



आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या : File No : V2(ST)24 /North/Appeals/2018-19

7863 + 7867

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-002-APP-138-18-19

दिनांक Date : 17-Dec-18 जारी करने की तारीख

Date of Issue

2/1/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No 04/AC/Dem/17-18/RTP Dated 31-Jan-18

Issued by **Assistant Commissioner** , Central GST , Div-V , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

M/s Jay Formulations 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:-

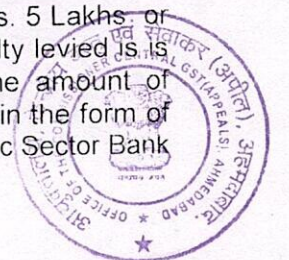
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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 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 प्रतियाँ (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 (सीस्तेत) 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 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.

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065



ORDER-IN-APPEAL

This appeal has been filed by M/s Jay Formulations Ltd, 1301, GIDC, Kerala, Dholka-BaVLA, Ahmedabad [for short-"the appellant"] against Order-in-Original No.04/AC/Dem/2017-18/RTP dated 31.01.2018 [impugned order] passed by the Assistant Commission of CGST, Division-V, Ahmedabad North [adjudicating authority]

2. The facts of the case is that based on Audit objection, a show cause notice dated 17.10.2016 was issued to the appellant, alleging that they had not paid service tax on services of "Goods Transport Agency" under reverse charge mechanism towards the transportation expenses for receipt of goods and material incurred during the period from 2010-11 to 2014-15. The said show cause notice proposes for [i] considering the services received by the appellant as "Goods Transport Agency";and [ii] demand of Rs.4,30,322/- with interest and penalty for violation of legal provisions under Finance Act, 1994 and Rules made there under. Vide impugned order, the adjudicating authority has confirmed the demand with interest and imposed penalty under Section 77(2), 77(1) and 78of Finance Act.

3. Being aggrieved, the appellant has filed by the instant appeals on the grounds that:

- The adjudicating authority has wrongly classified the service as Goods transport Agency ; that the appellant are engaged in export business and are using shipping line transporter for dispatching material to different countries and in case of local sales, they send material through IBA approved transporter;
- The adjudicating authority has only taken into consideration the legal provision regarding GTA services and totally ignored the fact that service tax payment has already been discharged by the transporter and thus not given to natural justice to SCN.
- No penalty is imposable.
- They relied on various case laws in support of their arguments.

4. A personal hearing in the matter was held on 19.11.2018. Shri Arjun Akruwala, Chartered Accountant appeared on behalf of the appellant.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal as well as at the time of personal hearing. The limited issue to be decided in the matter is relating to leviability of service tax on services of "Goods Transport Agency" under reverse charge mechanism incurred by the appellant towards transportation expenses for receipt of goods and material for the period from 2010-11 to 2014-15.



8. Section 65(105)(zzp) of the Act, *ibid*, defines taxable service under "Goods Transport Agency, as "taxable service means" any service provided or to be provided to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage. Section 65(50b) of the Finance Act, 1994 defines Goods Transport Agency Service, as "Goods Transport Agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called." To fall within the statute viz. Section 65(50b), which defines the "Good Transport Agency" and taxability on such service under clause of Section 65(105)(zzp) of the Act *ibid*, there should be a service in relation to transport of goods by road coupled with issue of consignment notes.

9. I find that in the impugned order the adjudicating authority has only discussed the legal provisions of "Goods Transport Agency Service" and clause of Notification No.36/2004-ST dated 31.12.2004 and Notification No.30/2012-ST dated 20.06.2012. The adjudicating authority, based on the legal provision, has concluded that the main activity of the appellant is manufacturing of excisable goods for which they receives inputs by transportation of goods by Road and also dispatching the goods by Road Transport and the expenses incurred towards transportation is liable for service tax under Reverse Charge Mechanism, vide notification supra. No further supporting arguments was placed by the adjudicating authority to establish that the appellant had actually rendered service of Goods Transport Agency and they are liable to pay service tax under Reverse Charge Mechanism as per notification mentioned above.

6. The appellant has mainly argued that the classification of service observed by the adjudicating authority is wrong; that they were engaged in export business and using shipping line transporter for dispatching material to different countries and in case of local sales, they send material through IBA approved transporter. They further contended that the tax has been paid by the transporter, hence no liability of tax on them. I also find that the appellant had not defended the case before the adjudicating authority regarding proper classification of their service as argued by them.

7. Classification of service is to be determined with respect to nature thereof vis-à-vis definitions of various services given in Section 65, read with Section 65A of Finance Act, 1994. I find that in the case of Commissioner of Central Excise, Agra V/s M/s Agra Computers, reported at 2014(34)STR 104 (Del-Tri), it has been held that Section 65A of Finance Act, 1994 provides guidance for determination of classification of taxable services for classification to be determined in terms of sub-clauses of Section *ibid*. In another case, I find that the Hon'ble Tribunal, Bangalore in the case of M/s SPL Developers (P) Ltd reported at 2015 (39) STR 455, held that "The classification of a service must always be on analysis of the characteristics of the service, analyzed in terms of the provisions of the Act; considered in the light of



the guidance provided in Section 65A of the Act; and identification of which of the clauses of Section 65(105), the service in issue falls into.

8. In the instant case, I find that neither the adjudicating authority has properly discussed with material evidence that the service rendered by the appellant during the relevant periods falls within the definition of "Goods Transport Agency" nor the appellant defended the case before the adjudicating authority that the service rendered by them does not falls under the service category of "Goods Transport Agency" and under which category the services actually falls. Therefore, I am of the considered view that the issue involved in the instant case is required to be examined afresh and pass a speaking order by the adjudicating authority with reasoning that the service in question during the relevant period falls under the category of "Goods Transport Agency" service. The appellant may defend their case with material evidence, if any before the adjudicating authority.

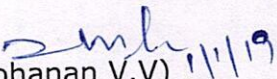
9. In view of above discussion, I remand the case to the adjudicating authority. The appeal stand disposed of in above terms.

3/12/18

(उमा शंकर)
आयुक्त (अपील्स)

Date: /12/2018.

Attested


(Mohanan V.V)
Superintendent (Appeal)

By RPAD

To
M/s Jay Formulations Ltd,
1301, GIDC, Kerala, Dholka-Bavla,
Ahmedabad

Copy to:-

1. The Chief Commissioner, CGST Zone, Ahmedabad.
2. The Commissioner, CGST, Ahmedabad North
3. The Addl./Joint Commissioner, (Systems), CGST, Ahmedabad North
4. The Dy. / Asstt. Commissioner, CGST, Division, Ahmedabad North
5. Guard file.
6. P.A



