



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

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- क फाइल संख्या : File No : **V2(ST)243/North/Appeals/2018-19 / 11077 TO 11081**
- ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-002-APP-125-2019-20**  
दिनांक Date : 24.02.2020 जारी करने की तारीख Date of Issue: **28/02/2020**
- श्री **अखिलेश कुमार**, आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals) Ahmedabad
- ग \_\_\_\_\_ आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनांक : से सृजित  
Arising out of Order-in-Original: ST/14/AC/08-09,, Date: 22/05/2008 Issued by: Asst. Commissioner, CGST, Div: III, Ahmedabad North.
- घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता  
Name & Address of the **Appellant** & Respondent

**M/s. Mahadev Moters**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :  
**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.



ध 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।

(d) 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- ष0बी/35-इ के अंतर्गत:-

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

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 दूसरा मंजिल, बहमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 रू.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 bear 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ 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 होंगे।

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.

(6)(i) 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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This order is arising out of Hon'ble CESTAT, Ahmedabad's Final Order No.A/13154/2017 dated 27.09.2017 passed against Order-in-Appeal No.44/2009 (STC)/LMR/COMMR-(A)/AHD dated 23.02.2009 in the case of M/s Mahadev Motors.

2. Briefly stated, the facts of the case are that the Directorate General of Intelligence, Ahmedabad Zonal Unit (DGCEI) has carried out an inquiry in respect of non-payment of Service Tax by the Direct Selling Agents (DSAs) appointed by the ICICI Bank Ltd on the gross amount paid by the bank for providing services of DSA. During the course of inquiry, it was observed that M/s Mahadev Motors, Municipal Shop No.11, Outside Dariyapur Gate, Dariyapur, Ahmedabad [hereinafter referred to as "appellant"] was appointed as DSA for marketing Two-Wheeler Loan Product of ICICI Bank Ltd and also providing services as a DSA to many other banking institutions; that the appellant were getting commission/incentives from the bank for promotion/marketing of their business of banking and financial services. On verification, it was further revealed that the appellant had received gross commission/incentive income amounting to Rs.53,41,407/- during the period from 01.07.2003 to 31.03.2006 and on which they were liable to pay Service Tax amounting to Rs.4,59,904/-. Accordingly, a Show Cause Notice dated 09.05.2007 was issued to the appellant for recovery/demand of non-payment of said Service Tax along with interest and imposition of penalty under Section 75 A, 76, 77 and 78 of the Finance Act, 1994. The said amount of Service Tax along with interest was deposited by the appellant.

2.1 The Assistant Commissioner of Service Tax, Division-III, Ahmedabad [hereinafter referred to as "adjudicating authority"] has confirmed the demand of Service Tax amounting to Rs.4,44,060/-, out of total demand and dropped the remaining amount of Rs.15,844/-on account of revised value of taxable service, vide OIO No.ST/14/AC/08-09 dated 22.05.1998 [hereinafter referred to as "impugned order"]. He also confirmed the demand of interest and further imposed penalties under various Sections alleged in the Show Cause Notice.

2.2 Being aggrieved with the impugned order, the appellant had filed an appeal before the Commissioner (Appeals), Central Excise, Ahmedabad which was rejected, vide OIA No. 44/2009 (STC)/LMR/COMMR-(A)/AHD dated 23.02.2009. Against the said OIA, the appellant has filed an appeal before Hon'ble CESTAT, Ahmedabad, who vide order No.A/13154/2017 dated 27.09.2017, has remanded the case to the Commissioner (Appeals).

3. A personal hearing in the matter was held on 08.12.2019. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant. He submitted a written submission during hearing and reiterated the submissions made in Appeal Memorandum.



3.1 In the Appeal Memorandum, the appellant has, inter-alia, submitted that:

- The Service Tax was not applicable on commission agents who caused sale or purchase of goods on behalf of another person for a consideration which was based on the quantum of such sale or purchase (Reference Notification No.13/2003-ST).
- Service provided to a customer by any Body Corporate or commercial concern other than a banking company or a financial institution including a non-banking financial company, in relation to banking and other financial services was exempted under clause (e) of Notification No.25/2004 dated 10.09.2004.

3.2 In the written submission submitted during Personal Hearing, the appellant has further stated that they were providing table space in their premises for operational assistance for marketing and infrastructure support services and other transaction processing services to banks and accordingly falls under "Support Services of Business or Commerce". They relied on the case laws M/s Car World Autoline [2008 (9) STR 246] and other case laws. It was also re-iterated that the service provided by them were exempt vide Notification No.25/2004-Service Tax dated 10.09.2004. The appellant has also contended that no penalty is imposable as there was no clarity regarding taxability on the instant issue and they also made full paid full payment before issuance of show cause notice. They also referred various case laws in this regard.

4. I have carefully gone through the facts of the case, submissions made by the appellant in Appeal Memorandum as well in written submission made during personal hearing and the Hon'ble CESTAT's order dated 27.09.2017 supra. I find that the case was remanded by the Hon'ble CESTAT to decide the issue along with case of refund on the same set of services for the same period which also remanded by the CESTAT. The order of CESTAT reads as under:

*"3. The Ld. Chartered Accountant submits that the present appeal may also be remanded to the Ld. Commissioner (Appeals) to decide the taxability along with the claim of the refund of the tax paid.*

*4....*

*5. We find that the issue revolves in a very narrow compass, hence the appeal is taken up for disposal with the consent of both sides. Undisputedly, on the same set of services for the same period, demand notice was issued for recovery/appropriation of the service tax and the amount paid as service tax by the assessee, later claimed by them as refund. From the contention of the Ld. Chartered Accountant, it appears that this Tribunal has decided the issue of refund by remanding the same to the Ld. Commissioner (Appeals), whereas the appeal pertaining to demand of service tax, since involve taxability of service remained pending before Division Bench of this tribunal. Accordingly, the present appeal is also remanded to the Ld. Commissioner (Appeals) to decide the matter along with the refund claim remanded by this Tribunal vide order dated 02.09.2016. Appeal is allowed by way of remand. MA (EH) disposed of."*



5. From the above, I find that the issue involves two separate parallel proceedings, covering the same period. One is related to demand proceedings initiated by the department under Show Cause Notice dated 09.05.2007 towards demand of Service Tax amounting to Rs. 4,59,904/- and other is related to refund proceedings in respect of the said amount of Service Tax paid by the appellant before issuance of show cause notice dated 09.05.2007. The instant case is remanded by the CESTAT, on request made by the representative of the appellant, to decide the matter along with the claim of refund remanded by the CESTAT, vide its order dated 02.09.2016.

5.1 On record, I find that the Commissioner (Appeals-II), Central Excise, Ahmedabad has already decided the refund issue, in view of the CESTAT order dated 02.09.2016, vide OIA No.AHM-SVTAX-000-APP-035-17-18 dated 28.06.2017 i.e well before the CESTAT's order dated 27.09.2017 referred to above. In the said OIA dated 28.06.2017, the Commissioner (Appeals) has held that the amount paid by the appellant is not a deposit but against duty/tax liability, hence limitation for filing refund claim is applicable as per provisions of Section 11 B of the CEA, 1944. The Commissioner (Appeals) has also held that the refund cannot be granted unless demand proceedings are in favour of them. In the circumstances, as per remand proceeding order dated 27.09.2017 supra, the issue of demand of Service Tax amounting to Rs. 4,59,904/- is required to be answered in present proceeding.

6. I find that in the OIA dated 23.02.2009 supra, the Commissioner (Appeals) has held that the services provided by the appellant were related to promotion or marketing of service provided by the client and were taxable w.e.f 01.07.2003 under "Business Auxiliary Service" and not eligible for exemption under Notification No.13/2003-ST dated 20.06.2003 and Notification No.25/2004-ST dated 10.09.2004 as the said notifications are providing exemption to commission agent and Banking and other Financial service respectively; that the appellant were not provided such services.

7. In the instant case, the appellant is engaged in the business of promotion/marketing of business of ICICI Bank Ltd and was appointed as DSA for marketing Two-Wheeler Loan Product of ICICI Bank Ltd and also rendered services as a DSA to many other banking institutions. They were getting commission/incentive from ICICI Bank Ltd/banks. This fact was not disputed. As regards the nature of the services being covered by Business Auxiliary Services and its taxability, as held by the Commissioner (Appeals) in the OIA dated 23.02.2009, I find that the issue is no more *res integra* by various decisions of the Tribunal viz. in the case of *Malpani Finance v. CCE, Bhopal* reported in 2008 (10) S.T.R. 300 (Tribunal-Delhi), *M/s. Auto World v. CCE, Allahabad* reported in 2008 (12) S.T.R. 74, *M/s. Bridgestone Financial Services v. CCE* reported in 2007 (8) S.T.R. 505 (Tribunal-Delhi) as also on the decision in the case of *M/s. Roshan Motors Ltd. v. CCE, Meerut* reported in 2009 (13) S.T.R. 667 (Tribunal-Delhi), and Principal Bench



decision in the case of M/s Renaissance Leasing & Finance Pvt Ltd. [2017(52) STR 40-Tri Del. The ratio of all the said decisions is to the effect that the Direct sales Agents to the banks for arranging the finance to their, prospective customers fall under the category of Business Auxiliary Services. As such, I do not find any merit in the appellant's plea that the services rendered by them falls under Support Services of Business or Commerce".

8. The appellant contended that they are eligible for exemption under clause (e) of Notification No.25/2004-ST dated 10.09.2004. The said Notification extended Service Tax exemption in respect of certain specified services falling under Business Auxiliary Service, provided for the prior to 10-9-2004. The eligibility of exemption was denied by the Commissioner (Appeals) in the OIA dated 23.02.2009 and I also follow the said decision as the appellant were not provided any Banking and Financial Services. Further, the Hon'ble CESTAT in the case of M/s Omega Financial Service reported in 2011 (24) STR 590-Tri.Bang has held that:

**"6.** On perusal of the Notification No. 25/2004, we find that the services rendered by the appellant would not fall under the category of exemption sought to be given by the said Notification. Learned counsel was specifically pointing out towards clause (e) of the Notification which is reproduced below.

(e) Services provided to a customer by any Body corporate or commercial concern, other than a banking company or a financial institution including a non-banking financial company, in relation to banking and other financial services.

**6.1** We find that this clause will not be applicable, as Hon'ble High Court of Kerala in the case of C.C.E. v. Car World Autoline - 2010 (17) S.T.R. 449 (Ker.) has categorically ruled out that these services of getting loan by a dealer and getting a commission will not get covered under the said clause."

The case law of Hon'ble CESTAT in the case of Car World Autoline [2008 (9) STR 246-Tr.Bank) relied on by the appellant is distinguished as the facts of this case involves appellant being appointed as Direct Sales Agents by various banks. In fact, it is seemed that the facts of instant case are squarely covered by case law in the case of Commissioner of Central Excise, Chandigarh Vs. M/s Kathuria Financial Services [2014 (36) STR 662 (Tri.-Del.)], wherein, it has been held that in the cases where the assessee appointed as DSA to evaluate prospective customers for Banks, the Services provided by assessee are in the nature of promotion and marketing provided to Bank for which bank paid them. The head note of the said decision is as under:

*"Exemption - Business Auxiliary Services - Assessee appointed as Direct Sale Agent to evaluate prospective customers for ICICI Bank - Contract between assessee and ICICI Bank and not between assessee and customers - Services provided by assessee in the nature of promotion and marketing provided to ICICI Bank for which bank paid them - Assessee's services not fall under category of 'provision of service on behalf of client' as prescribed under category (c) of Notification No. 14/2004-S.T. and benefit thereof not available to assessee - Section 65(105)(zzb) of Finance Act, 1994."*



9. In view of above discussion, it is clear the appellant, being DSA, is not eligible for exemption from Service Tax liability for the disputed periods. Therefore, I am of the opinion that the adjudicating authority has correctly confirmed the demand, vide his impugned order.

10. As regards imposition of penalty, I find that the adjudicating authority has imposed penalty of Rs.500/- under Section 75A, Rs.100/- per day under Section 76, Rs.5000/- under Section 77 and Rs.4,44,060/- under Section 78 of the FA. The appellant has argued by citing various judgments on non-imposition of penalty, on the grounds that there was bonafide belief that tax was not to be paid and requested to relief under Section 80 of the FA. The said argument is not acceptable and tenable. The appellant has not filed any ST-3 Returns and also not approached the department regarding leviability of service tax on the activities carried by them. The department came to know of it only after inquiry was initiated. The appellant had filed refund of Service Tax paid during litigation which clearly indicates that the liability of tax in question is not acceptable to them. In the circumstances, I do not find any reason or merit to interfere with the impugned order in as much as penalties imposed.

11. In view of above, I uphold the impugned order passed by the adjudicating authority. Accordingly, I reject the appeal filed by the appellant.

*Attested by*

*Subroto*  
(Mohan V.V)  
Superintendent (Appeal),  
Central Tax, Ahmedabad.

**BY R.P.A.D**

To,  
M/s Mahadev Motors,  
Municipal Shop No.11, Outside Dariyapur Gate,  
Dariyapur, Ahmedabad

**Copy to:-**

1. The Principal Chief Commissioner, Central GST Zone, Ahmedabad.
2. The Commissioner, Central GST, Ahmedabad North.
3. The Assistant Commissioner, CGST, Division-II, Ahmedabad North.
4. The Asstt. Commissioner, (Systems), CGST, Hq., North
5. Guard file.
6. P.A file.

*Akhil*  
.. 25 February 2020  
(Akhil Kumar)  
Commissioner (Appeals)  
/02/2020

