

	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,	केंद्रीय उत्पाद शुल्क भवन,	7 th Floor, Central Excise Building,
सातवीं मंजिल, पॉलिटेक्निक के पास,	आम्बावाडी, अहमदाबाद-380015	Near Polytechnic, Ambavadi, Ahmedabad-380015
फोन : 079-26305065		टेलीफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(ST)262/A-II/2016-17/10091 को 10095
स्थगन आवेदन संख्या(Stay App. No.):
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-139-17-18
दिनांक (Date): 26/10/2017, जारी करने की तारीख (Date of issue): 27-11-17
श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by Shri Uma Shanker, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद, आयुक्तालय द्वारा जारी
मूल आदेश सं----- दिनांक -----से सृजित
Arising out of Order-In-Original No. SD-01/09/AC/ GUJ.INFO/2016-17 Dated:
15.12.2016 issued by: Assistant Commr STC(Div-I), Ahmedabad.

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Gujarat Infotech 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।

Any person an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



- (c) 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 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 हों।

- (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-बी/35-इ के अंतर्गत:-

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

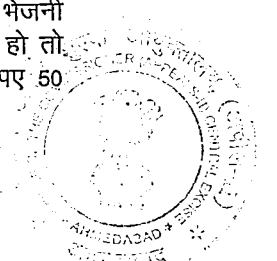
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) 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 ओ-20, न्यू मैन्टल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 Appellate 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील 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।

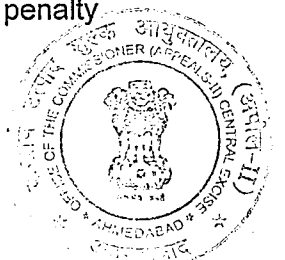
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 सन्दर्भ में 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

M/s Gujarat Infotech Limited, A-2, 2nd Floor, Jay Tower, Ankur Complex, Naranpura, Ahmedabad 380 013 (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.SD-01/09/AC/Guj.Info/2016-17 dated 15.12.2016 (henceforth, "impugned order") passed by the Assistant Commissioner, Service Tax, Division-I, Ahmedabad (henceforth, "adjudicating authority").

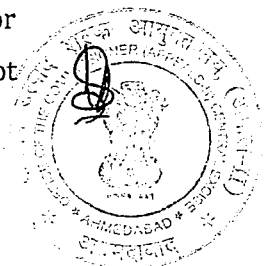
2. The facts of the case, in brief, are that the appellant, having service tax registration for providing taxable services, when audited by the departmental officers, was found to have declared in ST-3 returns filed for the F.Y.2010-11 and F.Y.2012-13 a less value of taxable services than what was recorded in the books of account. A show cause notice demanding service tax on the differential value was issued on 14.10.2015. The adjudicating authority, while deciding the matter, accepted the explanations given by the appellant in support of difference in the two values, excepting the difference of Rs.35,75,675/- pertaining to the income from 'Rashtriya Swasthya Bima Yojana (RSBY) printing project'. This printing project was related to enrollment and issuance of smart cards to BPL families, as per agreement with 'General Data Pvt Ltd', a company engaged in various projects relating to smart cards & RFID. The adjudicating authority treated this income as consideration received against taxable services namely 'business support service' specified under section 65(105)(zzzq) of the Finance Act, 1994.

2.1 The adjudicating authority, therefore, confirmed the service tax demand of Rs.3,68,295/- involved in the RSBY project income of Rs.35,75,675/- and dropped the remaining demand. The appellant has felt aggrieved with the confirmation of demand on RSBY project and has preferred this appeal.

3. The main points in the grounds of appeal, in brief, are as follows-

3.1 Appellant submits that there never was any proposal to treat RSBY Printing Project under the category of 'support services of business or commerce' under section 65(105)(104c) read with section 65(105)(zzzq) of the Finance Act, 1994 and therefore department has travelled beyond the scope of show cause notice, which was not permissible in view of many decisions in this regard. Appellant has quoted some of such decisions.

3.2 Appellant argues that only specified activities provided in relation to business or commerce are covered in the 'support services of business or commerce' and the activity of printing smart cards on behalf of the client was not



one of them. Thus, as per appellant, services other than those specified cannot be covered in the 'support services of business or commerce'.

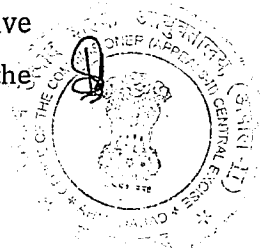
3.3 Appellant states that even if the services are presumed to be taxable, service provided in relation to printing provided to a client by any person in relation of business auxiliary service, in so far it related to provision of service on behalf of the client, was exempt in terms of Notification No.14/2004-ST.

3.4 Appellant has also contested the demand of interest and imposition of penalties.

4. In the personal hearing held on 4.10.2017, Dr. Nilesh V. Suchak represented the appellant and reiterated the grounds of appeal. He explained that the printing for a client was exempt under Notification No.14/2004-ST and according to him, there was no suppression involved. He also made some written submissions.

5. I have carefully gone through the appeal. The issue to be decided is whether RSBY project income – income from enrollment and issuance of smart cards to BPL families – was taxable as support services or not in terms of section 65(105)(zzzq) of the Finance Act, 1994. According to adjudicating authority, the activity of enrollment and issuance of smart cards in accordance with agreement with 'General Data Pvt Ltd' was covered under 'business support services' defined under section 65(104c) and was therefore taxable in terms of section 65(105)(zzzq) of the Finance Act, 1994. Appellant contends that the activity is not one of the eleven specified activities covered under the definition of 'support services of business and commerce' [Sec.65(104c)] and therefore beyond the purview of service tax. Appellant argues that the activity at best can be covered under business auxiliary services, however, the provision of service on behalf of a client in relation to 'printing' is exempted in terms of Notification No.14/2004-ST dated 10.9.2004.

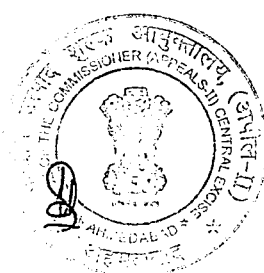
6. The support services of business or commerce, as per Section 65(104c) *ibid*, means *services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.* The definition therefore has a main part and according to that services provided in relation to business or commerce are support services. The second part, i.e., inclusive part specifies some eleven categories like evaluation of prospective customers, telemarketing, processing or purchase orders. Clearly, main part of the



definition is all encompassing and inclusive part is an indicative list, the indicative list however gives a fair idea of the services that should fall in the main part also, otherwise every service provided in relation to business or commerce, which may or may not fall under any specified service category, would be covered and that would render the specified category of services redundant. So, the indicative list renders a sense of judgment to choose the services that should fall under the main part.

6.1 Further, support services are the services which a business entity normally outsources for use in business or commerce. In other words, support services are outsourced services of a business entity for use in his business or commerce. In the instant matter, the relevant fact is that General Data Pvt Ltd, a company engaged in various projects relating to smart cards and RFID, was conferred with the task of issuing smart cards in a project to undertake insurance related activities in Amreli District of Gujarat under RSBY. The General Data Pvt Ltd entered into an agreement with the appellant and outsourced part of the work to the appellant. The appellant, on the basis of data provided by General Data Pvt Ltd was supposed to spread awareness of RSBY scheme among beneficiaries, enroll (data capture) the beneficiary family and personalize and issue the smart card. For this purpose, appellant was supposed to setup enrollment stations and use his own infrastructural support such as computers, biometric scanners. The appellant was to get Rs.36 per card on the basis of invoices issued on weekly basis. Therefore, I am of the view that General Data Pvt Ltd, in order to carry out the project work awarded to them, took the help and support of appellant, including infrastructural support. Thus, the appellant's services to General Data Pvt Ltd are in the nature of support services in relation to business of General Data Pvt Ltd and impugned services are liable to be classified under 'support services for business or commerce' and consequently taxable in terms of section 65(105)(zzzq) of the Finance Act, 1994.

6.2 Appellant's argument that to classify a service as support service it should only fit into eleven specified service activities is a completely wrong argument. As mentioned already, these eleven categories of services are only indicative services and confining the definition of support services to these eleven categories only will render the main part of definition redundant. The services provided by the appellant are nothing but supportive of the business of issuing smart cards by General Data Pvt Ltd under RSBY. General Data Pvt Ltd was got the work of issuing smart cards under RSBY project and part of this work was outsourced to the appellant to accomplish the task of issuing smart cards. The appellant has supported General Data Pvt Ltd in executing a task and it is not correct to say that appellant has provided service on behalf of General Data Pvt Ltd so as to classify the service under business auxiliary service. The confirmation of duty demand by classifying



the service under 'support services for business or commerce', therefore, is quite in order and requires no interference.

6.3 One of the appellant's grounds of appeal is that the show cause notice never specified the service category under which demand was made and therefore adjudicating authority has travelled beyond the boundaries of show cause notice. The appellant has quoted many decisions in this regard to emphasise that boundaries of the show cause notice cannot be crossed. In this regard, the important fact is that when department carried out an audit of the records of the appellant, mismatch between the income recorded in books of account and that declared in ST-3 returns was noticed and show cause demanding service tax on the differential amount came to be issued. Thus, at the time of issuing the show cause notice, department had no access to the explanations with regard to difference in income and therefore had no material to ascertain the service category under which service tax was payable. The demand made in the show cause notice was therefore an open demand without specifying the service category as it was not possible in absence of appellant's explanations and connected documents.

6.3.1 Further, the appellant, at the time of auditing, accepted the short payment of service tax and paid the same alongwith interest. This shows that appellant was aware of the tax liability but was waiting for the department to point out. At this stage, it seems that appellant did not bother to reconcile the difference. The explanations to reconcile the difference came before the adjudicating authority during adjudicating proceedings and he has dealt with the same in the impugned order. At the show cause notice, as already mentioned, appellant accepted the liability, the show cause notice issued was more in the nature of appropriating the amount paid and with a view to impose appropriate penalties. When the fact of the matter is that appellant did not disagree with the difference and paid the service tax thereon, it is not correct to take a ground now that he was not put to notice about the exact liability or about the category of service under which tax was payable. In my view, no prejudice has been caused to the appellant in the matter and there is nothing like travelling beyond the scope of show cause notice.

7. With regard to invocation of extended period, appellant contends that there was no suppression of facts. The appellant's contention, however, fails in light of the facts of the case that in his periodic returns (ST-3), the information relating to the income on which service tax remained to be paid was never shown. If in his self assessment, the activity was covered under business auxiliary service but was exempted under a notification, this fact and income figures should have find place in the returns. The fact that a certain income on which service tax was payable but not paid was detected during auditing, itself suggests that vital information was not

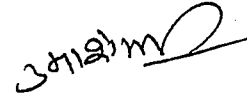


declared to the department. Therefore, suppression of facts is evident and for that reason, invocation of extended period is rightly invoked. Consequently, the penalties imposed under section 78 and 77(2) are also in accordance with the law.

8. In view of the foregoing, the impugned order is upheld and appeal is rejected.

9. अपीलकर्ता 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.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested



(Sanwamal Hudda)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s Gujarat Infotech Limited,
A-2, 2nd Floor, Jay Tower,
Ankur Complex, Naranpura,
Ahmedabad 380 013

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad South.
4. The Asst./Deputy Commissioner, Central Tax, Division-VII, Ahmedabad- North.
5. Guard File.
6. P.A.

