

केन्द्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX

केन्द्रीय कर शुल्क भवन
7th Floor, Central Excise Building
Near Polytechnic
सातवा मंजिल, पॉलिटेक्निक के पास
Ambavadi, Ahmedabad-380015
आम्बावाडी-अहमदाबाद-380015

079-26305065 टेलिफोन करवाकर
079-26305136 टेलिफैक्स

क फाइल संख्या : File No : V2(ST)182,183 &184/A-II/2016-17/10143 to 10153

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-002-APP-86-87-88-17-18

दिनांक Date : 21/11/2017 जारी करने की तारीख Date of Issue 28-11-17

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-014-015-016-16-17**
Dated 29.09.2016 Issued by **ADC STC, Service Tax, Div-HQ, Ahmedabad**

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

**M/s. Abhishek Associates
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 :-

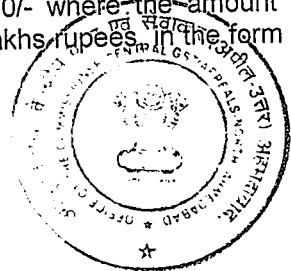
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेधाणी 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 ed by a copy of the order appealed 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 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 फॉर्म 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 A219k 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 धारा 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्त 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 हैं -

- (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 बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी 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,

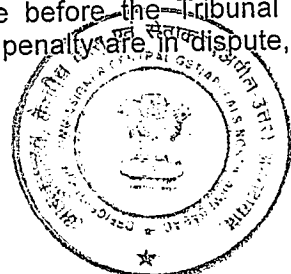
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

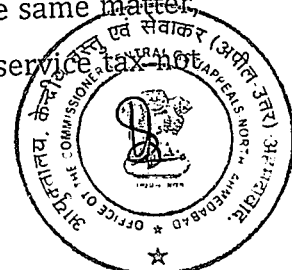


ORDER-IN-APPEAL

M/s Abhishek Associates, 24, Ambrish Society, Ranip, Ahmedabad 380005 (henceforth, "appellant") has filed following three appeals against the Order-in-Original No.AHM-SVTAX-000-ADC-14-15-16-2016-17 dated 29.9.2016 (henceforth, "impugned order") passed by the Additional Commissioner, Service Tax, Ahmedabad (henceforth, "adjudicating authority").

Sl. No.	Appeal No.	SCN F. No. & Date	Amount of service tax involved in the SCN (Rs.)	Period involved
1.	V2(ST)182/A-II/16-17	STC/4-27/O&A/ADC/12-13 dated 5.10.2012	43,83,510	2007-08 to 2010-11
2.	V2(ST)183/A-II/16-17	STC/4-44/O&A/12-13 dated 2.4.2013	31,95,563	2011-12
3.	V2(ST)184/A-II/16-17	STC/4-77/O&A/2013-14 dated 12.5.2014	8,43,582 + 41,27,580	Apr 2012 to Sep 2013

2. To state briefly, the facts of the case are that during scrutiny of ST-3 returns filed by the appellant, who was having service tax registration for providing Erection, Commissioning and Installation service (ECI service, for short) and Management, Maintenance or Repair service (MMR service, for short), it was noticed that appellant was not paying service tax on ECI service by claiming exemption for the same. After some inquiry, it appeared that the appellant was in fact providing MMR service of electrical items/ fittings and electrification work. It further appeared that in some cases the appellant was paying service tax on 33% of total value of service by claiming benefit of abatement under Notification No.1/2006-ST as applicable to ECI service. Thus, it appeared that services provided by the appellant were in the nature of MMR service and not ECI service and accordingly, abatement claimed in some cases was also wrong. A show cause notice (SCN dated 5.10.2012) was therefore issued for recovery of the service tax not paid. In the same matter, next show cause notice (SCN dated 2.4.2013) was issued for service tax not paid during 2011-12.



2.1 The demand of service tax raised under the show cause notices was confirmed under adjudication order (OIO) No.5-6/STC/AHD/ADC(JSN)/2013-14 dated 31.5.2013. The matter went to the Commissioner (A) and Commissioner (A) gave a mixed order and also remanded certain part of the matter back to adjudicating authority, against which both department as well as appellant filed appeals with CESTAT. Hon'ble CESTAT, vide order dated 17.7.2014 decided the appeal filed by the appellant (department's appeal is still pending for decision) and setting aside the orders passed by the lower authorities remanded back to the adjudicating authority for deciding all issues afresh. Meanwhile, third show cause notice dated 12.5.2014 was also issued covering the period from Apr 2012 to Sep 2013.

2.2 In the order passed in remand proceedings (impugned order), there is no relief for the appellant and hence, feeling aggrieved the appellant has filed the subject appeals. The impugned order also covers the third show cause notice dated 12.5.2013.

3. In brief, the appellant has taken following grounds of appeal-

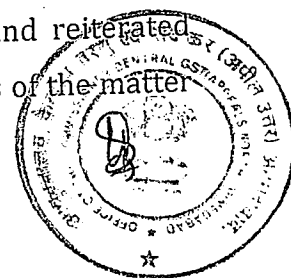
3.1 As per appellant, the services provided by him were classifiable as Works Contract service and therefore it was wrong to confirm the demand under MMR service.

3.2 Appellant contends that services provided to Airport Authority of India are not liable to service tax as it was a turnkey work carried out for the AIRPORT and specifically excluded from levy of service tax.

3.3 With regard to services provided to ESIC hospital, NBCC, NBCC as a sub-contractor, appellant has relied upon CBEC's Circular No.80/10/2004-ST; 147/16/2011-ST; 138/7/2011-ST.

3.4 Appellant has also contested invocation of extended period in case of first SCN, stating there is no suppression. Imposition of penalties has also been contested.

4. A personal hearing was held on 21.8.2017, wherein Shri Vipul Khandhar, Chartered Accountant represented the appellant and reiterated the grounds of appeal. Shri Khandhar also submitted a synopsis of the matter and copies of some invoices and board's circulars.



5. I have carefully gone through the appeal papers. The classification of service activities of the appellant is the core issue. The demand of service tax confirmed in the impugned order covers three show cause notices for the period Apr 2007 to Sep 2013. From the details available in the impugned order and also in the grounds of appeal, I note that dispute is with regard to services provided to – Airport Authority of India (AAI); Indian Space Research Organisation (ISRO); National Building Construction Corporation (NBCC); Employees State Insurance Corporation (ESIC); Railways; and All India Radio (AIR).

6. Since determination of classification of services is dependent on the underlying contracts, I need to examine the copies of contracts/ invoices provided by the appellant during personal hearing to decide the nature of activities. However, before that, it would be useful to understand the scope of services involved in the subject matter, as per erstwhile section 65 of the Finance Act, 1994-

6.1 **ECI service** means any service provided by a commissioning and installation agency in relation to, inter-alia, installation of electrical and electronic devices, including wirings or fittings thereof. [Section 65(39a)]

6.2 **WC service** is a service in relation to execution of a works contract, excluding works contracts in respect of roads, airports, bridges... [Section 65(105)(zzzza)]

6.2.1 Works contract (WC) is a contract where transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods. [Explanation to Section 65(105)(zzzza)]

6.2.2 Further, as per the same Explanation, only specified works contracts, which includes installation of electrical or electronic devices, are covered in the WC service.

6.3 **MMR service** means any service provided by any person under a contract in relation to management of properties, whether immovable or not; maintenance or repair of properties, whether immovable or not; maintenance or repair, including reconditioning or restoration or servicing of any goods or equipment, except motor vehicle. [Section 65(64)]



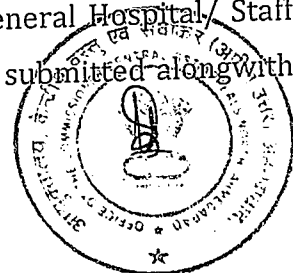
7. I have examined the copies of documents produced by the appellant during personal hearing in light of the above-said provisions, considering the same as representative documents for the whole period involved in all three appeals. My findings are as follows.

7.1 **Services provided to AAI-** Acceptance letter of 15.11.11 of AAI addressed to the appellant indicates that the contract was for supply of electrical spares for maintenance of T-2 at SVPI Airport, Ahmedabad. Thus, supply of electrical spares for maintenance of Airport terminal is evident, however, it is not clear whether service activity is also involved alongwith supply of spares. The acceptance letter and schedule of quantity attached therewith is insufficient to draw any conclusion in this regard. If the contract is for supply of goods only, there is no question of levy of service tax.

7.2 **Services provided to ISRO** - As per ISRO, SAC, Ahmedabad's letter dated 10.9.2007, the work offered is of rewiring of old electrical points and redistribution of electrical power in old MIC lab in bldg no.23 at SAC, Ahmedabad. Apparently, the work offered includes both supply and service, however, the work is obviously in the nature of maintenance and repairs and does not involve installation of electrical or electronic devices so as to classify the service as a WC service. I therefore concur with the findings of adjudicating authority that the service rendered is MMR service.

7.3 **Services provided to NBCC** - There is a letter dated 1.9.2009 for reward of ARM works of electrical works at ESIC-MGM Hospital, Parel, Mumbai. The work involves supply of material as well as labour charges. The item list contains switches, insulated wires, tubelight starters, chokes, fan regulators, etc. and labour charges are fixed per month. This indicates that the contract was in the nature of maintenance or repair, perhaps ARM also stands for Annual Repair and Maintenance, hence contract is for maintenance and repair work. The classification of the activity as MMR service as adopted in the impugned order is quite in order and requires no interference.

7.4 **Services provided to ESIC** - The description of work - Providing annual maintenance & repair electric work for ESIC General Hospital/ Staff Quarters, Naroda, Ahmedabad- mentioned in the letter submitted alongwith



the ESIC's letter dated 18.11.2010 says it all. The work done was therefore rightly classified under MMR service and there is no scope for any change.

7.5 **Services provided to Railways** – With regard to this part, appellant has not submitted any document, hence I am unable to draw any conclusion with regard to nature of service.

7.6 **Services provided to AIR** – As per Assistant Engineer (Elect.), Prashar Bharti (AIR)' letter dated 19.2.2010, the nature of work is Re-wiring in B type 6 Nos. Quarters N Block at ESIC Colony, Acheri Sabarmati, Ahmedabad. The work appears to involve both supply and service, however, it is in relation to repairing work and not for installation of electrical or electronic devices so as classify under WC service. The work done by the appellant has been deservedly classified by the adjudicating authority under MMR service.

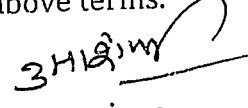
8. I therefore find that the impugned order requires no interference except, as far as it relates to the services provided to AAI and Railways, where adjudicating authority has relied upon the Proprietor's statement recorded before the Central Excise Officer to highlight the work done by the appellant. Since present matter is more about correct interpretation of facts than the law, the contracts relating to work done for AAI and Railways need to be gone through to decide taxability and classification of the activities involved. Accordingly, matter needs to be remanded back to the adjudicating authority to study the contracts awarded by AAI and Railways and decide the matter accordingly. Further, adjudicating authority needs to break up the entire demand, service recipient-wise, so as to segregate the demand pertaining to services provided to AAI and Railways and pass a speaking order after going through all/ representative contracts with these entities. The appellant is also directed to produce the copies of relevant contracts before the adjudicating authority for his examination and other details as required by him. Needless to mention, principles of natural justice would be followed.

9. Accordingly, I remand the matter back to the adjudicating authority for a fresh decision in accordance with directions given in the preceding paragraph.



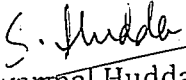
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

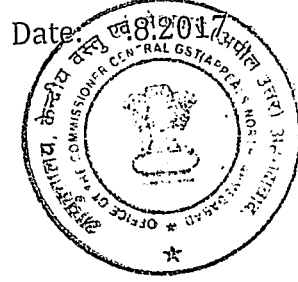
The appeals filed by the appellant stand disposed of in above terms.


(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested


(Sanwamal Hudda)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,
M/s Abhishek Associates,
24, Ambrish Society, Ranip,
Ahmedabad 380005

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad -North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad South.
4. The Asstt./Deputy Commissioner, Central Tax, Division-VII, Ahmedabad North.
- ✓ 5. Guard File.
6. P.A.