

	केन्द्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केन्द्रीय उत्पाद-शुल्क भवन सातवीं मंजिल, पोलिटिकनिक क-पास आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building, Near Polytechnic Ambavadi, Ahmedabad-380015
☎ 079-26305065		☎ 079-26305136

रजिस्टर डाक ए .डी .द्वारा

2017 to 2018

क फाइल संख्या (File No.): V2(STC)116 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-366-17-18**

दिनांक (Date): **20-Mar-2018** जारी करने की तारीख (Date of issue): **4/4/2018**

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No **25/AC/D/BJM/2017** Dated: **29/12/2017**

issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad North

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

M/s Rucha Engineers Pvt 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) केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पृवक्त 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।

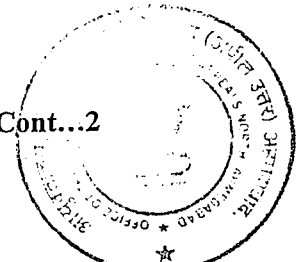
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 :-

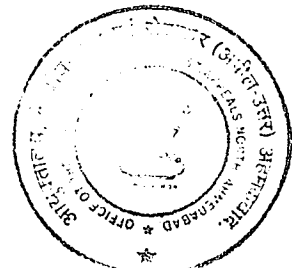
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 मेटल 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 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 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 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) -

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- (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।

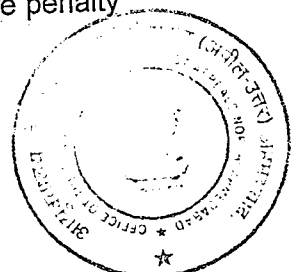
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 मांग 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 appeal has been filed by M/s. Rucha Engineers Private Limited, Unit II, B-3, Tata Motors Vendor Park, Sanand, Ahmedabad [for short – “*appellant*”] against OIO No. 25/AC/D/BJM/2017 dated 29.12.2017 passed by the Assistant Commissioner, CGST and Central Excise Division III, Ahmedabad North Commissionerate [for short – “*adjudicating authority*”].

2. Briefly, the facts are that during the course of audit of the appellant, it was observed that they had short paid service tax of Rs. 16,68,968/- under RCM, in respect of *Manpower recruitment or supply agency service* and *Security service* for the FYs 2013-14, 2014-15 and 2015-16. Therefore, a show cause notice dated 9.6.2017 was issued to the appellant proposing recovery of service tax short paid along with interest. The notice also proposed penalty on the appellant under section 78(1) of the Finance Act, 1994.

3. This notice was adjudicated vide the impugned OIO dated 29.12.2017, wherein the adjudicating authority, confirmed the demand along with interest and further imposed penalty on the appellant. The amount already paid by the appellant was appropriated towards service tax and interest dues.

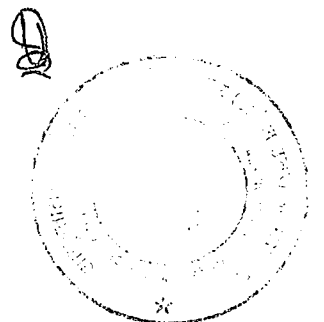
4. Feeling aggrieved, the appellant has filed this appeal on the following grounds:

- that the adjudicating authority failed to properly appreciate the reconciliation submitted;
- that the service tax liability worked out by the audit party is erroneous because the trial balance and ledgers relied upon were not correct and correct reconciled trial balance produced by the appellant has been ignored;
- the audit party has erroneously and mischievously issued the notice to when they knew that the figures relied upon were not correct and that the reconciled figures were submitted to them;
- that penalty under section 78(1) of the Finance Act, 1994, is not imposable because the essential ingredients of suppression of facts with an intent to evade payment of service tax is absent in the present case;
- that the entire notice is based on the record maintained by the appellant which were always available for audit;
- that the notice is barred by limitation.

5. Personal hearing in the case was held on 14.3.2018 wherein Shri Abhay P Kolte, Advocate, appeared on behalf of the appellant. The learned advocate, reiterated the grounds of appeal and submitted that their figures had not been considered. He also submitted a copy of citation in the case of National Thermal Power Company Limited [1998(99) ELT 200(SC)].

6. I have gone through the facts of the case, the grounds of appeal and the oral submissions made during the course of personal hearing. The question to be decided is whether the appellant is liable to pay the service tax alleged to be short paid with interest. The second question to be decided is whether the appellant is liable for penalty or otherwise.

7. Briefly, I would like to sum up the issue, before proceeding any further. Vide Revenue Para 1 of FAR No. 1002/16-17 dated 22.5.2017, an objection was raised that the appellant had short paid service tax of Rs. 16,68,968/-. This objection, was a result of scrutiny of the contract labour and security services ledgers and expenses shown in trial balance booked under the heads contract labour and security services.



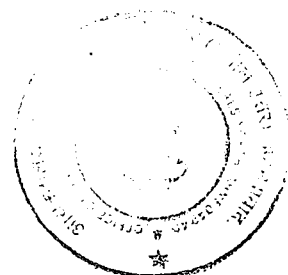
8. Before taking up the contentions raised by the appellant, I would also like to put on record that the appellant did not file any defence reply before the adjudicating authority. In fact the appellant also failed to avail the benefit of the personal hearing, granted by the adjudicating authority on three different occasions.

9. Though the appellant failed to submit any defence reply and avail the opportunity of personal hearing, it is his contention that the adjudicating authority failed to appreciate the reconciliation submitted by them. This contention, belie facts. However, it is on record in the show cause notice itself that vide an email dated 16.3.2017, the appellant had submitted a worksheet re-determining the service tax liability and based on this re-determination the appellant had paid service tax of Rs. 6,39,362/- along with interest of Rs. 4,14,278/-. However, I find that there is no finding on the re-determination of service tax liability submitted by the appellant. The probable reason could be that the appellant failed to provide a detailed defence reply or attend the personal hearing before the adjudicating authority. The appellant also needs to explain in detail the reasons, as to how the service tax liability worked out by the audit party was erroneous because the figures were taken from the trial balance and ledgers submitted by the appellant himself. Further, the appellant also needs to give an explanation as to how the figures for the FY 2013-14, 2014-15 and 2015-16, in the trial balance/ balance sheet, was erroneous, because the audit was conducted way after the completion of these financial years.

10. The appellant's other contention that the audit party has erroneously and mischievously issued the notice when they knew that the figures relied upon were not correct and reconciled figures were submitted to them, appears to be a wild statement. It does not behove the appellant to make such sweeping statements when it based on **their records and figures** that the short payment, was worked out. In case the appellant had any grievance, the matter could have been properly represented before the adjudicating authority, an opportunity which they failed to avail.

11. Since the working of the duty liability is being questioned, I deem it appropriate to remand back the matter to the adjudicating authority in terms of my observation made in para 9, supra. I am not giving any finding as regards invocation of extended period and imposition of penalty. These matters are kept open. Further, the adjudicating authority is directed to give a detailed finding, based on the submission of the appellant. The appellant is also directed to provide all the documents, ledgers, balance sheet, to substantiate his claim within a period of four weeks from the receipt of this order to the adjudicating authority. Needless to state, the adjudicating authority will adhere to the principles of natural justice, while deciding the matter.

11.1. In view of the foregoing, the impugned OIO is set aside and the matter is remanded back to the adjudicating authority.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
12. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date : .3.2018

Attested

Vinod Lukose
(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

By RPAD.

To,

M/s. Rucha Engineers Private Limited,
Unit II, B-3, Tata Motors Vendor Park,
Sanand,
Ahmedabad.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad North.
3. The Deputy/Assistant Commissioner, Central Tax, Division-III, Ahmedabad North.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad North.
5. Guard File.
6. P.A.

