



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

कर भवन,

सहर्षी मंजिल, पोलिटेक्निक के पास,

आम्बावाडी, अहमदाबाद-380015

GST Building, 7<sup>th</sup> Floor,,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015



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क फाइल संख्या : File No : V2/42/GNR/2019-20/12450 To 12454

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-028-19-20

दिनांक Date : 18/09/2019 जारी करने की तारीख Date of Issue: 27/09/2019

आयुक्त (अपील) द्वारा पारित

Passed by Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : AHM-STX-003-ADC-  
MSC-062-15-16 दिनांक : 3/30/2016 से सृजित

Arising out of Order-in-Original: AHM-STX-003-ADC-MSC-062-15-16, Date: 3/30/2016  
Issued by: Additional Commissioner, CGST, Div: RRA, Gandhinagar Commissionerate,  
Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Superintendent of Police

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 से 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, 4<sup>th</sup> 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 हैं।

(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 ईए-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, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 ईए-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 रुपये 5 लाख या उससे कम है वहां रुपये 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 5 लाख या 50 लाख तक हो तो रुपये 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 50 लाख या उससे ज्यादा है वहां रुपये 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 यथारिथति 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, 1984 की धारा 34F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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-APPEL

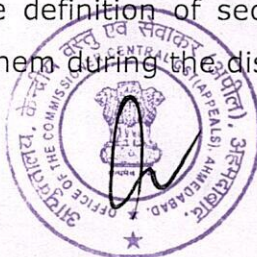
This appeal has been filed by the Superintendent of Police, Gandhinagar (Gujarat) [for short-'the appellant'] against Order-in-Original No.AHM-STX-003-ADC-MS-062-15-16 dated 30.03.2016 [for short-'the impugned order'] passed by the Additional Commissioner of Central Excise, Ahmedabad- III (now CGST Gandhinagar Commissionerate) [for short-'adjudicating authority'].

2. Briefly stated, the fact of the case are that the appellant is engaged in rendering service under "Security Agency Service"; that the appellant was providing security service to private persons or companies for activities like escorts of cash etc to the public/private sector banks for consideration. As it appeared that such service provided by the appellant is taxable under Section 65(105) (w) read with Section 65(94) of Finance Act, 1994 (FA) and they were not paying service tax, jurisdictional Officer has obtained details of amount received by the appellant towards such service rendered during 2009-10 to 30.06.2012. On the basis of such details submitted by the appellant, a show cause notice dated 21.10.2014 was issued to the appellant for non-payment of service tax amounting to Rs.26,89,834/- with interest and imposition of penalty under Section 76, 78, 77 of FA. Vide impugned order, the adjudicating authority has confirmed the demand with interest and imposed penalty of Rs.26,89,834/- under Section 78 of FA and Rs.10,000/- under Section 77 of FA; prescribed penalty under Rule 7c of Service tax Rules, 1994 and dropped imposition of penalty under Section 76 of FA.

3. Being aggrieved, the appellant has filed the instant appeal. They submitted that they are an authority of State Government to carry out statutory and constitutional duties working under Home Ministry of State Government; that they collect some charges according to the resolution passed by the Home Ministry in respect of service rendered to Bank etc.; therefore, as per definition under Section 65(105) of FA, the word 'person' used must be construed to be a natural person as well as a juristic person and by no stretch of imagination, the same will include State or its officers or the posts created under a statute; the issue in dispute has finally been decided by the Hon'ble supreme Court in case of CCE & ST, Jaipur-II V/s Dy.Commissioner of Police, Jodhpur [2018 (11) GSTL 133].

4. Hearing in the matter was held on 13.05.2019. Shri Krutosh Patel, Chartered Accountant appeared for the same and reiterated the submissions and further submitted additional submissions dated 12.09.2019 for consideration.

5. 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 issue to be decided in the instant case is whether the service rendered by the appellant would be covered within the definition of security agency services and service tax will be liable to be paid by them during the disputed periods.





6. I find that the service tax liability of Rs.26,89,834/- confirmed by the adjudicating authority in the instant case is pertaining to the period of 2009-10 to 30.06.2012 towards service rendered by the appellant to various organizations.

7. As per Section 65(94) of FA, "Security Agency" means "any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel" and taxable service under Section 65(105)(w) means "any service provided to any person, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity." In view of above definition, any person engaged in rendering service of Security Agency services to "any person" is taxable.

8. However, I find that the appellant has argued that they are not liable for payment of service tax on the following counts which needs to be examined.

[a] They are an authority of State Government working under Home Ministry Gujarat State as per definition under Section 65(105) of FA, the word 'person' will not include State or its officers or the posts created under a statute; that the Hon'ble Supreme Court has decided this issue in favour of their argument in case of CCE & ST, Jaipur-II V/s Dy. Commissioner of Police, Jodhpur [2018 (11) GSTL 133].

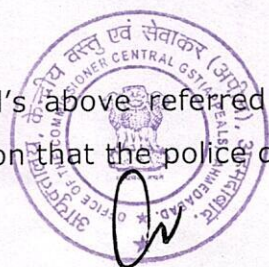
9. I have perused the decision of Hon'ble Supreme Court supra. I find that the the Hon'ble Supreme Court's decision in case of CCE & ST, Jaipur-II V/s Dy. Commissioner of Police, Jodhpur [2018 (11) GSTL 133] has affirmed the decision of Hon'ble Tribunal in case of Deputy Commissioner of Jodhpur [2017 (48) S.T.R. 275 (Tri. - Del.)]. While dismissing the appeal filed by the department, the Hon'ble Supreme Court passed the following order:

*"In the facts of the case, we are not inclined to interfere with the impugned order(s). The civil appeal(s) are accordingly dismissed."*

*The Appellate Tribunal in its impugned order had held that the activity of the State police represented by the Superintendent of Police of various districts deploying security personnel to various organizations and for character verification of candidates selected for various jobs on payment of charges, was not leviable to Service Tax under the category of Security Agency service under Section 64(94) of the Finance Act, 1994.*

*It was further held that the definition of 'person' introduced in Section 65B (37) of the Finance Act, 1994 to include Government, local authorities, etc. with effect from 1-7-2012 was not applicable prior to the said date."*

On close perusal of the Hon'ble Tribunal's above referred order, I find that the Hon'ble Tribunal has come to the conclusion that the police department, which is an





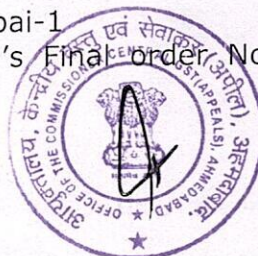
agency of the State Govt., cannot be considered to be a "person" engaged in the business of running security services. The relevant para 10 of the said Hon'ble Tribunal's decision are under:

*"In the light of the definition of the term "person" in the General Clauses Act, 1897, which has also been examined and clarified by the Apex Court, it would appear that the Superintendent of Police, which is an agency of the State Govt. does not appear to be covered within the term "person". It is also noteworthy that in the year 2012 when the pattern of levy of service tax was changed and the concept of negative list was introduced with effect from 1-7-2012, a definition was introduced for the term "person" in Section 65B(37), of the Act, which includes the Govt., local authorities, etc. From this, it is evident that such a definition for the term "person" has become part of the statute only from this date. To decide the meaning of "person" up to this date, we will have to refer to the General Clauses Act, 1897 as well as relevant case laws. The Apex Court has clearly held that the definition of "person" cannot be extended to include State. Consequently, we are of the view that the Superintendent of Police will not be covered within the term "person"."*

7. In view above decision, it is very clear that the definition of "person" cannot be extended to include State Government and the Superintendent of Police will not be covered within the term "person" upto 01.07.2012. Accordingly, the appellant is not liable to pay service tax in respect of 'security agency' service provided by them upto 01.07.2012. However, the decision supra further clarifies that on introduction of definition for the term "person" in Section 66B (37) of FA, Government or local authority has become part of the statute from 01.07.2012 only. This indicates that the Government or local authority who provides "security agency" service falls under the definition of Section 65(94) of FA supra and the service provides by them is taxable as provided under Section 65(105)(w) w.e.f 01.07.2012. By applying the ratio of the above decision, it is apparently clear that the appellant is liable to pay service tax for the service in question from 01.07.2012. However, in the instant case demand was confirmed for the period from 2009-10 to 30.06.2012. Therefore, in view of above decision of Hon'ble Tribunal and Hon'ble Supreme Court supra, I find that the service tax demanded for the period in question by the adjudicating authority with interest is not correct and tenable and required to be set aside. I do so. Since the demand is not sustainable, the question of imposition of penalty is also not sustainable.

8. The appellant has further furnished decision of Hon'ble Tribunal on similar issue in the following cases in their favour:

- [i] Superintendent of Police, Keda V/s CCE & ST, Ahmedabad, (Hon'ble Tribunal, Ahmedabad's Final order No.A/10786/2018-27.04.2018)
- [ii] Superintendent of Police V/s CCE & ST, Bhavnagar (Hon'ble Tribunal, Ahmedabad's Final order No.A/11428/2018-13.07.2018)
- [iii] Mumbai Police V/s CST, Mumbai-1 (Hon'ble Tribunal, Mumbais 's Final order No.A/85703-85704/2018-23.03.2018)





In all above decisions, the Hon'ble Tribunal has set aside the demand of service tax in respect of Security Agency service rendered by the Police, in view of Hon'ble Tribunal, Jodhpur's order in case of Deputy Commissioner of Jodhpur supra.

9. In the foregoing discussion, I set aside the impugned order and allow the appeal filed by the appellant. The appeal stand disposed of in above terms.

Gopi Nath) 18/9/19

Commissioner (Appeals)

Date 09.2019

Attested

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



**BY R.P.A.D**

To

The Superintendent of Police,  
Sector-27, Gandhinagar,

**Copy to:-**

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



