आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलेफैक्स07926305136

DIN:20230364SW000000AD2F

स्पीड पोस्ट

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क फाइल संख्या : File No : GAPPL/COM/CEXP/21/2023-APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-215/2022-23**
दिनाँक Date : **24-03-2023** जारी करने की तारीख Date of Issue 30.03.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **31/AC/D/2022-23/AM** दिनाँक: **15.11.2022**, issued by Assistant/Deputy Commissioner,Division-IV, CGST, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s Astro Construction Ltd.,
   804, Matrix Building, Near Vodafone House,
   Off. S.G. Road, Prahladnagar, Ahmedabad-380051

2. Respondent
   Assistant/Deputy Commissioner, CGST,Division-IV, Ahmedabad North , 2nd Floor, Gokuldham Arcade,Sarkhej-Sanand, Ahmedabad - 382210

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।

Any person aggrieved by this Order-In-Appeal 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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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 प्रकिया 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.

(क) 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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।

(c) 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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.

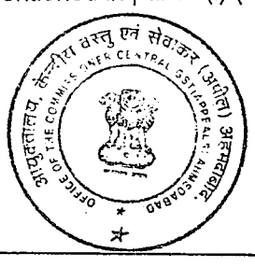
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तालिखित 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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. Registar 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 ओदश 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 हैं।

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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

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।

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

The present appeal has been filed by M/s. Astro Construction Ltd., 804, Matrix Building, Near Vodafone House, Off. S.G. Road, Prahladnagar, Ahmedabad – 380051 (hereinafter referred to as "the appellant") against Order-in-Original No. 31/AC/D/2022-23/AM dated 15.11.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division IV, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AADCA8538KST001 and engaged in supply of cylinder on rent. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2016-17, it was noticed that there is difference of value of service amounting to Rs. 12,96,180/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2016-17. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant was called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. V/27-37/SCN/Astro/ 2021-22 dated 21.10.2021 demanding Service Tax amounting to Rs. 1,94,427/- for the period FY 2016-17, under proviso to Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2017-18 (up to Jun-17).

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,94,427/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2016-17. In the impugned order, demand of Service Tax amounting to Rs. 48,607/- was also confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2017-18 (up to Jun-17). Further, Penalty of Rs. 2,43,034/- was imposed on the appellant under Section 78 of the Finance Act, 1994; and Penalty of Rs. 5,000/- was imposed on the appellant under Section 77(2) of the Finance Act,

1994 for failure to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- They are into business of providing empty gas cylinders to customer for their industrial use. Thus, the possession of the cylinders was lying with tenant of cylinders. The tenant has to pay deposit and on the receipt of cylinders, the deposit is paid back. The damages if any, on cylinders will be recovered. The possession and effective control is with the holder of Gas Cylinder, as it is use for industrial purpose.

- They have paid VAT on the income of renting of gas cylinders.

4. Personal hearing in the case was held on 16.03.2023. Shri Nitin M. Pathak, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He submitted a written submission during hearing. He reiterated submission made in appeal memorandum.

4.1 The appellant, vide their written submission dated 21.12.2022 submitted during the course of personal hearing, inter alia, made the following submissions:

- They were giveing Gas Cylinders on rent on time basis by taking deposit. On returning of the Gas Cylinders, the deposits will be returned to the customer, after deducting the damages to cylinder, if any.

- The possession is given to the customer and they did not have the custody of cylinders.

- In their case, they did not enter in to any agreement, but the sale bill itself was an agreement.

- They were giving control of gas cylinders to the customer, hence, no service tax is leviable in their case. In support of their arguments, they relied upon the following judgments:

  a) Industrial Oxygen Vs. State of AP reported in 1992 (86) STC 539 (AP HC)
  b) State of Orissa Vs. Asiatic Gases – (2007) 7 VST 531 = 5 SCC 766 (SC)
  c) North East Gases Vs. State of Assam – (2004) 134 STC 249 (Gau. HC)

d) Hindustan Coca Cola Beverages P. Ltd. Vs. State of Andhra Pradesh – (2013) 61 VST 393 (AP HC DB)

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2016-17 and FY 2017-18 (upto June-2017).

6. I find that in the SCN in question, the demand has been raised for the period FY 2016-17 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

> *"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.*
>
> *3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."*

6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a

proper ground for raising of demand of service tax, specifically when the appellant is already registered with Service Tax department.

7. It is observed that the appellant are registered with department and were engaged in renting out of cylinder. It is further observed that the adjudicating authority, while confirming demand of service tax has held that the activity undertaken by the appellant were classifiable under the category of "Supply of Tangible goods for use" defined under Section 65(105) (zzzzj) of the Finance Act, 1994. However, I find that the provisions under Section 65(105) of the Finance Act, 1994 has been replaced by negative list based service tax regime vide Notification No. 20/2012-ST dated 05.06.2012, made applicable w.e.f. 01.07.2012. Hence, the adjudicating authority has confirmed the demand under the provisions prevalent before 01.07.2012, which are not in existence for the period of demand pertaining to FY 2016-17 & FY 2017-18 (upto June-17). I find that on this count also the confirmation of demand by the adjudicating authority is not sustainable.

8. I also find that main contention of the appellant is that they had supplied the goods / Oxygen Cyliner during the period on rent basis and not only possession and custody of the goods stood transferred to the customer, but the effective control and right to use such goods also stood transferred to the customer. Thus, in the instant case, transaction involves the transfer of the right to use any material involving transfer of both possession and control of such goods to the user of goods and considered as deemed sales, which is leviable to VAT and they have paid VAT.

9. I find that with effect from 01.07.2012, there has been total shift in the service tax levy, from "specific service based taxation" to "negative list based taxation". That means, all the services, except those listed in negative list, shall be liable to service tax. Section 66B of the Finance Act, 1994 provides that there shall be levied a tax to be referred to as service tax on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such a manner as may be prescribed. The 'negative list' of services is provided in Section 66D of the Finance Act, 1994. Section 65B(44) of the Finance Act, 1994, as inserted w.e.f. 1 July, 2012, defines 'service' to mean any activity carried out by any person for another for consideration and includes a declared service but would not include certain services specified in clauses (a), (b) and (c). Declared services have been enumerated in Section 66E of the Finance Act, 1994. Sub-clause (f) of Section 66E of the Finance Act, 1994, which is relevant for the purposes of the activity involved in this case, is as follows:

"(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;"

9.1 I also find that the Transfer of Right to use goods for cash, deferred payment or valuable consideration is considered as deemed sales under sub-clause (d) of Article 366(29A) of the Constitution of India. To determine whether the activity carried out by the appellant falls under deemed sales or declared service under Section 66E(f) of the Finance Act, 1994, I find it relevant to refer to the judgment of the Hon'ble Apex Court in the case of BSNL vs. UOI reported in 2006 (2) STR (161) (SC), wherein the following five key test has been given to decide the transaction is 'deemed sale' or otherwise:

"91. To constitute a transaction for the transfer of the right to use the goods the transaction must have the following attributes :

a. There must be goods available for delivery;

b. There must be a consensus ad idem as to the identity of the goods;

c. The transferee should have a legal right to use the goods-consequently all legal consequences of such use including any permissions or licenses required therefor should be available to the transferee;

d. For the period during which the transferee has such legal right, it has to be the exclusion to the transferor this is the necessary concomitant of the plain language of the statute - viz. a "transfer of the right to use" and not merely a licence to use the goods;

e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others."

9.2 I find that when Oxygen Cylinders / Gas Cylinders were handed over to customer for use by the appellant, it is natural that the appellant will not have control over its use; that transfer of goods involve transfer of possession and effective control of the goods. Thus, I find that in the present case in hand, the answer of the all the above five key attributes has gone in favour of the appellant and thus it can be said that the five essential ingredients as held by the Hon'ble Supreme Court have been fulfilled in the transactions of hiring / renting undertaken by the appellant and it is termed as 'deemed sale' and exigible to VAT.

9.3 I also find that in the present case, the goods had been leviable to VAT and the appellant had paid VAT. Therefore, Supply of tangible goods for use and leviable to VAT / sales tax as deemed sale of goods, is not covered under the scope of declared service under Section 66E(f) of the Finance Act, 1994. The similar view has been taken by the Board in their DO letter F.No. 334/1/2008-TRU dated 29.02.2008, when the Supply of Tangible Goods

service defined as taxable service. The relevant portion of the said letter are reproduced below:

> *"4.4 SUPPLY OF TANGIBLE GOODS FOR USE:*
>
> *4.4.1 Transfer of the right to use any goods is leviable to sales tax / VAT as deemed sale of goods [Article 366(29A)(d) of the Constitution of India]. Transfer of right to use involves transfer of both possession and control of the goods to the user of the goods.*
>
> *4.4.2 Excavators, wheel loaders, dump trucks, crawler carriers, compaction equipment, cranes, etc., offshore construction vessels & barges, geo-technical vessels, tug and barge flotillas, rigs and high value machineries are supplied for use, with no legal right of possession and effective control. Transaction of allowing another person to use the goods, without giving legal right of possession and effective control, not being treated as sale of goods, is treated as service.*
>
> *4.4.3 Proposal is to levy service tax on such services provided in relation to supply of tangible goods, including machinery, equipment and appliances, for use, with no legal right of possession or effective control. Supply of tangible goods for use and leviable to VAT / sales tax as deemed sale of goods, is not covered under the scope of the proposed service. Whether a transaction involves transfer of possession and control is a question of facts and is to be decided based on the terms of the contract and other material facts. This could be ascertainable from the fact whether or not VAT is payable or paid."*

9.4 I also find that the adjudicating authority has erred in arriving at the findings that in the invoices issued by the appellant they have simply mentioned Rent for Oxygen Cylinder and there is not clear narration that there has been transfer of right of possession and effective control and therefore concluded that the service provided by the appellant falls under 'supply of tangible goods' and liable to service tax. The relevant part of the impugned order is as under:

> *"14. .....*
>
> *I find that it is necessary that there must be a contract or agreement or it may be mentioned under invoice regarding the conditions for transfer of right to use of the tangible goods. There must be clear narration that there has been transfer of right of possession and effective control. In this present case I find that the Noticee have provided the service of 'supply of tangible goods'. On going through the invoices raised in this regard I find that they have simply mentioned 'Rent for Oxygen Cylinder'. I also find that they have not submitted any contract or agreement entered*

with the recipient of service. Therefore, I find that the service provided by the Noticee suitably falls under 'supply of tangible goods' and liable to service tax……"

9.5 In view of the above, I find that the adjudicating authority has erred in arriving at the findings that the service provided by the appellant falls under 'supply of tangible goods'. In the facts of the case, I find that Transfer of a right to use goods implies that full liberty is vested in the transferee to have the right to use goods to the exclusion of all other, including the owner of goods during the rental / hire period. In the present case, the appellant also paid VAT on the income of renting of gas cylinders. After careful examination of facts of the case as discussed supra, I am of the opinion that the service rendered by the appellant will not be covered under declared service under Section 66E(f) of the Act and the appellant cannot be held liable to discharge service tax on the income received from providing such services.

10. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of renting / hiring income received by the appellant during the FY 2016-17 & FY 2017-18 (upto June-17), is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

11. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

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

(Akhilesh Kumar) 24th March, 2023.
Commissioner (Appeals)

Attested

(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad

Date : 24.03.2023

<u>By RPAD / SPEED POST</u>

To,
M/s. Astro Construction Ltd.,
804, Matrix Building,
Near Vodafone House,
Off. S.G. Road, Prahladnagar,
Ahmedabad – 380051

Appellant

The Assistant Commissioner,

Respondent

CGST, Division-IV,
Ahmedabad North

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad North
3) The Assistant Commissioner, CGST, Division IV, Ahmedabad North
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North (for uploading the OIA)
5) Guard File
6) PA file