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

क फाइल संख्या : File No : V2(ST)306/A-II/2016-17 / 480-84
 ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-268-17-18
 दिनांक Date : 12/01/2018 जारी करने की तारीख Date of Issue 24/01/18

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No AHM-SVTAX-000-ADC-41-16-17 Dated 06.03.2017 Issued by ADC STC, Service Tax, Div-HQ, Ahmedabad

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

**M/s. AVM Oilfield Services
 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 :-

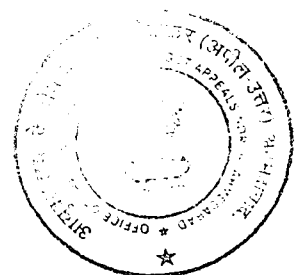
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

○ 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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 demanced & 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

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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 फॉर्म 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 (सीस्तेत) 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 43 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 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,

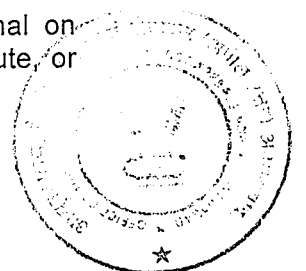
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



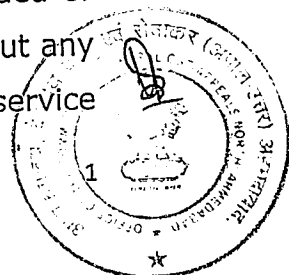
ORDER IN APPEAL

M/s. AVM Oilfield Services, B-29, Umed Park Society, Sola Road, Ghatlodia, Ahmedabad, (*hereinafter referred to as the 'appellant'*) holding Service Tax Registration No. AAQFA0760RSD001 for providing services falling under the category "Management or Business Consultant Services". The said appellant though registered with the Department, had not discharged their Service tax liability to the full, even though the correct taxable value was in the knowledge of the appellant. Therefore a demand notice was served to them in this regard. The Adjudicating Authority, did not allow the appellant's contention and confirmed the demand of Service tax of Rs.89,34,735/-, alongwith interest, late fees and also imposed penalty vide OIO No. AHM-SVTAX-000-ADC-41-2016-17 dt.06.03.2017. The Appellant aggrieved by the said OIO, filed an appeal against the same, before me.

2. The facts of the case, in brief, are that it came to the notice that the appellant was deliberately suppressing the correct taxable value and thus not paid the correct service tax leviable on the taxable value towards providing/receiving taxable services with a view to evade payment of service tax. On the basis of investigation conducted and document collected from and submitted by the appellant, the differential service tax liability for the period 2010-11 to 2013-14 was ascertained as below :

Period	Income shown as per books of Accounts (in Rs.)	Rate of Service tax (incl. of Cess) (in %)	Service tax liability as per book of accounts (in Rs.)	Service tax liability as per ST-3 return (in Rs.)	Service tax paid as per ST-3 return (in Rs.)	Net difference of Service tax payable (in Rs.)
2010-11	18176651	10.30	1872195	1872195	94825	17,77,370
2011-12	35003021	10.30	3605311	3289928	227941	33,77,370
2012-13	8417688	12.36	1040426	00	200000	8,40,426
2013-14	23782924	12.36	2939569	00	00	29,39,569
TOTAL						89,34,735

It appeared that the appellant had deliberately not furnished the actual value while discharging their Service tax liability and thereby suppressed the correct taxable value with an intent to evade payment of Service tax. Therefore, a Show Cause Notice was served to the appellant demanding Service tax amounting to Rs. 89,34,735/-, alongwith interest and penalty. The Adjudicating Authority found that the denial of service not provided or liable to Service tax in respect of M/s. Kakoti Engineering Works without any evidence or justification is only an afterthought to escape from their service



tax liability as department had booked a case of short payment of service tax already declared in their ST-3 return during the period 2010-11 and 2011-12 and based on the books of accounts for the period 2012-13 and 2013-14, as no ST-3 returns were filed by the appellant during that period. The Adjudicating Authority also found that the appellant had not disputed their service tax liability on service provided to other parties and had accordingly paid service tax of Rs.46,62,317/-, during the course of investigation. Accordingly, the Adjudicating Authority vide OIO No. AHM-SVTAX-000-ADC-41-2016-17 dt.06.03.2017, confirmed the demand of service tax amounting to Rs.89,34,735/-, interest at the appropriate rate, late fees of Rs.80,000/-, and imposition of penalty under Section 77 & 78 of the Finance Act, 1994.

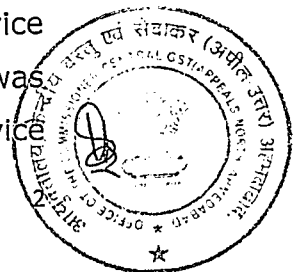
4. Being aggrieved by the impugned order dt. 06.03.2017, the appellant has filed this appeal before me on the grounds that (i) Department did not consider their submission that the services provided to M/s. Kakoti Engineering Works was a supervision service; (ii) the calculation of service tax liability done by the department did not consider the payments made by the appellant on a pure agent basis for and on behalf of M/s. Kakoti Engineering Works; and (iii) demand of interest and imposition of penalties is not applicable.

5. During the personal hearing, Shri V.P.Singh, C.E.O. of the appellant appeared before me and reiterated the grounds of appeal and also submitted that the lower authority had not considered their submission.

6. I have carefully gone through the facts of the case on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of personal hearing.

7. The question to be decided is as to whether (i) the services provided by the appellant, over and above what they have already paid for, would be considered as a service and be liable to service tax; and (ii) whether the expenses incurred by the appellant were on a pure agent basis.

8. The appellant's contention that the Adjudicating Authority did not follow the principles of natural justice, was clearly brushed aside by the Adjudicating Authority at Para 5.1. of the impugned order with factual information and therefore does not need to be looked in to any further. The contention of the appellant is that the services provided by them to M/s. Kakoti Engineering Works was merely a supervision service. The service provided by the appellant during the entire period covered in this issue, was liable to Service tax. There is no doubt about the fact that the service



provided by the appellant would attract Service tax. The demand confirmed by the Adjudicating Authority covers both the periods, prior to the introduction of Negative list and after the introduction of Negative list. However, the Adjudicating Authority has refrained from deciding the classification/nature of the taxable service provided by the appellant, which has categorically been stated at Para 5.2 of the impugned order. The Adjudicating Authority has also not clarified as to whether the unpaid amount or the amount disputed by the appellant pertains to the period prior to the introduction of Negative list or after the introduction of Negative list. As such, though the taxability of the service is not disputable, the Adjudicating Authority is required to clarify this aspect for finalizing the issue. The appellant's contention As such, the matter is remanded back to the Adjudicating Authority to decide the matter afresh with emphasis on the points mentioned above and the appellant can put up their fresh submission in the matter before the Adjudicating Authority.

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

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

उमा शंकर

(उमा शंकर)

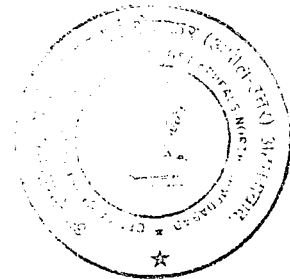
आयुक्त (अपील्स)

ATTESTED

(R.R. NATHAN)

SUPERINTENDENT,

CENTRAL TAX APPEALS, AHMEDABAD.



To,

M/s. AVM Oilfield Services,
B-29, Umed Park Society,
Sola Road, Ghatlodia,
Ahmedabad.

Copy to:

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

1-2-74

