



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  
☎: 079-26305065 टेलिफैक्स : 079 - 26305136



क फाइल संख्या : File No : V2(ST)82/North/Appeals/2019-20/139397013944  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-115 -19-20  
दिनांक Date : 22-01-2020 जारी करने की तारीख Date of Issue 14/02/2020

श्री अखिलेश कुमार, आयुक्त (अपील) द्वारा पारित

Passed by Shri Akhilesh Kumar Commissioner (Appeals)

ग Arising out of Order-in-Original No. 01/AR-V/Supd./Dresser-Rand/19-20 Dated 05/07/2019 Issued by Superintendent Commissioner , Central GST , Div-I , Ahmedabad North.

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

**M/s Dresser-Rand India Private Limited**

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, 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 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





(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.





The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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 Dresser-Rand India Private Ltd, Plot No.187, Phase-1, GIDC Estate, Naroda, Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No.01/AR-V/Supd./Dress-Rand/19-20 dated 05.07.2019 [hereinafter referred to as "impugned order"] passed by the Superintendent, CGST & CE, Range V, Division-1, Ahmedabad North [hereinafter referred to as "adjudicating authority"].

2. Facts of the case, in brief, are that the officers of CERA, Ahmedabad had conducted audit of appellant for period from 2012-13 to 2016-17. During test check of ST 3 Returns and Service Tax payment records of the appellant, it was noticed that they had paid Service Tax [i] @12.36% in respect of Goods Transport Agency (GTA) during June 2015 to September 2015; [ii] @12.36% in respect of Manpower Recruitment Agency (MPRA) during June 2015; [iii] and @14% during November 2015, in respect of Business Support Service (BSS). As the rate of Service Tax was increased from 12.36% (with Cess) to 14% (without Cess) with effect from 1<sup>st</sup> June 2015 and on introduction of Swachha Bharat Cess at the rate of 0.05% with effect from 15.11.2015, the appellant was liable to pay Service Tax @14% from June 2015 to 14.11.2015 and from 15.11.2015 onwards @14.5%. Based on the Audit Report of CERA, a show cause notice dated 06.04.2018 was issued to the appellant for recovery of short payment of Service Tax amounting to Rs.8,85,352/- under Section 73(1) of the Finance Act, 1944 (FA) with interest under Section 75 of the FA and imposition of penalty under Section 76 of the FA. The appellant has paid an amount of Rs.2,51,001/- [Service Tax with interest] towards the short payment of GTA and MPRA vide challan dated 27.04.2018.

2.1 The adjudicating authority has confirmed the demand of Rs.8,85,352/- with interest and imposed penalty under Section 76 of the FA. He also appropriated the amount already paid by the appellant towards services under GTA and MPRA.

3. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- The dispute is pertaining to Service Tax payable in respect of BSS on Reverse Charge Mechanism; that being a Associated Enterprise, as per Rule 7 of Point of Taxation Rules, 2011 [for short-PTR], the point of taxation should be the date of debit in the books of account of the recipient of service or date of making payment whichever is earlier.
- They had received the invoices in question for BSS in August 2015 and accounted in the books of account; that since the payment was made on 23.11.2015, they paid interest of Rs.6,91,981/- on delayed payment. Therefore, the demand with interest is not correct. Even if the demand is sustainable, the amount paid by them as interest is more than the demand.





- Since the appellant made full payment of Service Tax along with interest towards GTA and MPRA within thirty days from the date of issue of Show Cause Notice, they are not liable to pay interest under Section 76 of the FA.

4. Personal Hearing in the matter was held on 08.01.2020. Shri Karthik Kumar Gandhi, Authorized Representative of the appellant appeared and reiterated the submission made in the Appeal Memorandum and their written submission dated 14.11.2019.

5. I have carefully gone through the facts of the case and submission made by the appellant in the Appeal Memorandum as well at the time of Personal Hearing. The limited issue involved and to be decided in the instant appeal is relating to short payment Service Tax amounting to:

- [i] Rs.2,31,091/-towards GTA (Goods Transport Agency)Service for the period of June 2015 to September 2015;
- [ii] Rs.19,910/- towards MPRA (Man Power Recruitment Agency) Service for the period of June 2015; and
- [iii] Rs.6,34,351/- towards BSS (Business Support Service) for the period of November 2015.

6. I find that in respect of [i] and [ii] above, the appellant has not disputed/contested the liability of Service Tax for the disputed periods. I also find that by accepting the liability, they paid the disputed amount with applicable interest within thirty days on receipt of Show Cause Notice which was appropriated by the adjudicating authority. Therefore, I uphold the order passed by the adjudicating authority by confirming the demand with interest in this context.

6.1 However, I find that the appellant has disputed the penalty imposed under Section 76 of the FA only, in respect of short payment of Service Tax towards services under GTA and MPRA. The periods involved in these cases are from June 2015 onwards. The Service Tax liability under the services of GTA and MPRA came into existence from 10.09.2004 and 07.07.1997 respectively. I find that with effect from 14.05.2015, as per proviso to Section 76 of the FA, where Service Tax and interest is paid within a period of thirty days of the date of service of notice under Section 73 (1) of the FA, no penalty shall be payable and proceedings in respect of such Service Tax and interest shall be deemed to be concluded. In respect of short payment mentioned at [i] and [ii] above, the adjudicating authority himself admitted that the appellant has paid the short payment of Service Tax with interest within one month of issuance of Show Cause Notice. Therefore, the penalty imposed is not correct and unwarranted which is required to be set aside. Accordingly, I set aside the penalty imposed under Section 76 of the FA in respect of these two services.

7. As regards short payment of Rs.6,34,351/- mentioned at [iii] above, it is observed that the appellant had provided services under BSS, vide invoice dated





18.08.2015, for which the due date for the payment of Service Tax amounting to Rs.1,77,61,823/- was on 05.09.2015. However, the appellant has discharged the Service Tax on 23.11.2015 alongwith interest. It is the contention of the adjudicating authority that due to introduction of Swatchh Bharat Cess @0.50% with effect from 15.11.2015, the appellant was liable to pay Service Tax @14.5% instead of 14% on the service viz BSS availed vide invoice dated 18.08.2015, as they paid the due Service Tax only on 23.11.2015. On other hand, the appellant has contended that being an Associated Enterprise, as per Rule 7 of PTR, the point of taxation should be the date of debit in the books of account of the recipient of service or date of making payment whichever is earlier; that in their case, they had debited the liability in their books of account immediately on receipt of the invoice in question, therefore, the Service Tax paid @14% is correct.

8. Relevant portion of Rule 7 of PTR reads as under:

*"7. Determination of point of taxation in case of specified services or persons.- Notwithstanding anything contained in rules 3, 4 or 8, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:*

*Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months:*

*Provided further that in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier. "*

9. According to Rule 7 of PTR, the point of taxation in respect of the persons required to pay tax as recipients of service shall be the date on which payment is made. However, as per proviso to the said Rule, in case of Associated Enterprises, the taxation shall be the date of debit in the books of accounts of the person receiving the service or date of the payment whichever is earlier. In the instant case, the appellant has stated that being an Associated Enterprises, they debited the taxation in their books of account at the time of invoice issued i.e 18.08.2015. I find that the adjudicating authority has not disputed the fact that the appellant is an Associated Enterprises. In the circumstances, in appellant's case, the Point of Taxation is the date of debit in the books of account. According to Rule 7 of PTR, Point of Taxation in respect of the person required to pay tax as recipients of service shall be the date on which payment is made. The proviso to the said Rule stipulates that [i] if the payment is not made within three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months; and [ii] in case of Associated Enterprises, where the person providing the service located outside India, the Point of Taxation shall be the date of debit in the books account or date of making the payment whichever is earlier. However, without considering the legal provisions in totality as well as facts on records, the adjudicating authority has considered the Point of Taxation as the date of payment of Service Tax, which is legally not sustainabale. It is also observed





that the appellant had also submitted a Chartered Accountant's certificate dated 11.11.2019 in support of their contention that the transaction in question was with their Associated Enterprises.

9.1. In view of above discussion, in agreeing with the contention of the appellant, I am of the opinion that the payment made with interest is correct and acceptable. Therefore, I do not find any merit in the order of the adjudicating authority in respect of recovery of short payment amounting to Rs. 6,34,351/- along with interest and penalty imposed thereof . Accordingly, I set aside the same.

10. The appeal stands disposed of accordingly.

*Akhil Kumar*  
 (Akhil Kumar)  
 Commissioner (Appeals)  
 01/2020



**ATTESTED**

*Mohan V.V.*  
 (Mohan V.V)  
 Superintendent  
 CGST (Appeals) Ahmedabad

By R.P.A.D/Speed Post.

To,  
 M/s Dresser-Rand India Private Ltd,  
 Plot No.187, Phase-1, GIDC Estate, Naroda,  
 Ahmedabad

**Copy to:**

- 1) The Principal Chief Commissioner, CGST, Ahmedabad Zone.
- 2) The Commissioner, CGST, Ahmedabad North.
- 3) The Dy./Asst. Commissioner, CGST, Div-I, Ahmedabad North
- 4) The Supdt, AR-V, Div-1, Ahmedabad North
- 5) The Asst. Commissioner (System), CGST, Ahmedabad North.
- 6) Guard File.
- 7) P. A. File.



