

आयुक्त का कार्यालय, (अपीलस)  
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



क फाइल संख्या : File No : V2(ST)60 /North/Appeals/2018-19

7806 to 7810

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-127-18-19

दिनांक Date : 20-Nov-18 जारी करने की तारीख Date of Issue 1/1/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

Arising out of Order-in-Original No 12-14/JC/2018/GCJ Dated 28-Mar-18 Issued by Joint Commissioner , Central GST , Div-VI , Ahmedabad North.

अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

**M/s Sai Consulting Engineerings  
Pvt Ltd**

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:-

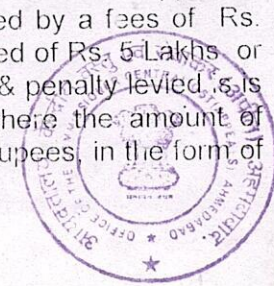
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेन्टल अस्पताल कंपाउण्ड, मेघानी 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 निम्नलिखित, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकती है 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 मांगे 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।

(iii) 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 accompanied 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 फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियों (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा अधीक्षक 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 शर्तों 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ 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, बशर्ते 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 है

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

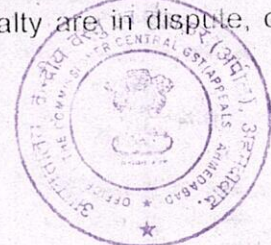
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

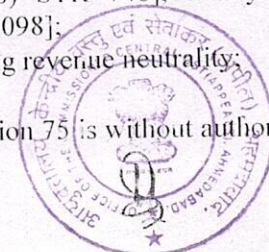
This appeal has been filed by M/s. Sai Consulting Engineers Private Limited, Block A, Satyam Corporate Square, B/h Rajpath Club, Bodakdev, Ahmedabad 380 059 [for short –‘appellant’] against OIO No. 12-14/JC/2018/GCJ dated 28.3.2018, passed by the Joint Commissioner, CGST, Ahmedabad North Commissionerate [for short –‘adjudicating authority’].

2. Briefly, the facts are that three show cause notices dated 17.4.2015, 28.6.2016 and 21.3.2017, covering the period from April 2013 to March 2016 demanding total service tax of Rs. 71,53,146/- was issued to the appellant *inter alia* alleging that they had made expenditure in foreign currency under the head *professional fees – foreign* for consultancy engineers service received from foreign service providers and had failed to discharge service tax on the same; that these were to be considered as services in terms of Section 65B(44) of the Finance Act, 1994 and were liable to service tax in terms of Section 66B of the Finance Act, 1994.

3. These notices were adjudicated vide the impugned OIO dated 28.3.2018, wherein the adjudicating authority confirmed the demand along with interest and further imposed penalty on the appellant under sections 76 and 77(2) of the Finance Act, 1994.

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

- that they are executing various civil construction projects in foreign countries; that these contracts are awarded by Government or semi-Government agencies; the appellant engages various consulting engineers to who the appellant subcontracts part of the project and makes payment to such contractors or consultants; the Government or semi Government agency that has awarded the whole project to the appellant would make payment for executing the project to the appellant & the appellant would make payment to the sub contractors for a part of the job work executed by them;
- that the impugned OIO is passed on incorrect facts & is also suffering jurisdictional errors and deserves to be set aside;
- the contracts are entered into in foreign countries;
- that the sub contractors have not provided services “from” abroad or “from” non taxable territory, but they have provided services “in” the non taxable territory and their services have been fully consumed “in” foreign countries only; this fact has been conveniently bypassed by the adjudicating authority;
- the Commissioner’s order relied upon by the adjudicating authority is not final and conclusive and is under challenge before the Hon’ble Tribunal;
- the Rule 3(iii) of the Taxation of Services (Provided from outside India and received in India) Rules, 2006 is applicable only in a case where any taxable service was received in India; that the title of this rule shows that the provisions are applicable only when the services were provided from outside India and received in India; that they are subject to Section 66A of the Finance Act, 1994; that section 66A is only applicable when any taxable service provided from abroad was received by a person in India;
- that the aforementioned rules nowhere lay down that if a taxable service was received by a person located in India but in a foreign country where it was consumed then also such service would be deemed to have been received by the person in India because he was located in India; that when services of associated consultants and sub consultants were admittedly received and consumed by the appellant in foreign countries the Rules of 2006 was not at all applicable;
- the adjudicating authority erred in fastening service tax on the appellant for services admittedly received and consumed by the appellant in foreign countries; that they would like to rely on the case of Welspun Gujarat Stahl Rohren Limited [2007(5) STR 38] and Bharat Forge Limited [2008(9) STR 67], Intas Pharmaceuticals [2009(16) STR 748], Infosys [2014-TIOL-409-CESTAT Bang], KPIT Technologies [2014(36) STR 1098];
- that no proceeding could be initiated in a case involving revenue neutrality;
- that no penalty could have been imposed in this case;
- that the order regarding payment of interest under section 75 is without authority in law.



5. Personal hearing in the case was held on 12.6.2018 and then on 26.10.2018, wherein Shri Paresh M Dave, Advocate appeared on behalf of the appellant. The learned Advocate, reiterated the grounds of appeal and further showed me the invoice and bank details to stress home the point that the project is in a foreign soil and services were rendered there; that only payments were routed through India. He cited the judgements in the case of KPIT and Infosys, *supra* and the judgment of Milind Kulkarni [2016(44) STR 71]. He also pleaded revenue neutrality. The learned Advocate also provided a short note dated 13.6.2018 on the written submissions reiterating the contentions already raised in the grounds of appeal.

6. I have gone through the facts of the case, the grounds of appeal, the oral contentions raised during the course of personal hearing. The question to be decided is whether in this case the appellant is liable for service tax under reverse charge mechanism under the consulting engineers service received from abroad which was reflected in his books of accounts under the head 'professional fees -foreign'.

7. The adjudicating authority vide his impugned CIO dated 28.3.2018, has held that the appellant having a fixed establishment in India had given contracts/sub contracts to various experts for executing works in foreign countries; that the appellant had paid the amount in dispute; that in view of Rule 3 of the Place of Provision of Service Rules, 2012, read with notification No. 30/2012-ST dated 20.6.2012, the appellant being in a taxable territory of India was liable for payment of service tax on the value of services received from non taxable territory.

8. On going through the appellants contention in the grounds raised, I find that the appellant has heavily relied upon the Taxation of Services (Provided from outside India and received in India) Rules, 2006 to contend that they are not leviable to service tax. However, the facts of the matter is that the adjudicating authority has held the appellant liable in terms of Rule 3 of the Place of Provision of Service Rules, 2012 and not under Taxation of Services (Provided from outside India and received in India) Rules, 2006. This is more so since the dispute pertains to the period from April 2013 to March 2016.

9. Now, Section 66A of the Finance Act, 1994 would not apply from 1.7.2012. However, in the present case, I would like to reproduce the following:

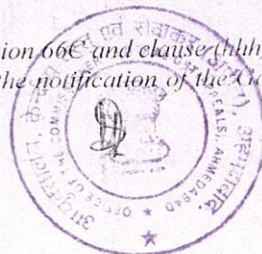
**Section 66C. Determination of place of provision of service. —**

(1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

(2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.]

**Place of Provision of Services Rules, 2012**  
[Notification No. 28/2012-S.T., dated 20-6-2012]

In exercise of the powers conferred by sub-section (1) of section 66C and clause (hh) of sub-section (2) of section 94 of the Finance Act, 1994 and in supersession of the notification of the Government of India in



the Ministry of Finance, Department of Revenue, number 9/2005-ST, dated the 3rd March, 2005 published in the Gazette of India Extraordinary, Part II, Section 3, Sub-Section (i) vide number G.S.R. 151(E) dated the 3rd March, 2005 and the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 11/2006-S.T., dated the 19th May, 2006 published in the Gazette of India Extraordinary, Part II, Section 3, Sub-Section (i) vide number G.S.R. 227 (E) dated the 19th May, 2006, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules for the purpose of determination of the place of provision of services, namely :-

**RULE 1. Short title, extent and commencement. —**

- (1) These rules may be called the Place of Provision of Services Rules, 2012.
- (2) They shall come into force on 1st day of July, 2012.

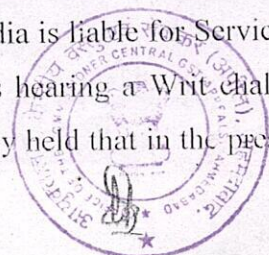
**RULE 3. Place of provision generally. —**

The place of provision of a service shall be the location of the recipient of service:

*Provided that in case [of services other than online information and database access or retrieval services, where] the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.*

Now the basic argument of the appellant is that the sub contractors have not provided services "from" abroad or "from" non taxable territory, but they have provided services "in" the non taxable territory and their services have been fully consumed "in" foreign countries only and hence, in view of the foregoing, no service tax under reverse charge is payable, since according to the appellant service tax is only leviable when the services were received in India. However, on going through Section 66C, *supra*, I find that the section gives power to the Central Government to frame rules to determine the place where services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided. In terms of this the Government has issued the Place of Provision of Services Rules, 2012, wherein, under Rule 3, the general place of provision is - the location of the recipient of the service. Now, what needs to be understood, is that what is stated is the location of the recipient of the service. In this case the contract were entered into by the appellant with Government and semi Government agencies and in undertaking these contracts, the appellant had engaged the services of contractors or consultants who provided the services to the appellant towards the undertaking/completion of the said contracts. The question that the contracts were entered into, performed and consumed in a country other than India, is not of relevance as the appellant states because neither the rule nor the act provides so. What is of relevance is that without doubt the contract was provided to the appellant and it is not disputed by anyone that the location of the appellant in this case was taxable territory of India. Hence, the appellant is liable for service tax in terms of Section 66C of the Finance Act, 1994, read with Rule 3 of the Place of Provision of Services Rules, 2012, and notification No. 30/2012-ST dated 20.6.2012.

10. The appellant has vehemently argued before me during the course of personal hearing stating that in the case of Orient Crafts Ltd [2006(4)STR 81(De)], the Hon'ble Delhi High Court had held that the Rules [i.e. Taxation of Services (Provided from outside India and received in India) Rules, 2006], framed by the Central Government, make it absolutely clear that taxable services provided from outside India and received in India is liable for Service Tax. We need not forget that in this case, the Hon'ble High Court was hearing a Writ challenging the validity of Section 66A of the Finance Act, 1994. I have already held that in the present dispute



being for the period from April 2013 to March 2016, Section 66A was of no relevance, since as already stated above, it would not apply from 1.7.2012.

11. The appellant has thereafter relied upon the case of Infosys Ltd [2014-TIOL 409-CESTAT-BANG] and KPIT Technologies Ltd [2014(36) STR 1098], wherein in both the cases, the dispute was regarding taxability under section 66A and [b] services were provided by the branches to their head offices. Further, the case of M/s. Infosys, in addition to the fact that the demand of service tax was under reverse charge mechanism under Section 66A, the service tax was in respect of the telecommunication services. The legal provisions are therefore completely different because in this case it talks about license and the right accrues on the grant of license only. The facts of the both the cases differ from the present dispute, in so far as section 66A of the Finance Act, 1994 would no longer apply to the present dispute at hand. Therefore, I find that the rationale of these cases would not apply to the present dispute.

12. The appellant has also relied upon the case of M/s. Milind Kulkarni [2016(44) STR 71] to substantiate their claim that they are not liable for service tax under reverse charge mechanism. I have gone through the said judgment of the Hon'ble Tribunal and find that even in this case the service was provided by the branches and subsidiary companies to the parent company and the service tax was demanded under section 66A. The facts are totally different. In the present dispute as I have already held that the appellant is liable for service tax under Section 66C of the Finance Act, 1994, read with Rule 3 of the Place of Provision of Services Rules, 2012 and notification No. 30/2012-ST dated 20.6.2012. Therefore, I find that this citation would be of no help to the appellant. I have also gone through the case of British Airways [2014(36) STR 598] and Torrent Pharmaceuticals Ltd [2015(39) STR 97] and find that while these judgements have been referred in the aforementioned citation, both these cases pertain to Section 66A and hence, as I have already held, would not be relevant to the present dispute.

13. The appellant has lastly stated that even if they are liable to pay service tax, it is a case of revenue neutrality. Now the purpose of service tax to be charged by using the reverse charge basis would be rendered obsolete if assessee's were to not pay tax by pleading that it is revenue neutral since even otherwise they were eligible for availing CENVAT credit. I do not agree with this argument, since this would never have been the object of the Government while introducing service tax under the reverse charge mechanism. Hence, the same stands rejected.

14. The appellant has lastly stated that they are not liable for penalty. Penalty has been imposed under sections 76 and 77 of the Finance Act, 1994. The adjudicating authority has given proper reasoning for imposing the said penalty. The appellant coming up with the argument that they were under a bonafide belief, that no tax was payable is not a plausible argument, more so since payment of service tax under reverse charge mechanism was a phenomenon which was introduced years back. Penalty under section 76 is imposed on account of service tax not levied or paid or on account of short payment of short levy for any reason other than fraud, willful misstatement, collusion, suppression, etc.. The appellant has not given me



any reason which forces me to interfere with the finding or the quantum of penalty imposed. The argument therefore stands rejected.

15. In view of the foregoing, the impugned OIO is upheld and the appeal is rejected.

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

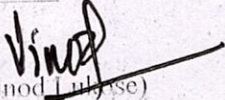
उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date 20.11.2018

Attested

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

By RPAD.

To,

M/s. Sai Consulting Engineers Private Limited,  
Block A, Satyam Corporate Square,  
B/h Rajpath Club,  
Bodakdev,  
Ahmedabad 380 059

Copy to:-

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



