



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

वस्तु एवं सेवा

GST Building, 7th Floor.,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015



: 079-26305065

टेलीफैक्स : 079 - 26305136



क फाइल संख्या : File No : **V2/75/GNR/2019-20/15164 To, 15134**
ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-024-2020-21**
दिनांक Date : **10-07-2020** जारी करने की तारीख Date of Issue: **23/07/2020**
आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **04/AC/HMT/NRM/2019-20**
दिनांक : **18-Jul-19** से सृजित

Arising out of Order-in-Original: **04/AC/HMT/NRM/2019-20**, Date: **18-Jul-19** Issued by:
Assistant Commissioner, CGST, Div: Himmatnagar, Gandhinagar Commissionerate,
Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Bloom Dekor Ltd.

Plot No. 267, Village Oran, National Highway No. 08, Prantij, Sabarkantha.

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- १0बी/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

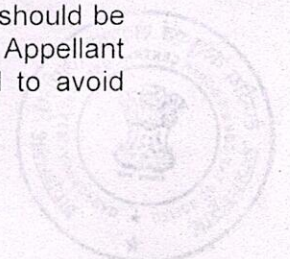
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(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 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 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 filled to avoid multiplicity 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 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 होगा।

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."



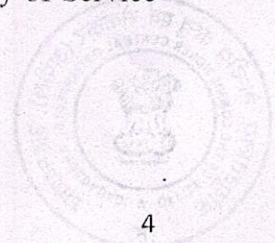
ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s. Bloom Décor Limited, having registered office at Plot No. 267, Village Oran, National Highway No. 08, Taluka-Prantij, Dist.-Sabarkantha (hereinafter referred to as the '*appellant*') against Order in Original No. 04/AC/HMT/NRM/2019-20 dated 18.07.2019 (hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner of Central Tax, Division Himmatnagar, Gandhinagar (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant is engaged in manufacture of Paper Based Decorative Laminate Sheets falling under Chapter SH No. 48239019 of the First Schedule to the Central Excise Tariff Act, 1985 and is holding Central Excise Registration No. AAACB6221BXM001. The appellant is also holding Service Tax Registration No. AAACB6221BST001. The audit of the appellant was conducted by the department for the period January 2013 to December 2013. It was found by the audit officers that the appellant did not pay Service Tax under Reverse Charge Mechanism under the category of Man Power Supply Agency's Service (Labour Contractor), Security Agency Service and Goods Transport Agency Service falling under erstwhile Section 65(105)(k), Section 65(105)(w) and Section 65(105)(zzp) of the Finance Act, 1994 (in short '*the Act*') respectively. Also, the appellant did not pay Service Tax on the professional fees paid to the Director of the company. On the basis of audit observation, a SCN vide F.No. V/15-01/CGST/HMT/O&A/17-18 dated 19.03.2018 was issued to the appellant by Assistant Commissioner, Central GST, Division-Himmatnagar, Gandhinagar wherein total Service Tax demand of Rs. 29,47,340/- along with applicable interest and penalty was made. The demand was confirmed by the Adjudicating Authority vide Order in Original No. 04/AC/HMT/NRM/2019-20 dated 18.07.2019. He also imposed penalty on the appellant under Section 77(2) and 78 of the Finance Act, 1994. The adjudicating authority has relied upon the judgment of Settlement Commission, Chennai in case of SVL Manpower Solutions Private Limited.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds that:

- a. The Service Tax liability was paid on the entire value of service by the service providers and hence demanding the same once again would result in double taxation.
- b. Since, the due tax payable was actually paid by another person connected with the transaction hence the same liability could not be fastened on the appellant on the pretext that the person who actually discharged the liability of Service Tax was not the person liable to pay the tax.



- c. In the facts of the present case, if any Service Tax amount is discharged in pursuance of order of adjudicating authority, the same would be available as CENVAT thereby creating a revenue neutral situation.
- d. The Adjudicating Authority has erred in referring and relying upon the judgment of Settlement Commission as the order passed by Settlement Commission is only binding to the party for whom the order has been passed by them.
- e. There is no loss of revenue as the service provider has paid the Service Tax.
- f. The demand on the fees paid to Director is not legally sustainable as it was made to him in his individual capacity as Chartered Accountant and proper bills were raised.
- g. The demand under the category of Goods Transport Agency (GTA) is not sustainable as the individual consignment freight was small and exempt vide Notification No. 34/2004- ST.
- h. The appellant placed reliance on a plethora of Judgements.

4. Personal Hearing in the case was held on 26.06.2020. Smt. Shilpa P. Dave, Advocate, appeared for hearing on behalf of the appellant. She reiterated submissions made in Appeal Memorandum. She submitted written submission along with the case laws in support of her contention.

5. I have carefully gone through the facts of the case available on record, grounds of appeal and oral submissions made by the appellant at the time of hearing. I find that the issue to be decided in the present appeal is whether the appellant is liable to pay Service Tax under Reverse Charge Mechanism under the category of Man Power Supply Agency's Service (Labour Contractor), Security Agency Service, Goods Transport Agency Service and Professional Fees of the Director.

6. It is observed that the government has vide Notification No. 30/2012-ST dated June 20, 2012 fastened the liability of payment of Service Tax on the service receivers under Reverse Charge Mechanism. As per the said notification, w.e.f. 01.07.2012, the service receivers were required to discharge 75% of the Service Tax liability in respect of Supply of Manpower Service and 100% in respect of Goods Transport Agency (GTA) Service. The said notification was further amended vide Notification No. 45/2012-ST dated August 07, 2012 whereby the service receiver in respect of services received from Director of the company was required to discharge 100% of Service Tax liability.

6.1 The rationale behind Reverse Charge Mechanism was explained by CBEC in para 12 of the letter D.O.F. No. 334/1/2012-TRU, dated 16.03.2012 which reads as under:

"12. It has been noticed that a number of registrants collect the tax but do not pay the same to the Department. This is a serious loss of



the revenue even though the compliant section at the recipient end is often not benefited. To ensure proper collection, while not inconveniencing small business, a new scheme is proposed to be introduced."

7. It is observed that the Adjudicating Authority has observed under Para 27 of the impugned order that the Service Provider has paid up the total Service Tax liability including that of the appellant. The relevant portion of the order is reproduced verbatim:

"In all the above issues, I find that the assessee had not paid up the Service Tax on the 75/100% of the value of the services received, as the case may be, being the Service Receiver. Instead, the Service Provider had paid up the total amount of Service Tax, including the portion of the Service Receiver."

The adjudicating authority has further observed that the service recipient is liable to pay appropriate Service Tax and after payment if there is an excess, the proper entity may seek refund.

7.1 As regards the liability to pay Service Tax on 100% of value of the Professional Fees paid to the Director, the adjudicating authority has under para 28 of the order observed as under:

"I find that no documents evidencing the payments made under the category of "Chartered Accountant Service" has been produced by the assessee as claimed by the assessee in their written submissions dated 07.09.2018."

7.2 It is apparent from the case records that the appellant was liable to pay 75% of the Service Tax liability under Reverse Charge Mechanism as service receiver but they did not discharge their tax liability in case of Man Power Supply Agencies (Labour Contractor) & Security Agency. Instead, the Service Providers have discharged their tax liabilities. Hence, it is observed that the appellant has not followed the procedure prescribed regarding discharging of Service Tax liability. However, there is no short payment of Service Tax either in respect of Manpower Supply Services as the service provider themselves have discharged the liability. As the service tax due to the exchequer in both the situations being already stand collected, there is no justification in raising a demand again on the same amount as it would amount to double taxation. I, therefore, do not find any merit in the contention of the adjudicating authority that the service recipient is liable to pay appropriate Service Tax and after payment if there is an excess, the proper entity may seek refund as the same does not serve any legal purpose.



8. I find that the case of Transpek Silox Industries Private Limited Vs. Commissioner of Central Excise, Vadodara-I [2018(17) G.S.T.L. 434 (Tri.-Ahmd.)] is squarely applicable in the case at hand. The Hon'ble Tribunal while setting aside the demand has observed that in a case where Service Provider pays 100% of the Service Tax, the Service Receiver is not required to pay the tax as it would result in double taxation.

9.1 I find that the adjudicating authority has relied upon the judgement of Hon'ble Settlement Commission in SVL Manpower Solutions Private Limited reported at 2018 (364) ELT (Setl. Comm.) while confirming demand. It is observed that the said case is not applicable in the instant case as the Commission has given finding against the service provider, who being a Private Limited Company, was required to discharge 100% of tax liability and that there was only 25% of payment by the service receiver. However, in the instant case, the entire liability has been discharged by the service provider and hence there is no short payment. The facts of the case are identical in case of Transpek Silox Industries supra. Hence, based on the said judgement of Tribunal, Ahmedabad, the demand of Rs.27,99,464/- under Manpower Supply Agency Service and Rs.54,990/- under Security Agency Service is not legally sustainable and is liable to be set aside.

9. As regards the Service Tax demand of Rs.65,180/- under Goods Transport Agency, the appellant has claimed that the said amount of tax was not payable by them on reverse charge basis as the consignment freight amount was very small and hence the same was exempted from payment of Service Tax in view of Notification No. 34/2004-ST. The adjudicating authority has not given any finding in this regard. The relevant Notification No. 34/2004-ST dated December 03, 2004 is reproduced below:

Notification No. 34/2004 - Service Tax

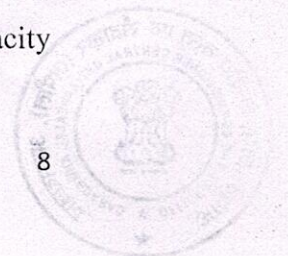
In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax leviable thereon under section 66 of the said Act, where,-

(i)	<i>the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or</i>
(ii)	<i>the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty</i>
	<i>Explanation.- For the purposes of this notification, "an individual consignment" means all goods transported by a goods transport agency by road in a goods carriage for a consignee.</i>



The appellant has in submission presented during hearing submitted the relevant ledgers in support of their contention. Since, the adjudicating authority has not given any finding regarding submissions made by the appellant, I find that it would be proper to remand the matter on this issue for recording his finding on the ledgers.

10. As regards liability of the appellant to pay Rs.27,706/- as Service Tax under Reverse Charge Mechanism under the category of Professional Fees paid to the Director, I find that for the financial year 2013-14, they have submitted copy of relevant ledger supported with invoice raised to him. It is observed from the said invoice that Mr. Mayur Parikh, Director, has raised invoice as Chartered Accountant for professional fees in company law matter. Hence, the service has been provided by Mr. Mayur Parikh in his individual capacity and not in the capacity as Director of the appellant company. Under the circumstances, Service Tax was payable by the individual person who was rendering the service and there was no scope of recovering Service Tax from the appellant under the Reverse Charge Mechanism. The charge made by the department that the impugned activity attracted Service Tax under the reverse charge mechanism in terms of Rule 2(d)(EE) of Service Tax Rules, 1994 and Notification No.30/2012-ST as amended is based on the incorrect surmise that the service provided by Mr. Mayur Parikh was in his capacity as Director. Further, I find that the CBEC has issued a clarification on independent Directors/Managing Directors under Management Consultancy Service, vide Circular No.115/9/2009-ST dated 31.07.2009. As per the clarification issued by the Board in the said Circular, "the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category 'Management Consultancy service'. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax". In other words, the service provided by the Director in the personal capacity to the Company, would be payable by the person who rendered such service and not by the company under Reverse Charge Mechanism. I also find that in a similar issue in case of M/s Advance Addmine Pvt Ltd, the Commissioner (Appeals), Ahmedabad vide OIA No.AHM-CXCUS-003-APP-003-18-18 dated 27.04.2018 has also taken a view that the Director himself is liable to pay the Service Tax as an individual service provider. Further, being a taxability issue, the onus is on the department to prove that the service rendered by Mr. Mayur Parikh was in the capacity of the Director of the company and not in his personal capacity so as to fasten the liability under RCM to the appellant. Apart from the mentioning that the appellant has paid professional fees to the Mr. Mayur Parikh, there is nothing mentioned about for what service/purpose the said amount has been paid to him. The crucial factor on the issue whether the services provided by the Director was in his capacity as a Director of the company or in his personal capacity is clearly missing in the case. The appellant, on the other hand, has established by records that the professional fees under dispute in the case has been paid for the services provided in his personal capacity



and not as a Director of the company. Therefore, the demand for Service Tax as confirmed in the impugned order is not sustainable and is liable to be set aside. Since the demand is set aside, the question of demanding interest under Section 75 of the Act and imposition of penalty under Section 76 and 78 of the Act does not arise.

11. In view of the above discussions, it is held that the impugned order is not sustainable for being not legal and proper and hence the same is set aside. The appeal filed by the appellant is allowed except to the extent that demand of service tax made under the category of Goods Transport Agency Service. For the demand of service tax under the category of Goods Transport Agency Service under RCM is concerned, the matter is remanded back to the original authority for recording his finding on the ledgers.

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

Akhilesh Kumar
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date : 10.07.2020.

Attested

Anilkumar P.

(Anilkumar P.)
 Superintendent (Appeals)
 CGST, Ahmedabad.



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5. The Dy. / Asstt. Commissioner, CGST, Himmatnagar Division, Gandhinagar Commissionerate.
- ✓ 6. Guard file.
7. P.A.

