



सत्यमेव जयते

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)22 /North/Appeals/2018-19 /10428 to 10432

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-002-APP-220-18-19

दिनांक Date : 27/03/2019 जारी करने की तारीख Date of Issue 8/5/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-OriginalNo05/AC/Dem/17-18/RTP Dated 31/01/2018

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

ध 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:-

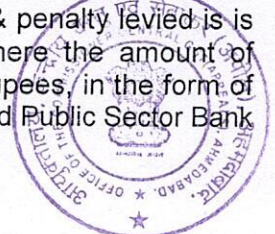
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1988 की धारा 13 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

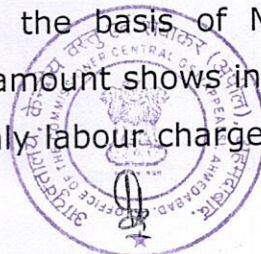
M/s. Jay Formulations Ltd., 1301, GIDC, Kerala, Dholka-Bavla, Ahmedabad-382220 (hereinafter referred to as the 'appellant') have filed the present appeal against Order-in-Original NO. 05/AC/Dem/2017-18/RTP Dated 31.01.2018 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, CGST, Division V, Ahmedabad-North (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the appellant is registered with Central Excise Department having Registration No. AAACJ3799GXM002 and engaged in the manufacture and clearance of finished goods i.e. Pharmaceutical Products falls under Chapter Sub-head 3004 of the Central Excise Tariff Act, 1985. They are availing the facility of Cenvat Credit under Cenvat Credit Rules, 2004.

3. During the course of Audit for the period from 2011-12 to 2014-15, it was noticed that the appellant has received services of "Manpower Recruitment or Supply Agency's Services" & "Security Agency's Services" from persons other than Body Corporate as under:

Description of Service	2012-13	2013-14	2014-15
Security Service	196897	262103	407450
Man Power Service	8280537	12274554	11823145
Total	8477434	12536657	12230595

Further, it appeared that the appellant has failed to pay the Service Tax of Rs. 30,81,782/- (including E. Cess & H.S.E. Cess) for the period July, 2012 to March, 2014, thereby violating the provisions of Section 68(2) read with Rule 6 of the Service Tax Rules, 1994 in respect of expenses incurred for supply of Manpower Services and Security Services under Reverse Charge Mechanism. However, the appellant did not agree to the audit objection raised by the department and argued that they were not liable to pay service tax in respect of Manpower/Labour Service because they paid charges to labour on the basis of pieces rate and not on the basis of Manpower or Labour charges on per day basis and the amount shows in balance sheet under labour and wages charge is not only labour charges but also some part



of employees salary and in case of security service they assured the department to make payment of service tax within a week time from the date of submission of letter to the Department. Further, they did not produce any record/documents in support of their claim. Further, it appeared that the appellant has contravened the provisions of Notification No. 30/2012-ST dated 01.07.2012 as amended by Notification No. 45/2012-ST dated 07.08.2012. During the course of Audit, it was also noticed that the appellant has not obtained Service Tax Registration as required under the provisions of Section 69 of the Finance Act, 1994. Therefore, a Show Cause notice dated 17.10.2016 was issued to the appellant. Further, the appellant submitted that in respect of non-payment of Service Tax on Security Services under Reverse Charge Mechanism, they have already paid Service Tax vide Challan No. 00269 dated 29.10.2016 for Rs. 80,320/- and with regard to non-payment of Service Tax on supply of Man Power Service, they have submitted that since they have not segregated labour salary they have given monthly invoices to the office for verification of manpower supply services. Further they submitted that they had never taken Man Power supply Services but they had given work on a piece rate basis to contractors and they have enclosed rate contract and also invoice copy which were issued by the contractors. The show cause notice was adjudicated vide the above mentioned impugned order wherein the Adjudicating authority has confirmed the demand raised in the Show Cause Notice, along with interest and penalties.

4. Aggrieved of the same, the appellant filed the present Appeal on the grounds *which are inter alia mentioned* that:

(a) The appellant had received services of labour on a piece rate basis from contractors and it is very clear from the rate of Contract and copy invoices submitted by the appellant that they had not received the services, not on actual number of manpower and/or labourers supplied. Hence, the same should be classified as a pure 'Contract for work' in place of 'Manpower Recruitment or Supply Agency's Services'.

(b) The essential characteristics of 'Manpower Supply Service' and 'Contract for Work Service' are clarified in Board Circular No. 190/9/2015-ST dated 15.12.2015. As per para 3 of this Circular, the services received by the appellant are classifiable as pure 'Contract for Job Work Services'.



(c) The exact nature of service needs to be determined on the facts of each case which would vary from case to case.

(d) As per definition specified in Section 65(105)(k) of Finance Act, 1994 for 'Manpower Recruitment or Supply Agency's Services', the services received by the appellant do not fulfil the main condition i.e. supply of labour on temporary basis.

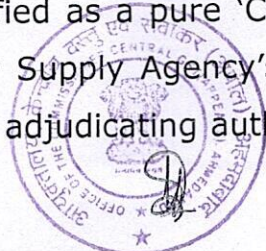
(e) The facts involved in the present case are not squarely covered by the clarification given by the CBEC vide Circular No. 96/7/2007-S.T. dated 23.08.2007. The appellant was receiving services of the nature where the contractor is at liberty to decide the number of workers required for undertaking the job and value of service was payable on piece rate basis depending upon the specification laid down by the appellant.

5. Personal hearing in the matter was held on 13.02.2019 wherein Shri. Arjun Akruwala, Chartered Accountant, appeared on behalf of the appellant and reiterated the contents of appeal memorandum. Further, He requested to remand the case back to the adjudicating authority because lots of evidences were not taken on record.

6. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellant and oral submission made at the time of personal hearing.

7. On going through the impugned order, I find that in respect of non-payment of Service Tax on Security Services under Reverse Charge Mechanism, the appellant have already paid Service Tax of Rs. 80,320/- vide Challan No. 00269 dated 29.10.2016 and the same has been appropriated by the adjudicating authority against the confirmed demand.

8. Further, I take the contention of the appellant that they were not liable to pay service tax in respect of Manpower/Labour Service because they paid charges to labour on the basis of pieces rate and not on the basis of Manpower or Labour charges on per day basis and the amount shows in balance sheet under labour and wages charge is not only labour charges but also some part of employees salary and argued that the same should be classified as a pure 'Contract for work' in place of 'Manpower Recruitment or Supply Agency's Services'. In this regard I agree with the view of the adjudicating authority that the appellant was



involved in a contractual work with different Labour Contractors viz. Manish Ishwarbhai Thakor, Babubhai Patel, Suresh C. Patel, etc. The appellant's contention is not supported by any documentary evidence. Simply stating that they paid charges to labour on the basis of pieces rate and not on the basis of Manpower or Labour charges on per day basis, does not suffice the purpose of the appellant and it seems to be a mere afterthought on their part.

9. However, the appellant has claimed that the case, vide the impugned order, was decided *without taking their* lots of evidences *on record*. Thus, as they were devoid of the natural justice, they have requested before me, during the course of personal hearing, to remand the case back to the adjudicating authority as lots of evidences were not taken on record in deciding the case by the adjudicating authority.

10. His request sounds logical to me as Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. In light of the above discussion, I remand back the matter to the adjudicating authority to decide the case afresh following the principle of natural justice and considering all the evidences/supporting documents submitted by the appellant. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings.

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

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

Uma Shankar

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Attested

Vinod

(Vinod Lukose)
Superintendent (Appeals)
Central Tax, Ahmedabad



To,

M/s. Jay Formulations Ltd.,
1301, GIDC, Kerala, Dholka-Bavla,
Ahmedabad-382220.

Copy to:

- (1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- (2) The Commissioner, Central GST, Ahmedabad North.
- (3) The Assistant Commissioner, Central GST, Division-V, Ahmedabad North.
- (4) The Asstt. Commissioner(System), Central GST HQ, Ahmedabad.
(for uploading the OIA on website)
- (5) Guard file.
- (6) P.A. file.



