



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015



☎ : 079-26305065

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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(ST)286/A-II/2016-17/10251 to 10255
स्थगन आवेदन संख्या(Stay App. No.):
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 140-17-18
दिनांक (Date): 26/10/2017, जारी करने की तारीख (Date of issue): 20-11-17
श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by Shri Uma Shanker, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-VI), अहमदाबाद, आयुक्तालय द्वारा जारी
मूल आदेश सं----- दिनांक -----से सृजित
Arising out of Order-In-Original No. _SD-06/09/AC/kloeckner Desma/2016-17_ Dated:
23.12.2016 issued by: Assistant Commr STC(Div-VI), Ahmedabad.

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

M/s kloeckner Desma Machinery Pvt. Ltc

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।

Cont...2



- (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 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-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 मेन्टल हास्पिटल 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 वहां 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 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 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 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 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

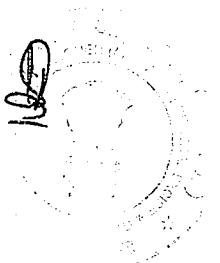
This is an appeal filed by M/s Kioeckner DESMA Machinery Pvt. Ltd. (herein after referred to as the appellants) against the OIO No. SD-06/09/AC/Kioeckner Desma/16-17 dtd. 23.12.2016 (herein after referred to as the impugned order) passed by the Assistant Commissioner (herein after referred to as the adjudicating authority).

2. The brief facts of the case are that the appellants were engaged in receiving taxable services under the category of Intellectual Property Services defined under Section 65(55 b) of the Finance Act, 1994. During the audit of annual report for the financial year 2009-10, certain amount was shown as "others" under the head of expenditure in foreign currency. Transfer of technical know-how by a foreign company to the recipient of such service in India with incidental activity of providing training is taxable under "Intellectual Property Service". It was also noticed that the providence of training services adorned with technical assistance/consultancy by the foreign entity firm in overseas to the employees of the said assessee and thereby reimbursement of such training expenses by the said assessee to their employees largely falls under the ambit of "consulting Engineer Service" rather than in the scope of definition of "Intellectual Property Service" as proposed by the Audit. In view of this, the appellants were issued a show cause notice proposing demand and recovery of service tax of Rs. 3,28,684/- with interest and imposition of penalties under various sections of the Finance Act, 1994. After considering various contentions put forth by the appellant, the adjudicating authority held the service to be classifiable under "consulting Engineer Service" and confirmed demand of Service Tax of Rs. 1,75,024/- and imposed penalties.

3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- (a) That the service cannot be classified under "consulting Engineer Service" as there is no finding in the impugned order to suggest that the fee paid is towards advice, consultancy or technical assistance or there is any nexus with that;
- (b) That there is no rendition of service by service provider to service recipient and therefore there cannot be any levy of service tax;
- (c) That the training of employees or expenditure related to training of employees is not covered under the scope of Consulting Engineers Service and further that expenditure/costs cannot be considered as amount charged by Service provider for such service provided by him;
- (d) That the entire demand is time barred as there was no suppression, willful misstatement on their part;
- (e) That the nature of expenses are not related to rendition of any service and therefore there is no obligation on the part of the appellants to submit all such details in their returns to be submitted;
- (f) That penalty cannot be imposed as there was no suppression, willful misstatement on their part;
- (g) The appellants sought support from the following case laws:

Intercontinental Consultants & Technocrats Pvt. Ltd. vs. Union of India - 2013 (29) STR-9 (Del.), Reliance Industries Ltd. Vs. Commissioner of C.Ex., Vadodara-I - 2011 (23) STR-555 (Tri-Ahm.) regarding non-coverage of supply of manpower for commissioning or installation and imparting training under Consulting Engineer Services, Micro Academy (India) Pvt. Ltd. Vs. Commissioner of ST, Bangalore - 2009 (16) STR-28 (Tri-Bang.) holding that activity of training does not fall under the scope of Consulting Engineers Service, Waters India Pvt. Ltd. vs. Commissioner of Service Tax, Bang - 2006 (4) STR-524 (Tri-Bang.) and many other cases.



4. The personal hearing in the case was held on 04.10.2017 in which Shri Hitesh Jagetiya appeared on behalf of the appellants. They reiterated the grounds of appeal and submitted that their submissions have not been considered. He also submitted a copy of training invoice.

5. I have carefully perused the documents pertaining to the case and submitted by the appellant alongwith the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issue to be decided in the instant case is whether the appellant is liable to pay service tax for the reimbursement of expenditure incurred on training provided in foreign country.

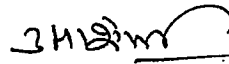
7. I find that the matter has been dealt with by the adjudicating authority and concluding that the service tax is liable to be paid on the expenditure incurred on training taken in foreign. The adjudicating authority has concluded that apart from training reimbursement expenses mentioned at Sr. No. 10 of the table given in the order, no other expenses are liable to service tax payment. I agree with the findings given in the impugned order in view of the fact that the issue has been discussed in the case of Commissioner of Service Tax, Chennai Vs Heidelberg India Pvt. Ltd. - 2013 (29) S.T.R. 620 (Tri. - Chennai). In this case, it has been held that since no remuneration has been paid for training, expenses are not liable to service tax. Here in the instant case, it is evident from the records of the appellant that the reimbursement has been made of training expenses. In view of this situation, I find no reason to interfere with the impugned order. find that the citations given by the appellant in their support are not helping their cause in view of absence of any submission by the appellant. I also find support from the decision in the case of 2009 (16) S.T.R. 71 (Tri. - Mumbai) IN THE CESTAT, WEST ZONAL BENCH, MUMBAI in KEIHIN FIE PVT. LTD. Vs COMMISSIONER OF CENTRAL EXCISE, PUNE-I in which it was held asunder

"The reason being that the actual expenses, incurred by the foreign consultant while imparting training to the appellants' personnel in Japan and subsequently reimbursed by the appellants, were held to be not towards consulting engineering services as these expenses related to living, food and travel provided to appellants' technicians in Japan. Hence no service tax was leviable on it."

8. The aspects of imposition of penalty and invocation of extended period for raising demand have been dealt with by the adjudicating authority and I find that the contentions raised by the appellant are not acceptable in view of the findings given above and I do not find any reason to interfere with the impugned order.

10. The appeal is disposed off accordingly with consequent relief if any.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।



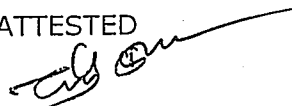
(उमा शंकर)

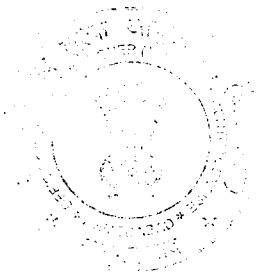
केन्द्रीय कर आयुक्त (अपील्स)

अहमदाबाद.

Date: : .2017

ATTESTED


(D.Upadhyaya)
Superintendent (Appeals),
Central GST, Ahmedabad.



BY R.P.A.D.

M/s. Kloeckner DESMA Machinery Pvt. Ltd.,
Road No. 1,
Kathwada,
Behind Torrent Power Sub-Station,
Ahmedabad-382430

Copy To:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad (South).
- (3) The Asstt./Dy. Commissioner, CGST, Div-V (Odhav), Ahmedabad (South)
- (4) The Asstt./Dy. Commissioner, Systems, CGST, Ahmedabad (South)
- (5) Guard File.
- (6) P.A. File.

