

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

रजिस्टर डाक ए.डी. द्वारा

क फाइल संख्या (File No.) : V2(STC)106 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 371-17-18

दिनांक (Date): 22-Mar-2018 जारी करने की तारीख (Date of issue): 9/4/2018

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

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

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-II), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No MP/13/Dem/AC/2017/Kdb Dated: 29/12/2017  
issued by: Assistant Commissioner Central Excise (Div-II), Ahmedabad North

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

**M/s Electro Service**

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।



- (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 :-

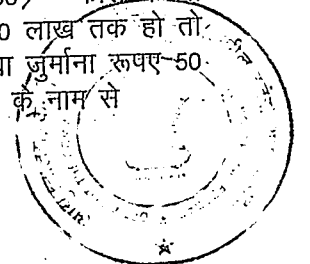
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 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) -

- (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।

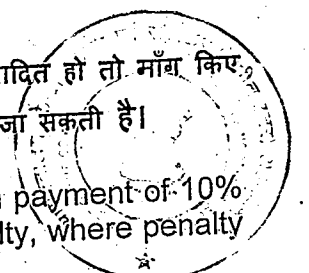
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

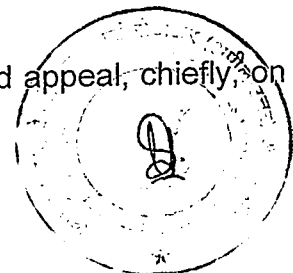


## ORDER-IN-APPEAL

**M/s Electro Service**, situated at Badami Colsa Compound, opposite : Municipal Industrial estate, Bapunanger, Ahmedabad – 380 024 (hereinafter referred to as 'the appellant'), is engaged in providing services classifiable under "**Management, Maintenance or Repair services**". On the basis of inquiry conducted by the erstwhile Range-XIII, Division-III, Service Tax, Ahmedabad, it was revealed that the appellant engaged in the rewinding / repairing of faulty motors classifiable as "Management, Maintenance or Repair services" under Section 6B of the Finance Act, 1994, read with Section 66D and Section 66E of the Finance Act, 1994, was not paying Service Tax, for which two show cause notices were issued and adjudicated *vide* O.I.O. No.SVTAX-000-JC-007-15-16 dated 24/06/2015 and O.I.O. No. SD-06/05/AC/Electro service/16-17 dated 30/11/2016 confirming Service Tax demand amounts of Rs.18,92,211/- and Rs.3,71,429/-.

2. After the amendments applicable from 01/07/2012 under section 66B, service Tax is chargeable on all the services except those included in the negative List as defined under Section 66D. As the appellant continued to evade payment of service Tax, another Show Cause Notice F.No.v.44/03-07/Dem-Electro Ser./17-18 dated 01/11/2017 (hereinafter referred to as 'the SCN') was issued to the appellant demanding Service Tax amounting to **Rs.1,74,619/-** for the period **April-2015 to March-2016**; proposing to appropriate the payment of Rs.68,718/- made by the appellant towards the demand; demanding interest under section 75 of the Finance Act, 1994 and proposing to impose penalty on the appellant under section 76, section 77(1)(a) and Section 78 of the Finance Act, 1994 and proposing to levy late fee as provided under rule 7 C of the Service Tax Rules, 1994 read with section 70 of the Finance Act, 1994 for non-filing of ST-3 returns for the period 2014-15. The SCN was adjudicated *vide* O.I.O. No. MP/13/Dem/AC/2017/KDB dated 21/12/2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, G.S.T. Division II (Naroda Road), Ahmedabad North (hereinafter referred to as 'the adjudicating authority'). In the impugned order it has been held that the appellant was liable to pay Rs.1,74,619/- and the amount of Rs.68,718/- paid by the appellant has been appropriated. In the impugned order demand of Rs.1,05,901/- has been confirmed under Section 73(1) of the Finance Act, 1994 along with interest under section 75 of the Finance Act, 1994. A penalty of Rs.10,000/- has been imposed on the appellant under Section 77(2) of the finance Act, 1994. Further, late fees of Rs.40,000/- has been imposed under section 70(1) of the Finance Act, 1994 for non-filing of service Tax returns for 2015-16 and a penalty of Rs.1,05,901/- has been imposed on the appellant under Section 78 of the Finance Act, 1994.

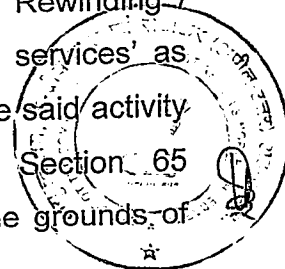
3. Aggrieved by the impugned order, the appellant has filed appeal, chiefly, on the following grounds:



1) In the present appeal, the moot question is to decide whether the services provided during April-2015 to March-2016 by the appellant falls under the category of 'Works Contract service' as contended by the appellant or under the category of 'Management, Maintenance or Repair service' as decided by the adjudicating authority. Earlier, the charge of Service Tax was created by section 66 and Section 66A and after 01/07/2012, these Sections were replaced by Section 66B when the Finance Act, 2012 introduced a new law for levy of service Tax based on the Negative List concept from 01/07/2012 replacing the erstwhile positive List of 119 services. The doctrine '*lex posterior derogate legi priori*' must apply as the younger law overrides the older law. The demand of Service Tax for the services provided during April-2015 to march-2016, relying on erstwhile section 66A(1) of the Finance Act, 1994 is not legally permitted under the prevailing provisions. The adjudicating authority erred in concluding that services provided by the appellant are not classifiable as 'Works Contract service' during April-2015 to March-2016. The appellant request s to consider that new valuation provisions in respect of Works Contract needs to be analyzed to determine the value of services, as in the erstwhile regime, works contract services were taxable at a composite rate of 4.94% and was applicable on the gross amount charged for the contract whereas under the Negative list regime, the composition scheme has been replaced by the abatement scheme where Service tax is payable on the total amount charged reduced by the prescribed percentage of abatement. The total amount charged will be the gross amount charged for Works contract and Maintenance services in relation to moveable property is required to be treated as 'Works contract' and Service Tax is payable on 70% of the entire value of the contract. It is very surprising that on the one hand the awareness is shown about insertion of Section 73 (1A) of the Finance Act, 1994 while on the other hand ignorance about notification No. 21/2012-ST dated 05/06/2012 regarding effective changes *vide* Finance Act, 2012 w.e.f. 01/07/2012. The copies of Invoices were never demanded by the adjudicating authority as the appellant did not have a active registration during April-2015 to March-2016. The appellant had not contravened any of the provisions of the Finance Act, 1994 and the demand for Service Tax and interest under Section 73(1) and Section 75 respectively were not required to be confirmed. Penalty under Section 78(1) of the Finance Act, 1994 was not imposable. The appellant request to consider that only due to inability of the Service Tax department to regenerate ACES user ID and password til date the appellant was not able to file ST-3 returns. The appellant has clearly mentioned in paragraph 52 of the grounds of appeal that it does not desire to be personally heard in the matter.

4. On considering personal hearing to be granted to the appellant, it is seen that the appeal form ST-4 submitted by the appellant, in column 6A thereof pertaining to personal hearing, the appellant has stated "**No, the appellant do not wish to be heard in person**". Further in paragraph 52 of the grounds of appeal, the appellant has categorically relinquished the opportunity for being heard in person. Accordingly, I find that the appellant do not desire to add anything further than what has already been adduced in the grounds of appeal and take up the appeal for decision on the basis of the impugned order and the grounds of appeal as available on records.

5. I have carefully gone through the contents of the impugned order as well as the grounds of appeal filed by the appellant. The main issue to be decided is whether the adjudicating authority had correctly classified the impugned services of Rewinding / Repairing of faulty Motors under "Management, Maintenance or Repair services' as defined under Section 65 (105) (zzg) of the Finance Act, 1994 or does the said activity merit classification under 'Works Contract service' defined under Section 65 (105)(zzzza) of the Finance Act, 1994 as claimed by the appellant in the grounds of



appeal making the liability to pay Service Tax only on 70% of the value of services after abatement.

6. Works contract services were defined under Section 65(15)(zzzza) of the Finance Act, 1994. As regards the period of 2015-16 covered in the instant appeal, this service has been defined under Section 66E(h) of the Finance Act, 1994 which is a declared list entry reading "service portion in the execution of works contract". Further, the term 'Works Contract' has been defined under Section 65B(54) of the Finance Act, 1994 as under:

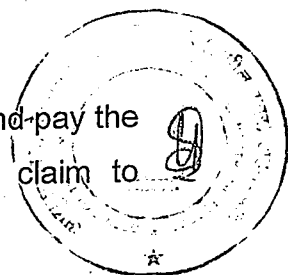
*"(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;"*

From the above it can be surmised that the broad condition to be satisfied to call a contract a Works contract are that property should get transferred during execution of the contract even though dominant nature of the contract need not be transfer of property. When considering Rewinding / repair of Motors impugned in the instant case, there is no transfer of property. The appellant has not even mentioned about any contract between the service recipient and itself for carrying out repair of motors. Therefore, the impugned services cannot be treated as service portion in the execution of works contract. Further, the appellant has not claimed or contended that there was any sales component or that it had paid VAT while claiming abatement for Rewinding / repair of motors. Therefore, the claim of abated value is not justified or sustainable in the case of Rewinding / repair of motors.

7. On considering the plea of the appellant that once the Negative list was introduced it was not liable to pay Service Tax under Maintenance, Management or Repair service, Section 6B of the Finance Act, 1994 stipulates as follows:

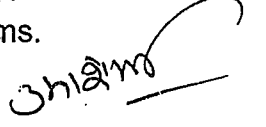
SECTION 66B. Charge of service tax on and after Finance Act, 2012.— There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

In view of the above, the appellant had no reason whatsoever to not assess and pay the correct Service Tax under Section 66B of the Finance Act, 1994. The claim to



abatement under works contract appears to be an afterthought and hence the confirmation of demand, interest and the imposition of penalties in the impugned order are correct and legally sustainable. The appeal is rejected.

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



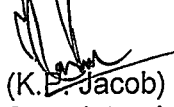
(उमा शंकर)

आयुक्त

केन्द्रीय कर (अपील्स)

Date: 22 / 03 / 2018

Attested

  
(K.P. Jacob)  
Superintendent,  
Central Tax (Appeals),  
Ahmedabad.

By R.P.A.D.

To

M/s Electro service,  
Badami Kolsa Compound,  
Opposite Municipal Industrial Estate,  
Ahmedabad – 380 024.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: II, (Naroda Road), Ahmedabad (North).
5. Guard File.
6. P.A.



