 Assistant Commissioner, CGST, Div: Gandhinagar, Gandhinagar Commissionerate,
 Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Dahej SEZ 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।

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- 70बी/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 प्रतियों 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 पढ़ी 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 अनुसूची-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 35F 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:

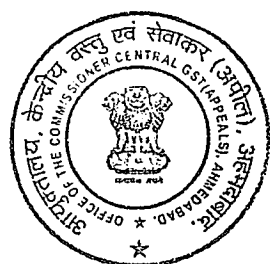
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ 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)(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.



ORDER-IN-APPEAL

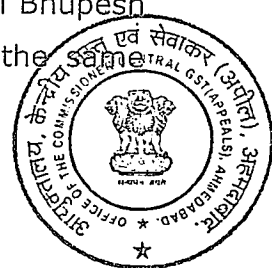
M/s Dahej SEZ Limited, 3rd Floor Block No. 14, Udhog Bhavan, Sector - 11, Gandhinagar - 382 2011, (hereinafter referred to as the 'appellant') has filed the present appeal against Order-in-Original No. 20/D/GNR/NK/2018-19 dated 03.12.2018 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Division - Gandhinagar, CGST Commissionerate Gandhinagar (hereinafter referred to as 'adjudicating authority').

2. Briefly stated, the appellant is holding Service Tax Registration number AACCD8098ESD004 and are engaged in providing 'Business Support Service', renting of immovable property service. It was observed by the Audit Officer of CGST that the appellant has raised invoices for the service charges to be collected from the allottees after 6 to 8 months of completion of service; that the said delay in issuance of invoice was taken place due to delay in fixing the rate charges by SEZ Development committee. The department has asked to pay the interest of delayed payment of service tax for the period from 2013-14 to 2015-16 which was not agreed by the appellant. Accordingly, a show cause notice dated 29.08.2017 was issued to them for recovery of interest amounting to Rs.16,17,766/-. Later on, vide the impugned order, the adjudicating authority has confirmed the recovery of interest.

4. Being aggrieved, the appellant has filed the instant appeal on the following grounds:

- The service rendered is recurrent in nature for exceeding more than three months and hence to be considered as Continued Supply of service; that point of taxation in this case shall be the completion of event as specified in the contract as per proviso to Rule 3(b) of Point of Taxation Rules, 2011.
- As per contract executed with SEZ units, charges for administrative service shall be paid after receipt of invoice from Developer; that invoice can be raised after charges decided by the Development Committee Meeting.
- The service provided to SEZ units and services provided to them are exempted under relevant notification against Form A2 and they have paid service tax only where the SEZ unit failed to provide Form A2 and such SEZ units has subsequently applied for refund since it is exempted to them; hence it is a revenue neutral effect.

5. Personal hearing in the matter was held on 21.08.2019. Shri Bhupesh Jhaver, Authorized representative of the appellant appeared for the



and reiterated the grounds of appeal. He further submitted a written submission dated 21.08.2019 for consideration.

6. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The limited point to be decided in the instant case is relating to the demand of Interest on delayed payment of Service Tax after due date in respect of service provided during 2013-14 to 2015-16 and corresponding invoices thereof raised in the year 2014-15, 2015-16 and 2016-17.

7. At the outset, I find that appellant has rendered service to the SEZ unit in the year 2013-14 to 2015-16 and raised invoices for the service charges to be collected from the allottees after 6 to 8 months of completion of service. The adjudicating authority has noted that as per Rule 4A of Service Tax Rules, 1994 and Rule 3(b) of Point of Taxation Rules 2011, the appellant have to issue invoice not later than thirty days from the date of completion of service. On other hand, the appellant has contended that the point of taxation in their case shall be determined according to the date when such charges are decided by the Development Committee Meeting, as per Section 12 of Gujarat Special Economic Zone Act, 2004.

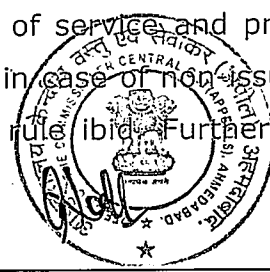
8. Service charges of Developer on SEZ units are recurrent in nature for exceeding more than three months and hence to be considered as continuous supply of services which is defined in rule 2(c) of point of Taxation rules, 2011 which is reproduced as below: -

(c) *"continuous supply of service" means any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months, or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition;*

As per Rule 4A of Service Tax Rules, 1994, in cases of continuous supply of services, the Invoice, Bill or Challan shall be made within 30 days of the date when each event specified in the contract which requires the recipient of service to make payment, is completed...

"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";

9. Therefore, the Rule 4A of STR, 1994 prescribes the time limit for issuance of invoices in case of continuous supply of service and proviso to the said Rule also prescribes the point of taxation in case of non-issuance of invoices within the time period prescribed under rule 4A. Further, as per



proviso of Rule 3(b) of Point of Taxation Rule, 2011, the invoices shall be issued not later than 30 days from the date of completion of taxable service or receipt of payment towards such taxable service which is earlier. The said Rule read as under:-

(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;*

10. All the provisions laid down under Rule 4A of STR, 1994 read with Point of Taxation Rule, 2011 scrupulously established that the date of completion of provision of service is due date of issuance of invoice. In the circumstances, as held by the adjudicating authority, there is no merit in the contention that the appellant had issued invoice after rate of service charged decided by the Development Committee. The appellant is required to be discharged the liability of tax according to the provisions of statute prescribed. Even if any delay due to administrative procedure, they have all option to pay service tax provisionally so as to avoid the violation. Therefore, I do not find any merit in the contention of the appellant.

11. The appellant further emphasized that the Services provided to the SEZ units are exempted from payment of Service Tax under relevant Notifications issued under Finance Act, 1994 against Form A-1 and now Form A-2. For this I shall refer to the Notification No.12/2013- Service Tax dated 01.07.2013 regarding Exemption to Services provided in SEZ Unit or Developer of SEZ for authorized operations. In the said Notification, condition at S. No. 3 (II)(b) reproduced as below:-

3. This exemption shall be given effect to in the following manner :

(II) The *ab initio* exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorized operation shall be allowed subject to the following procedure and conditions, namely :-

(b) on the basis of declaration made in Form A-1, an authorization shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

The applicant nowhere produced or mentioned that they had produced the requisite form as per aforesaid condition. Therefore such argument does not have any merit.



9. In view of foregoing discussion, I do not find any reason to interfere with the impugned order and I uphold the same. Accordingly, I reject the appeal filed by the appellant.

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

(Signature)
(Gopi Nath)

Commissioner (Appeals)

Date : .08.2019

Attested

(Signature)
(Mohanani V.V)
Superintendent (Appeals),
CGST, Ahmedabad.



BY R.P.A.D

To,
M/s Dahej SEZ Limited,
3rd Floor Block No. 14,
Udhyog Bhavan, Sector - 11,
Gandhinagar - 382 2011:

Copy to:-

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

