



198 सत्यमेव जयते

केंद्रीय का आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय उत्पाद शुल्क भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015



☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): V2(ST)113/A-II/2016-17 *454/458*
स्थगन आवेदन संख्या (Stay App. No.)

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-11-17-18
दिनांक (Date): 30/08/2017 जारी करने की तारीख (Date of issue): *5/9/17*

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by Shri Uma Shanker, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद, आयुक्तालय द्वारा जारी
मूल आदेश सं. _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No. SD-01/Ref/28/AC/SK/2016-17 Dated: 14.10.2016
issued by: Assistant Commr STC(Div-I) Ahmedabad.

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

M/s Shree Krishna Construction

कोई व्यक्ति इस अपील आदेश से असंतुष्ट 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:

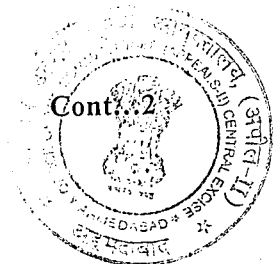
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा अंतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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 बालू बालू 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 किया गया है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित हो समय पर दिए गए हों 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.100 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत निरिदिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर अपील-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इकाई का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी जमा करनी 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 हास्पिटल कम्पाउण्ड, मेघाणी 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 : 380016. 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 वहाँ 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 वहाँ 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।



(ख) उक्तिलिखित परिच्छेद 2(1) क में बरुए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघानी नगर, अहमदाबाद-380016.

(b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियम, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या 50 लाख तक हो तो रुपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 50 लाख या उससे ज्यादा हो तो रुपए 10000/- फीस भेजनी होगी। फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध में की जाए। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है। स्टे के लिए आवेदन-पत्र रुपए 500/- फीस भेजनी होगी।

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 ₹ 1,000/-, ₹ 5000/- and ₹ 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 crossed bank draft in favour of Asst. Registrar of 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. Application made for grant of stay shall be accompanied by a fee of ₹ 500/-.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिये फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिये इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है।

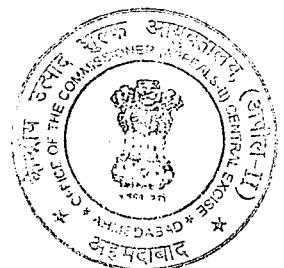
In case of the order covers a number of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scripatoria work if excising ₹ 1 lacs fee of ₹ 100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथा स्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिये।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of ₹ 6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर सम्बंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यावधि) नियम, 1982 में निहित है।

(6) Attention is invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.



ORDER IN APPEAL

M/s. Shree Krishna Construction, B-704, Satyam Skyline, Near Torrent Power, Sola Road, Naranpura, Ahmedabad -380013; (hereinafter referred to as the 'appellant') holding Service Tax Registration No: ABKFS-253JST001, have filed the present appeal on 15.12.2016, against the Order in-Original number SD-01/Refund/28/AC/SHREE KRISHNA/2016-17 dated 14.10.2016 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Service Tax, Division-I, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that M/s. Malani Construction was awarded the contract for a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession, by the government. The contract pertained to new construction of Institute of Kidney Disease Research Centre (IKDRC) at Manjushree Mill Compound, Ahmedabad. M/s. Malani Construction sub-contracted the work to the appellant. The appellant had filed a refund claim of Rs.13,75,439/- with the adjudicating authority on 27.06.2016. The appellant as a sub-contractor was availing exemption from payment of Service tax under Sl. No. 12(c) of the Notification No. 25/2012-ST dated 20.06.2012, till 31.03.2015. Vide Notification No. 06/2015-ST dtd.01.03.2015, the items mentioned at Sl.No. 12(c) of Notification No. 25/2012-ST, were omitted w.e.f. 01.04.2015. Accordingly, the appellant started charging Service Tax & deposited the same with the department in due course. However, vide entry No. 1(iv) of the Notification No. 09/2016-ST dated 01.03.2016, amended the Notification No. 25/2012-ST, as indicated below :

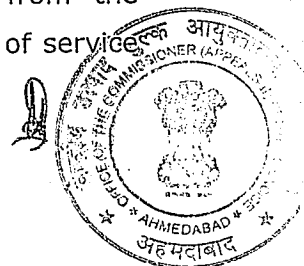
"after entry 12, with effect from the 1st March, 2016, the following entry shall be inserted, namely -

"12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment, under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date."

Accordingly, in view of this amendment, the appellant had sought the refund of Rs. 13,75,439/-, paid by them. The Adjudicating authority vide impugned order rejected the Refund claim amount of Rs. 13,75,439/-. The appellant being aggrieved by the impugned order filed this appeal on the basis that the adjudicating authority erred in rejecting the refund of Rs. 13,75,439/-, on the ground that the service is not 'works contract service'. The appellant alleged that the said ground was not a contention in the S.C.N., and hence the impugned order had clearly travelled beyond the scope of the S.C.N..

4. Personal hearing in the case was granted on 09.07.2017, and Dr. Nilesh Suchak and Shri Shilpang Karia, CA, appeared before me. They reiterated the grounds of appeal and submitted the C.A.'s certificate, the letter from the Government and a letter from the Contractor indicating that the burden of service tax of Rs. 13,75,439/-, has been borne by the appellant.



DISCUSSION AND FINDINGS :

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. The question to be decided is as to (i) whether the adjudicating authority has erred in concluding that the services provided by the appellant cannot be classified under works contract category and whether the said matter was contended by the department in the S.C.N. dtd.14.09.2016, issued to the appellant; (ii) whether the benefit of exemption Notification No. 25/2012-ST dt. 20.06.2012, is applicable in this case or not; and (iii) whether unjust enrichment is applicable in this claim.

6. I find that the contract for the work of new construction of Institute of Kidney Disease Research Centre was awarded to M/s. Malani Construction Co.. who sub-contracted the work to the appellant. The duty demanding authority has discussed the nature of service in Para 4 of the S.C.N. dtd.14.09.2016, issued to the appellant, wherein he has mentioned that that the sub-contractors or the labour contractors, though they have performed the job on behalf of their principal or Original Service Provider, would not deserve consideration and yield no merit as original contractor. So, the allegation of the appellant that the impugned order has travelled beyond the scope of S.C.N., does not hold substance. M/s. Malani Construction Co. had been awarded a works contract for the construction of the Institute of Kidney Disease Research Centre by the office of the Commissioner of Health, Government of Gujarat. M/s. Malani Construction Co. further sub-contracted some specific work to the appellant. The exemption available to the main contractor for providing of taxable services of works contract to the Government, a local authority or a Governmental authority by way of construction of civil structure meant predominantly for use other than for commerce, industry or any other business or profession, is not disputed in the impugned order in the light of Sl. No. 12 of Notification No. 25/2012-ST dt. 20.06.2012, read with Section 102 of the Finance Act, 1994, inserted by the Finance Act, 2016. The appellant is a sub-contractor who has sought refund of service tax paid by them, claiming exemption under Notification No. 25/2012-ST dt. 20.06.2012, read with Section 102 of the Finance Act, 1994, inserted by the Finance Act, 2016. However, the exemption is not applicable to the applicant as the same is meant for the contractor only who is provided of taxable services of works contract to the Government by way of construction of civil structure. At Sl. No. 29 (h) of Notification No. 25/2012-ST dt. 20.06.2012, the services of a sub-contractor are also exempted if "(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt". So, the primary requirement for any sub-contractor to claim exemption is that (i) he should be providing works contract service; (ii) he should be providing the works contract service to another



contractor who is providing works contract service and (ii) such another contractor who is providing works contract service should be exempt from payment of Service tax. In this case, while the main contractor is a works contractor and exempt, the appellant does not appear to be providing works contract service. 'Works contract' has been defined in Section 65B (54) of the Finance Act, 1994, wherein the two basic conditions required for a service provider to be considered under that definition have been stated as below :

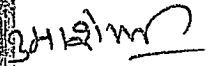
- (a) There should be transfer of property in goods involved in the execution of the contract, and
- (b) Such contract must be for Construction, Erection, Commissioning, Installation, Completion, Fitting out, Repair, Maintenance, Renovation or Alteration.

7. The appellant, does not seem to clear either of the requirements mentioned above and hence the services provided by the appellant would not fall under the purview of Works Contract Service. The Appellant was sub-contracted to perform only the labour work. As per their work order it was very much evident that they had supplied only labour services without transferring any goods involved in the execution of the contract. Consequently, the benefit of exemption under Notification No. 25/2012-ST dt. 20.06.2012, would not be available to the appellant as the services provided by the appellant were not covered by the works contract service. As the refund has rightly been rejected, the question of unjust enrichment does not arise.

8. In view of above, I dismiss the Appellant's appeal.

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

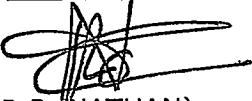
9. The appeal filed by the appellant, stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED



(R.R. NATHAN)

SUPERINTENDENT,

CENTRAL TAX APPEALS, AHMEDABAD.

To,

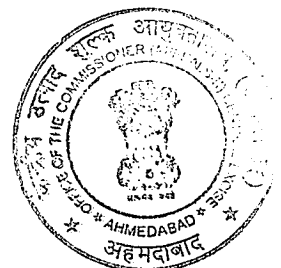
M/s. Shree Krishna Construction,

B-704, Satyam Skyline,

Nr. Torrent Power, Sola Road,

Naranpura,

Ahmedabad-380013.



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.

The GST, Ahmedabad
Ahmedabad
Division-VII, Central Tax, GST, Ahmedabad (North), Ahmedabad



