



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

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क फाइल संख्या : File No : V2(ST)119 /North/Appeals/2018-19

9223 + 09228

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-002-APP-174-18-19

दिनांक Date : 27-Jan-19 जारी करने की तारीख Date of Issue 12/2/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No CGST/A'bad-North/Div-VII/S.Tax-DC-008-18-19 Dated 05-Jul-18 Issued by Deputy Commissioner , Central GST , Div-VII , Ahmedabad North.

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

M/s Raj Builders

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 :-

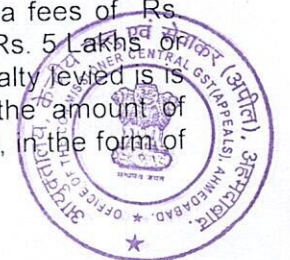
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

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

as file



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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 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 होंगे।

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. Raj Builders, Ranip, Ahmedabad (henceforth, "appellants") filed the present appeal against the Order-in-Original No.CGST/A'bad-North/Div-VII/S.Tax-DC-008-18-19 05.07.2018 (henceforth,"impugned order") passed by the Deputy Commissioner, GST Division-VII, Ahmedabad-North (henceforth, "adjudicating authority").

2. Brief facts of the case are that based on the intelligence that 60% of the total value collected from members in cash against booking/sale of residential cum commercial units in the scheme named 'Nishan Royal' & 'Nishan Status' were not included in accountants maintained for service tax purpose/ST-3 returns by M/s JM Infrascture, 'Nishan Status', Survey No.105/3 TP No.66,FP No. 26,GST Crossing, New Ranip, Ahmedabad('M/s JM' for brevity) & M/s. Raj Builders,Shop No.5&6'Nishan Status', GST Crossing, New Ranip,Ahmedabad('M/s Raj' for brevity), both service tax registrant, evaded service tax on said cash receipt and paid service tax only on remaining 40% value received through cheques, the office situated at Flat No.B-503 'Nishan Royal' Survey No.149,Opp-Anmol Bunglow, GST Road, New Ranip, Ahmedabad were searched 19.01.2015 by officers of Directorate General of Central Excise Intelligence, Zonal Unit, Ahmedabad (here-in-after referred to as 'DGCEI') and various official & private documents were seized under panchnama. Investigation revealed that M/s. Raj evaded service tax Rs.5,51,746/- during the period from July 2010 to September 2014 on advance booking received in cash. Show cause notice dated 14.02.2017 issued in this regard was decided under impugned order confirming said service tax short paid along with interest, penalty against the appellant.

3. Being aggrieved with the impugned order, the appellant preferred this appeal contesting *inter alia*, that though the facts of the present case is different, the adjudicating authority has mentioned findings of M/s. JM Infrastructure in the facts of present case and hence the impugned order is non-speaking one and violates **principle of natural justice**, the case of the present appellant is legal issue of demand under construction of residential complex and commercial or industrial construction service and **not the issue of 'Rojmel'** ; that the case of the department without investigation into crux of the matter is based only on the statement of Shri Jemin Patel; that apart from the rojmel, the show cause notice has not adduced any evidence to strengthen the claim that the rojmel received from the secret office belongs to the appellant; that the show cause notice is vague and in absence of any specific allegations, the



appellants are unable to effectively respond the same; that that onus of proof lies on the department to prove that appellant received unaccounted cash which is not discharged in present case; demand has been raised merely on the basis of the statement of the partner; that the appellant cannot be called upon to prove the negative, it is the department who has to prove that services more and above the ledger accounts have been received; that the appellant are not liable to pay service tax on amount received post construction of residential/commercial complex after applying for BU permission; the levy on builder-buyer transaction is held to be unconstitutional by Hon'ble Supreme Court under Commissioner of Central Excise & Customs Kerala and others v/s Larsen & Tubro Ltd & others reported in 2015(39)STR 913(SC) and Suresh Kumar Bansal v/s UOI reported in 2016 (43) STR(del); they also contested that levy of service tax on sale of immovable property is sub-judice and the matter is still pending with Hon'ble Supreme Court; that demand of service tax Rs.1,68,379/- paid under reverse charge mechanism, however not considered by in the show cause notice and Rs.1,92,833/- paid through Cenvat account annexed in the show cause notice is not adjusted in the demand of Rs.5,51,746/-; that since the department was aware of the facts, no suppression of facts and hence extended cannot be invoked; issue involves bonafide interpretation of law, no penalty under section 78 is applicable; as per Section 80 of Finance Act 1994, if the assessee proves that there was reasonable cause for failure, no penalty shall be imposed. Etc.,

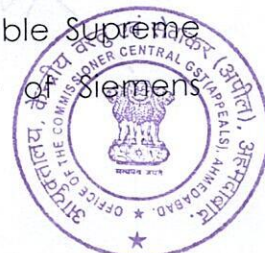
4. In the personal hearing held on 26.10.2018 Ms. Madhu Jain, advocate reiterated the grounds of appeal and stated that findings in the order in Original are not relating to this case and requested for remanding the case back.

5. I have carefully gone through the appeal wherein on the intelligence that 60% of the total value collected from members in cash against booking/sale of residential cum commercial were not included in taxable value and service tax were paid only on 40% value received through cheques, the premise of the appellant were searched by officers of Directorate General of Central Excise Intelligence. Investigation revealed that the appellant evaded service tax Rs.5,51,746/- which was confirmed under impugned order. The issue requiring determination is whether the appellant have received advance amount in cash from various members of the scheme 'Nishan Royal' and evaded service tax on it. I find that the show cause notice alleged that service tax Rs.5,51,746/- was short paid/evaded by the appellant. Said demand shown under final summery annexure 'M' of the show cause notice dated 14.02.2017 wherein service tax



liability is calculated based on gross value collected adjusting the value on which service tax paid during the period from 01.07.2010 to 30.09.2014 by the appellant. Said quantification of demand pertains to advance received prior to date of Building Use (BU) permission under the category of 'Construction of Residential Complex/Commercial & Industrial Construction' service and Goods Transport Agency (GTA) service and no specific mention of cash receipt entry in "Rojmel" register is made therein. It is also contested by the appellant that though the facts of the present case is different, the adjudicating authority has mentioned findings of M/s. JM Infrastructure in the facts of present case and hence the impugned order is non-speaking one and violates principle of natural justice. They pleaded that the case of the present appellant is legal issue of demand under construction of residential complex and commercial or industrial construction service and **not the issue of 'Rojmel'**. It is contested by the appellant, that the impugned order at para 10.2 mentioned the facts which were relevant to M/s. JM Infrastructure and not the present appellant. Based on these irrelevant finding in the impugned order, it has been requested by the appellant to remand the case back to the original adjudicating authority to which I find proper and acceptable. It is also contested by the appellant that Rs.1,92,833/- paid through Cenvat account annexed in the show cause notice is also not adjusted in the demand of Rs.5,51,746/- by the adjudicating authority.

6. I find that appeal at the outset stresses on the ground that though the facts of the present case is different, the adjudicating authority has mentioned findings of M/s. JM Infrastructure in the facts of present case and hence the impugned order is non-speaking one and violates principle of natural justice. I observe that the adjudication proceedings shall be conducted by observing principles of natural justice. Order passed in violation of the principles of natural justice is liable to be set aside by Appellate Authority. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. The Show Cause Notice is the first limb of this principle. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. The Hon'ble Supreme Court has further elaborated the legal position in the case of Siemens



Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under: -

" If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

7. The adjudicating authority should, therefore, bear in mind that no material should be relied in the adjudication order to support a finding against the interests of the party unless the party has been given an opportunity to rebut that material. In view of all these, the impugned order needs reconsiderations and incorporation of finding on the facts of the present case. I therefore, without going into merit of the case, remand the matter back to the original adjudicating authority for limited purpose of incorporating findings on the facts of the case of present appellant and for considering on merit the issue of adjustment of Rs.1,92,833/- paid through Cenvat account in the demand of Rs.5,51,746/- after hearing the appellant and to pass a fresh order so far it relates to the present appellant only.

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

The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

केंद्रीय कर, प्रधान आयुक्त (अपील्स)

Date:

Attested

(D.A.Parma)
Superintendent Central Tax (Appeals)
Ahmedabad.



By R.P.A.D.

To,

M/s. Raj Builders, Shop No. 5&6 'Nishan Status',
Near Anand Party Plot, GST Crossing, New Ranip,
Ahmedabad-382481.

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-North.
4. The Deputy Commissioner, Central Tax, Division-VII, Ahmedabad-North.
5. Deputy Director, DGGSTI, AZU, Ahmedabad.
6. Guard File.
7. P.A.



