
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015. टेलीफोन : 079-26305065	 7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलीफैक्स : 079 - 26305136
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क फाइल संख्या : File No : V2(ST)280/A-II/2016-17

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-253-17-18

दिनांक Date : 17/01/2018 जारी करने की तारीख Date of Issue 1-2-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-01/Refund/46/AC/MHS/2016-17 Dated 28.12.2016 Issued by Assistant Commr STC, Service Tax, Div-I, Ahmedabad

घ अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s. MHS Infratech Pvt Ltd
Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

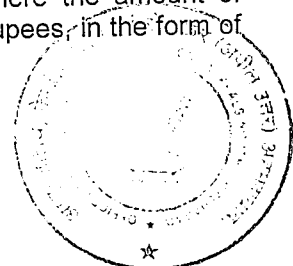
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of

C. file



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. / Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1988 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 हैं -

- (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 अर्ज़ी एवं अपील को लागू नहीं होगा।

4. 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,

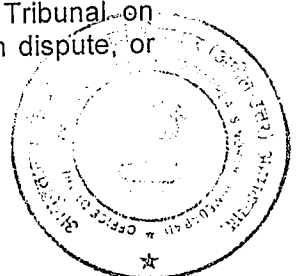
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

4(1) इस संदर्भ 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।

4(1) 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. MHS Infratech Private Limited, C/3/802, Anushruti Tower, Opp.-New York Tower, S.G. Highway, Thaltej, Ahmedabad 380 054 (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.SD-01/Refund/46/AC/MHS/2016-17 dated 18.12.2016 (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 as follows. The appellant, a service tax registrant, filed a refund claim of Rs.49,15,741/- on 01.09.2016 in terms of **section 102** of the Finance Act, 1994 in respect of service tax paid on construction services provided in relation to various construction works e.g. construction of a tower at Vastrapur in Ahmedabad for Executive Engineer (R&B) division, Ahmedabad; construction of police staff quarters at Upleta in Rajkot district for Gujarat State Police Housing Corporation Ltd (GSPHCL); Construction of Boys Hostel in Nadiad for Executive Engineer, Kheda, (R&B) division, Nadiad. The adjudicating authority, in the impugned order, allowed the refund except for an amount of Rs.15,67,530/- which was rejected on the following reasons-

- (i) Refund of Rs.8,63,379/- was rejected on the ground that this much amount was attributable to the Cenvat credit taken in respect of input services used in providing exempted services.
- (ii) Refund of Rs.2,15,485/- was denied as this was the interest paid for late payment of service tax and Notification 9/2016-ST did not provide for refund of interest.
- (iii) Refund of Rs.4,88,666/- was rejected on the ground that service recipient (GSPHCL) was not a governmental authority in terms of Notification No.25/2012-ST, hence services provided to GSPHCL for construction of police staff quarters were not covered in the retrospective exemption.

2.1 Aggrieved with the rejection of refund as above, appellant has preferred this appeal.

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

3.1 Appellant submits that GSPHCL is a governmental authority in terms of the definition of 'governmental authority' given under Notification No.2/2014-ST dated



30.01.2014 as GSPHCL is established by the Government of Gujarat; the Government of Gujarat has 100% control over it by way of equity; and it carries out the functions entrusted to a municipality under article 243W of the Constitution of India.

3.2 Appellant argues that rejection of refund of interest paid for delay in payment of service tax is not correct as there is no question of payment of interest when there was no liability of service tax.

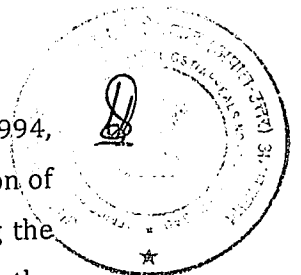
3.3 Appellant submits that during 2015-16 the input service credit was taken for outward taxable services only and hence there is no question of reversal of Cenvat credit for input services used in outward exempted services; that they agreed to reverse 60.51% of Cenvat credit availed but the construction services provided to governmental authority were taxable and accordingly they were not required to reverse the Cenvat credit taken on input services.

4. In the personal hearing held on 01.12.2017, CA Darshan Belani reiterated the grounds of appeal. He stated that refund was rejected on the ground that GSPHCL was not a government department and interest was not refunded.

5. Before deciding merits of the case, I note that there is a delay in filing the appeal. The appeal under section 85 of the Finance Act, 1994 was required to be filed within TWO months from the date of receipt of the order, which is not the case here considering that appeal has been filed on 09.03.2017 whereas impugned order was received by the appellant on 30.12.2016. Moreover, appellant has not requested for any condonation of delay in filing the appeal and therefore, appeal filed deserves to be rejected on the ground of delay alone.

6. With regard to merits of the case, I note that refund has been denied on three reasons namely- Rs.8,63,379/- was attributable to the Cenvat credit taken on input services used in providing exempted services and hence this much refund was deducted; Rs.2,15,485/- was paid as interest for late payment of service tax and interest was not to be refunded under section 102 of the Finance Act, 1994; and Rs.4,88,666/- was the service tax involved in services provided to GSPHCL and since GSPHCL was not a governmental authority in terms of Notification No.25/2012-ST, retrospective exemption did not apply and as a result refund did not arise.

6.1 I note that refund was filed in terms of section 102 of the Finance Act, 1994, whereby special provision for exemption in certain cases relating to construction of Government buildings was made and accordingly, service tax collected during the period 01.04.2015 to 29.02.2016 in respect of taxable services provided to the



Government, a local authority or a Governmental authority was allowed to be refunded.

6.1.1 Now, during 2015-16, appellant was taking Cenvat credit of input services and since services which became exempt at a later stage because of retrospective exemption were taxable at material time, it cannot be denied that appellant took Cenvat credit in respect of input services used in providing the exempted services. Further, in terms of rule 6 of the Cenvat Credit Rules, 2004, Cenvat credit of inputs or input services is not permitted when used in providing exempted services. Therefore, the amount attributable to the Cenvat credit taken in respect of exempted services was required to be reversed by the appellant and since appellant had not done so, adjudicating authority has appropriately denied the refund of equal amount of Rs.8,63,379/- calculated in proportion to ratio of value of exempted services to the total value of services provided. I therefore find no illegality in this regard.

6.2 With regard to adjudicating authority's conclusion that GSPHCL was not a governmental authority, I refer to the following definition of governmental authority as given under para 2(s) of the Notification No.25/2012-ST -

"governmental authority" means an authority or a board or any other body;

(i) Set up by an Act of Parliament or a State Legislature; or

(ii) Established by Government,

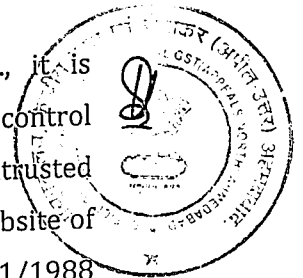
with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

6.2.1 The definition of "governmental authority" envisages two types.

(i) an authority or a board or any other body set up by an Act of Parliament or a State Legislature, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution; or

(ii) an authority or a board or any other body established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

6.2.2 Appellant claims that GSPHCL falls under second category, i.e., it is established by the Government of Gujarat; Government of Gujarat has 100 % control over it by participation by way of equity; and it carries out the functions entrusted to a municipality under article 243W of the Constitution. I find from the website of GSPHCL (<http://gsphc.gujarat.gov.in>) that GSPHCL was incorporated on 1/11/1988



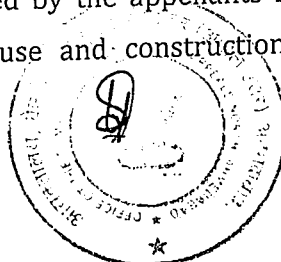
under Companies Act, 1956. This is a Government Company with 100% share holding subscribed by the Home Department, Government of Gujarat. They are involved in the construction of residential as well as non-residential buildings pertaining to the police force of the State of Gujarat. In the residential section, they are constructing police quarters and in the non-residential sections, they are involved in the construction of police stations, barracks and jails all over Gujarat.

6.2.3 Further, I would like to discuss the works that are identified under Article 243W of the Indian Constitution, as below;

*TWELFTH SCHEDULE
(Article 243W)*

- 1. Urban planning including town planning.*
- 2. Regulation of land-use and construction of buildings.*
- 3. Planning for economic and social development.*
- 4. Roads and bridges.*
- 5. Water supply for domestic, industrial and commercial purposes.*
- 6. Public health, sanitation conservancy and solid waste management.*
- 7. Fire services.*
- 8. Urban forestry, protection of the environment and promotion of ecological aspects.*
- 9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*
- 10. Slum improvement and upgradation.*
- 11. Urban poverty alleviation.*
- 12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.*
- 13. Promotion of cultural, educational and aesthetic aspects.*
- 14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.*
- 15. Cattle pounds; prevention of cruelty to animals.*
- 16. Vital statistics including registration of births and deaths.*
- 17. Public amenities including street lighting, parking lots, bus stops and public conveniences.*
- 18. Regulation of slaughter houses and tanneries.*

From the above, it can be seen that the service provided by the appellants falls under serial number 2 above i.e. "regulation of land-use and construction of buildings".

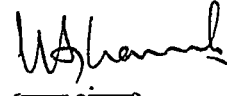


6.2.4 In view of the above, it is sufficiently established that the GSPHCL are a governmental authority with 100% share holding subscribed by the Gujarat Government and unlike the view of the adjudicating authority, the works carried out by them fall under the Article 243W of the Indian Constitution and hence, services provided by appellant to them are exempted. The appellant is therefore eligible for refund of Rs.4,88,666/-. With regard to refund of interest paid towards delay in payment of service tax, since appellant is found eligible for the refund of service tax paid, I see no reason to deny the refund of interest Rs.2,15,485/-.

7. In conclusion, the impugned order so far it is related to refund of service tax of Rs.4,88,666/- and interest of Rs.2,15,485/- is set aside and appeal is allowed with consequential relief. The rest of the impugned order holds good and appeal in that regard stands rejected.

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

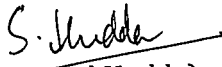
The appeal filed by the appellant stands disposed of in above terms.

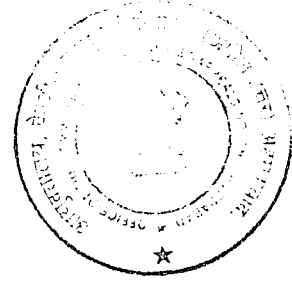

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested


(Sanwamal Hudda)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,
M/s.MHS Infratech Private Limited,
C/3/802, Anushruti Tower, Opp.-New York Tower,
S.G. Highway, Thaltej, Ahmedabad 380 054

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 Asstt./Deputy Commissioner, Central Tax, Division-VI, Ahmedabad- North.
5. Guard File.
6. P.A.

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