

**केंद्रीय कर आयुक्त (अपील)**

**O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,**  
 7<sup>th</sup> Floor, Central Excise Building,  
 केन्द्रीय उत्पाद शुल्क भवन,  
 Near Polytechnic,  
 सातवीं मंजिल, पोलिटिकनिक के पास  
 Ambavadi, Ahmedabad-380015  
 आम्बावाडी, अहमदाबाद-380015

079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(STC)114 /North/Appeals/ 2017-18  
 ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 375-17-18**  
 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-VI), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी  
 मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित  
 Arising out of Order-In-Original No **GST/Div-VI/O&A/10/West India/AC/KM/2017-18**  
 Dated: **16/01/2018**  
 issued by: Assistant Commissioner Central Excise (Div-VI), Ahmedabad North

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

**M/s West India Equipments**

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:**

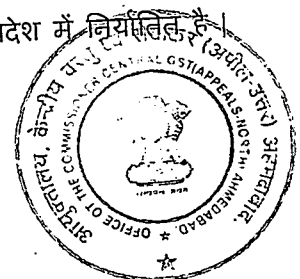
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए ।

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 :-

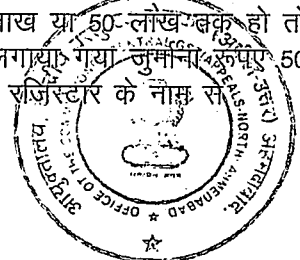
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 इ.ए-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 रजिस्ट्रार 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।

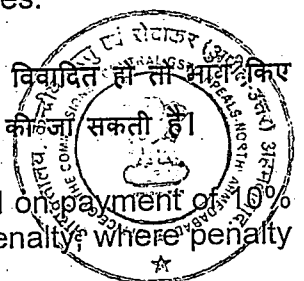
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

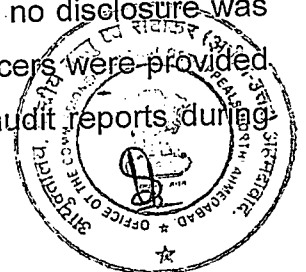


## ORDER-IN-APPEAL

**M/s West India Equipments**, Sanathan, Sarkhej-Bavla Highway, Sarkhej, Ahmedabad (hereinafter referred to as 'the appellant') was holding Service registration for providing services falling under the category of (i) Maintenance & Repairs services and (ii) Business Auxiliary services. During the course of audit of the records of the appellant in the month of July-2011 by the departmental officers for the period of 2006-07 to 2009-10, it was observed that the appellant had received certain amount towards for supply of machineries to its clients during 2008-09 & 2009-10 that appeared to be falling under the category of 'supply of tangible goods for use' taxable w.e.f. 18/05/2008 under section 65(105)(zzzzj) of the Finance Act, 1994. On further inquiry it appeared that Service tax amounting to Rs.3,13,940/- on rental income of machineries falling under 'supply of tangible goods for use' was recoverable along with interest. It also appeared that the appellant had not obtained Registration for the category of 'supply of tangible goods for use' and the details of such services were not mentioned in the returns. Therefore a Show Cause Notice F.No.STC/214/DEM/West India/D-III/12-13 dated 13/09/2012 (hereinafter 'the SCN') was issued to the appellant that was adjudicated *vide* O.I.O. No.GST/D-VI/O&A/10/WestIndia/AC/KM/17-18 dated 16/01/2018 (hereinafter referred to as 'the impugned order') issued by the Assistant Commissioner, Central GST & Central Excise, Division-VI, Ahmedābad North (hereinafter referred to as 'the adjudicating authority') where Service Tax demand of **Rs.3,13,940/-** for the period of **2008-09 to 2011-12** has been confirmed under Section 73(1) of the Finance Act, 1994; the protest lodged by the appellant was vacated and the payment of Rs.3,13,940/- has been appropriated; payment of interest has been confirmed under Section 75 of the Finance Act, 1994 appropriating an amount of Rs.19,070/- paid by the appellant towards interest confirmed and imposing penalties on the appellant under Section 77(1), Section 77(2) and Section 78 of the Finance Act, 1994.

2. Aggrieved by the impugned order, the appellant has filed the instant appeal on the following grounds:

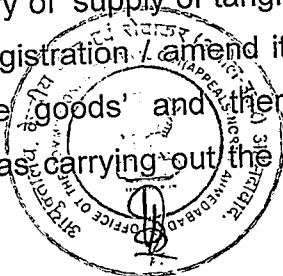
- 1) The adjudicating authority has erred in confirming larger period of limitation under Section 73(1) of the finance Act, 1994 even when there was no suppression of facts or any deliberate intention to evade payment of tax on the part of the appellant as the appellant had entered all such transactions of Hire charges of Volvo brand equipments in its books of Accounts from the beginning of such transactions and the same was reported in VAT returns and VAT was paid thereon and the appellant was having *bona fide* opinion that the transactions of renting of equipments were covered / taxable under VAT and no disclosure was required to be made in the Service Tax returns. The Audit officers were provided with all the books of accounts, invoices, VAT returns, VAT audit reports, during



inspection and hence there was no suppression of facts. On being pointed out by the Audit officers, the appellant had paid up the amount of Service Tax and interest thereon before issuance of the SCN. As per the decision of Hon'ble High Court of Gujarat in the case of CCE vs Steel Cast Ltd., if there was any confusion or controversy about taxability of a service and if assessee was entitled to *bona fide* view that the service is not taxable, then extended period is not applicable. In the case of Continental foundation Joint Venture vs CDE, Chandigarh – 2007 (216) ELT 177 (SC), it has been held by Hon'ble Supreme Court that with regard to the proviso to Section 11A of the Central Excise Act, 1944, mere omission to give correct information was no suppression of facts unless it was deliberate and to stop payment of duty. *Mens Rea* was not present on part of the appellant in the present case. The adjudicating authority had not considered the fact that the transaction of hire charge of Volvo brand equipment was with transfer of right to use and therefore fell under Article 366 (29A)(d) of the constitution of India a Deemed Sale and as per the advice of the appellant's VAT consultant, the appellant had a *bona fide* belief that such transactions fell under VAT and therefore VAT was paid and VAT returns were filed. A certificate from the Chartered Accountant was also produced showing Hire charges in VAT returns. The appellant would like to refer to a Circular D.O.F.No.334/1/2008-TRU dated 29/02/2008 of the department wherein at point 4.4.3 it is mentioned that when VAT is payable or paid then Service Tax is not payable.

3. Personal hearing in the appeal was held on 12/02/2018 that was attended by Shri Hemant Kajarekar, C.A. and Shri Sanjiv Adhvaryu, C.A. The learned C.A. reiterated the grounds of appeal and submitted that there was no written agreement.

4. I have carefully gone through the facts of the case on records and grounds of appeal filed by the appellant. The appellant is not disputing that it was liable to pay Service Tax on the activity of hiring out machineries under the category of 'supply of tangible goods for use'. The appellant is only disputing the invoking of extended period on the ground that it was under a *bona fide* belief that as it was paying VAT on the said service, it was not liable to pay Service Tax. This contention is not sustainable for the reason that the appellant was already registered providers of Services such as 'Maintenance & Repairs services' and 'Business Auxiliary services' and being a Service Tax assessee, the appellant cannot escape the responsibility cast upon it to properly classify service provided by it and pay proper service tax on such services. The fact remains that w.e.f. 18/05/2008 the renting of machineries was taxable under section 65(105)(zzzzj) of the Finance Act, 1994 under the category of 'supply of tangible goods for use'. The appellant had failed to obtain service tax registration / amend its existing service tax registration to include 'supply of tangible goods' and therefore the department had no means to know that the appellant was carrying out the impugned



activity up until the audit of its records was undertaken. Further, it has been clearly brought out in paragraph 10.3 of the impugned order that the appellant had not submitted Form 201A evidencing payment of VAT on Bill to Bill basis. In 10.4 again it has been brought out by the adjudicating authority that the appellant had failed to furnish any contract made with its clients establishing the fact that there was transfer of possession of machineries and even the Debit Notes were not reflecting payment of VAT. The appellant has not disputed these findings in the impugned order and hence the ground of *bona fide* belief on part of the appellant that Service Tax was not payable is not sustainable. The ingredients of suppression of facts with intent to evade tax exists in the present case and hence the invoking of extended period and the imposition of penalty under Section 78 of the Finance Act, 1994 is justified and valid. In view these discussions, I reject the appeal filed by the appellant,

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

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 22 / 03 / 2018

Attested

*(K. P. Jacob)*

(K. P. Jacob)  
Superintendent (Appeals-I)  
Central Excise, Ahmedabad.

By R.P.A.D.

To  
M/s West India Equipments,  
C/o M.S. Khurana Engg. Workshop,  
Before Santhan Overbridge,  
Sarkhej Bavla Highway, Sarkhej  
Ahmedabad.

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: VI, Ahmedabad (North).
5. Guard File.
- ✓ 6. P.A.

