

	केन्द्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	0/0 THE COMMISSIONER (APPEALS), CENTRAL TAX,	
	केन्द्रीय कर शुल्क भवन,	7 th Floor, Central Excise Building,
	सातवीं मजिल पोलिटेकनिक के पास,	Near Polytechnic,
	आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
 079-26305065		टेलीफैक्स: 079-26305136

क फाइल संख्या : File No : **V2(ST)250/A-II/2016-17**

ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP-327-17-18**

दिनांक Date : **22/02/2018** जारी करने की तारीख Date of Issue **17/3/2018**

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-23-24-25-2016-17**
Dated **13.12.2016** Issued by **ADC STC, Service Tax, Div-HQ, Ahmedabad**

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

**M/s. Shree Aum Enterprise
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 :-

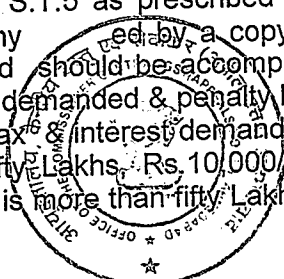
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल 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 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 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



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 अधीक्षक 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 (सीस्टैट) 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, 1994 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 अर्जी 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,

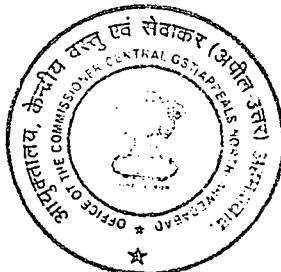
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



- (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.

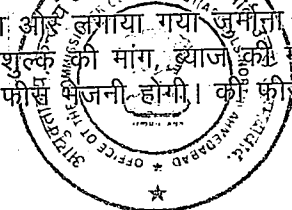
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (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 मैटल हारस्पिटल 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 इए-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 रूपरेखा 8 लाख या उससे कम है वहां रूपरेखा 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपरेखा 5 लाख या 50 लाख तक हो तो रूपरेखा 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपरेखा 50 लाख या उससे ज्यादा है वहां रूपरेखा 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 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 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।

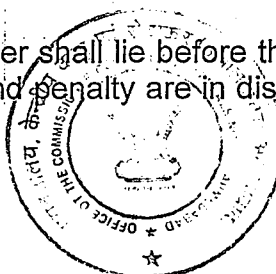
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

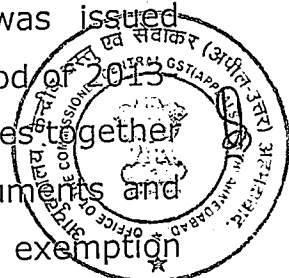
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

This is an appeal filed by M/s Shree Aum Enterprises, C-18, Ankur Society, Saijpur Bogha, Ahmedabad-382345 (herein after referred to as the appellants) against the OIO No. AHM-SVTAX-000-ADC-23-24-25-2016-17 dtd. 13.12.2016 (herein after referred to as the impugned order) passed by the Addl. Commissioner, Service Tax, Ahmedabad (herein after referred to as the adjudicating authority).

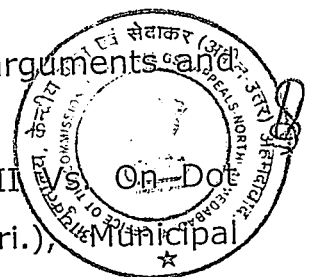
2. The brief facts of the case are that the appellants were engaged in providing service under the categories of manpower Recruitment Agency/Supply Service. They were issued three show cause notices. First was dtd. 21.10.2013 demanding Service tax of Rs. 20,47,503/- as they had supplied services to SEZ developers and units and had availed exemption from payment of service tax under Notification No. 4/2004-ST dtd. 31.03.2004 as amended but had failed to fulfill conditions of the Notification for availing exemption. It was also noticed during the reconciliation of figures shown in the books of account and on comparison with the figures shown in ST-3 returns, it had appeared that they had not shown the taxable value of Rs. 90,46,824/-. Act, 1985 and were also registered under Service Tax. This show cause notice was adjudicated vide OIO No. 24/STC-AHD/ADC(AS)/2013-14 dtd. 20.01.2014 and on being aggrieved by this order, the appellants appealed before the Commissioner (Appeals), vide OIA No. AHM-SVTAX-000-APP-199-14-15 dtd. 06.02.2015 remanded the case to the adjudicating authority with specific directions. For the second show cause notice, during the central excise audit in 2016, it was observed that the appellants had short paid service tax by Rs. 35,248/- on payments made to goods transport agency as notified under the Notification No. 36/2004-ST dtd. 31.12.2004 as amended. It was informed by the appellants that the said services were for transportation of goods to a unit located in SEZ. It was observed that the appellants were not eligible for exemption for services used and specified under sub-section (2) of Section 68 of the Finance Act, 1994 ("the Act" for brevity). They were required to pay service tax but they had not discharged service tax amounting to Rs. 35,248/-. Accordingly, a notice dtd. 07.05.2014 under Section 73 (1) of the Act was issued to the appellants. The third show cause notice dtd. 10.04.2015 was issued demanding service tax of Rs. 8,38,680/- not paid during the period of 2013-14. The adjudicating authority took all the three show cause notices together for adjudication and after having considered their defence arguments and case records, held that the appellants were not eligible for exemption contained in Notification No. 12/2013 since they failed to produce the copy



of the authorization for services to be used in the SEZ and therefore, vide the impugned order, confirmed the demands of service tax demanded in all the three show cause notices along with interest and also imposed penalty of equal amounts under Section 78 of the Act.

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

- a) That the correct reconciliation with all relevant supporting documents justifies the correctness of the reconciliation prepared by them;
- b) That the adjudicating authority has gone beyond their power and have overridden the decision passed and instructions given by the Commissioner (Appeals);
- c) That Section 51 of the SEZ Act, 2005 has the overriding effect on the all other applicable acts in force for the time being thus services provided to developer/units in SEZ are exempt from levy of service tax;
- d) That specific exemption has been given for any services to be provided by any service provider to the developers or units in the SEZ to carry on the authorized operations in SEZ;
- e) That their view is supported by the case laws of Crescent Shipping Agency (India) Ltd., Commissioner of Central Excise (Appeals) Chennai Bench- 2013-29-Taxmann.com-332 (Chenn.), Orix Auto Infrastructure Services Ltd. Vs. Commissioner of Service Tax (2015) 64- Taxmann.com-21 (Mum.), Norasia Container Lines vs. Commissioner of Central Excise, New Delhi (2012) 21-Taxmann.com-370 (New Del.), Pricewaterhousecoopers (P.) Ltd. Vs. Commissioner of Central Excise (Appeals) Chennai (2013) 35-Taxmann.com-399 (CCE-Chenn.);
- f) That the liability to comply conditions of supra relevant notifications is of service receiver and not of service provider;
- g) That non-fulfillment of any procedural conditions does not amount to loss of revenue to department as the transactions covered under present case are revenue neutral in nature;
- h) That the appellants accept service tax liability of Rs. 46,816/-, Rs. 7,582/-, Rs. 17,917/- & Rs. 2,084/- for the periods 2008-09, 2009-10, 2010-11 & 2011-12 respectively;
- i) No penalty can be imposed in view of the above arguments and extended period cannot be invoked;
- j) That they rely on the case laws of CCE, Meerut-II vs. Couriers & Cargo Ltd. - (2006) 6-STJ-337 (Tri.),



Corporation of Delhi Vs. Jagannath Ashok Kumar – (1987) AIR-2316 (SC), Commissioner of Wealth Tax vs. Jagdish Prasad Choudhary – (1996) AIR – 58 (Patna) etc.

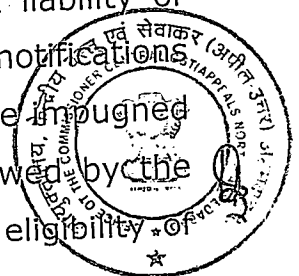
4. The personal hearing in the case was held on 08.11.2017 in which Shri Pratik Shah, C.A., Shri J.N. Bhag, Advocate, Shri Ashwin Panchal, Proprietor and Shri Mayank Shah, C. A. appeared on behalf of the appellants and reiterated the grounds of appeal.

5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with 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 service tax has been rightly demanded on the services provided by the appellants to a unit situated in SEZ.

7. I find that the appellants have claimed the benefit of exemption contained in various Notifications for supply to the SEZ. From the case records, I find that the first show cause notice dtd. 21.10.2013 proposing recovery of service tax of Rs. 20,47,50/- was confirmed vide OIO No. 24/STC-AHD/ADC(AS)/2013-14 dtd. 20.01.2014 and equal amount of penalty was also imposed. On being appealed against, the Commissioner (appeals) vide OIA No. AHM-SVTAX-000-APP-199-14-15 dtd. 06.02.2015 (the OIA for brevity) remanded the case to the adjudicating authority with certain specific directions.

7.1 While dealing with the issue of eligibility of exemption on the services supplied to SEZ developers/units in the para 8.3 at page 18 of the OIA, the Commissioner (Appeals) had found and held that "the basic condition of providing services to units/developers in SEZ for carrying out authorized operations within SEZ gets fulfilled". This finding is very specific and further it has been held in the OIA in the same para at page 19 that **the conclusion** arrived at by the adjudicating authority that those documents produced before him (adjudicating authority) were not sufficient to prove that the appellants has fulfilled the condition for taking the exemption under the above notifications **does not survive** (emphasis supplied). From this it is very clear that the issue of eligibility for exemption to supplies made to SEZ/ developers had already been settled in favour of the appellants and the remand was for a limited purpose of ascertaining the due tax liability or refund arising out of the same in the light of the various notifications operative during different periods of time. On plain reading of the impugned order, it is very clear that the directions have not been followed by the adjudicating authority in the impugned order and the issue of eligibility of



exemption for supplies to SEZ/developers has been re-adjudicated which is illegal and beyond the directions of remand order and therefore need to be set aside. Defiant attitude of the adjudicating authority is highly deplorable. In a catena of judgments, Hon'ble High Courts have stated that order of superior forum has to be implemented unless it is stayed by an appropriate authority. I accordingly set aside the impugned order on this issue.

8. I now take up the issue of service tax liability on the differential taxable amount that was found on reconciliation of the amount that was shown in the books of account and that shown in the ST-3 returns. I have perused the OIA and I find that the finding regarding the reconciliation is very specific and further it has been held in the OIA in the para 7.2 at page 13 which I reproduce below:

"So I agree with the appellant that the labour income shown in the P & L Account was inclusive of Service Tax."

Again in para 7.3 at page 13 of the OIA, specific directions have been given to re-quantify the tax liability of the appellant in view of the above findings. From this it is very clear that the issue of reconciliation of the amount that was shown in the books of account and that shown in the ST-3 returns had already been settled in favour of the appellants as the major plea of labour income being inclusive of service tax had been accepted and the remand was for a limited purpose of ascertaining the due tax liability keeping in mind the above findings. On plain reading of the impugned order, it is very clear that the directions have not been followed by the adjudicating authority in the impugned order and the issue of reconciliation of amounts has been re-adjudicated which is illegal and beyond the directions of remand order and therefore need to be set aside. I accordingly set aside the impugned order on this issue. Further as per directions given in para 7.3 at page 13 of the OIA, I hold that the demand based on reconciliation of the accounts and ST returns, need to be requantified keeping in view the findings that the amount was inclusive of service tax on labour income.

9. In view of the above findings, the appeal is partly allowed as per findings in para 7.1 herein above and partly allowed by way of remand with consequential relief as per findings given at para 8 herein above.

10. The appeal is disposed off accordingly.

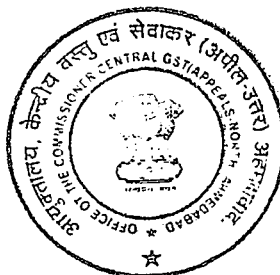
अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

U. Shankar

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)
अहमदाबाद

दिनांक:



सत्यापित

(क्षेमद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To:

M/s Shree Aum Enterprises,
C-18, Ankur Society,
Saijpur Bogha,
Ahmedabad-382345

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (North),
- (3) The Dy./Asth. Commissioner, CGST, Div.-I, Ahmedabad (North),
- (4) The Dy./Asth. Commissioner(Systems),CGST, Ahmedabad (North),
- (5) Guard File,
- (6) P.A.File.

