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
. ☎ 26305065-079 : टेलेफैक्स 26305136 – 079 :
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DIN-20201164SW00000E8FB

स्पीड पोस्ट

क फाइल संख्या : File No : V2(CEX)123/North/Appeals/2019-20

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-32/2020-21**
दिनाँक Date : **18.11.2020** जारी करने की तारीख Date of Issue : **25.11.2020**

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **05/DC/D/2019-20/AKJ** दिनाँक: **24.12.2019**, issued by Assistant/Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Jagruti Electro Controls Pvt. Ltd.
45, Gopi Industrial estate, Benhand Ramdev Masala,
Sarkhej Bavla Road, Changodar,
Dist-Ahmedabad-382210.

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

Any person aggrieved by this Order-In-Appeal 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 अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा की उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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, 4th 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.

(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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–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 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 in 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 अपीलो 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. Jagruti Electro Controls Pvt. Ltd., 45, Gopi Industrial Estate, Behind Ramdev Masala, Sarkhej Bavla Road, Changodar, Ahmedabad-382210 *[*hereinafter referred to as the *'appellant'],* against Order-In-Original No. 05/DC/D/2019-20/AKJ dated 24.12.2019 (hereinafter referred as "*impugned order*") passed by the Deputy Commissioner of CGST, Division-IV, Ahmedabad North Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant is engaged in manufacture and clearance of goods viz. Electrical Panel Board falling under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985. It was having Central Excise Registration No. AABCJ9367KEM001. During the course of scrutiny of financial records of the appellant by the departmental Audit for the period April-2016 to June-2017, it was observed that the appellant has paid rent amounting to Rs.2,16,000/- to their Director viz. Mr. Vikram L. Patel and same was shown under Expenditure Head "Office Rent Expense" in the Balance Sheet. Further, they had paid car rent amounting to Rs. 1,50,000/- to their Directors for car rent services and was shown under 'Car Maintenance Expense' in Balance Sheet. It was alleged that since the service provided by a Director of a Company or a Body Corporate to the said company or body corporate appeared to be liable to service tax under reverse charge mechanism under Notification No. 30/2012-ST dated 20.06.2012, as amended, a Show Cause Notice dated 03.09.2019 was issued to them by the Deputy Commissioner, Circle – VI, Central Tax Audit, Ahmedabad proposing demand of service tax amounting Rs. 54,900/- under proviso to Section 73(1) along with interest under Section 75 of the Finance Act, 1994. Penalty upon the appellant was also proposed under Section 78(1) of the Finance Act, 1994. The adjudicating authority vide the impugned order confirmed the demand along with interest and penalty.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

(a) that the company is paying rent to the owner of the property who also was Director of the appellant and rent was not paid as Director;

(b) that as per Notification No. 45/2012-Service Tax dated 07.08.2012, the liability to reverse charge service tax arises only in respect of service provided by Director;

(c) that the car maintenance expenses was paid towards car expenses to Director is only reimbursement of expenses and such payments are outside the mandate of the reverse charge provisions and there is no service provide as director;

(d) that the payment is not made as a Director of the company, but on account of expenses reimbursement and no service provided as director;

(e) that there has to be service and such service must be as director which are not satisfied in the case;

(f) that credit of such payment was available to the company which revenue neutral for them;

(g) that since there is no tax liability, question does not arise for interest and penalty.

4. Personal hearing in the matter was held on 23.10.2020. Shri Shridev Vyas, Advocate, appeared on behalf of the appellant for hearing. He reiterated the submission made in appeal memorandum.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum and at the time of personal hearing. The issue to be decided in the case is whether the appellant is liable to pay service tax in respect of rent paid to the Director in respect of personal property given on rent to the company as well as car maintenance amount paid to the Director being reimbursement of expenses, under reverse charge mechanism in the light of provisions of Rule 2(1)(d)(EE) inserted w.e.f 07.08.2012 read with the provisions of Notification No. 30/2012-ST dated 20.06.2012 as amended.

6. It is observed from case records that the appellant has paid an amount of Rs. 2,16,000/- as rent to the Director of their firm for renting to company the property owned by the Director. Besides that, they had also paid an amount of Rs. 1,50,000/- to their Directors as car rent towards car maintained by them. The department has sought to charge these expenditures as services under Section 65B(44) of the Finance Act, 1994 by contending that the Directors, being owners of property, has become service provider and the appellant has become service recipient. As the appellant firm is a body corporate, they become liable to pay service tax in respect of such services under reverse charge mechanism under Rule 2(1)(d) (EE) of the Service Tax Rules, 1994 read with Notification No.30/2012-ST dated 20.06.2012 as amended by Notification No.45/2012-ST dated 07.08.2012 .

7. The legal provisions contained under Section 65B(44) of the Finance Act, 1994 are reproduced below:

> *"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*
>
> *(a) an activity which constitutes merely,— (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or (iii) a transaction in money or actionable claim;*
>
> *(b) a provision of service by an employee to the employer in the course of or in relation to his employment;*
>
> *(c) fees taken in any Court or tribunal established under any law for the time being in force.*

Further, the legal provisions contained under Rules 2(1)(d)(EE) of the Service Tax Rules, 1994 are reproduced below:

> *(d) "person liable for paying service tax", - (i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-*
>
> .....
>
> *(EE) in relation to service provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate, the recipient of such service;*

8. The appellant has contended that the said service was provided by the owner of the property in his individual capacity and not in the capacity of Director of the Company and therefore service provided in personal capacity cannot be considered as service provided in the capacity of Director. They further contended that they are also paying the rent to the person being the owner of the property and not being the Director of the appellant. I find force in the contentions of the appellant that just because the owner of the property is Director of the appellant, the appellant cannot be held liable to pay the service tax being the service recipient. The fact which cannot be ignored in the case on hand is that the owner of the property has provided his property on the rent to the appellant and getting the rent from the appellant being the owner of the property and not being the Director of the appellant. Appellant is also paying the rent to the owner being the owner of the property (who has provided service to the appellant) and not being the Director of the appellant. Had the Director of the appellant given his property on rent to some other company, the Director of the appellant would have been held liable to pay the service tax being the owner of the property and being in his individual capacity as service provider. Also the car maintenance expenses are only reimbursement of expenses and not service provided by the Directors to be charged to tax under reverse charge provisions. This makes it clear that if the Director of a company is providing any sort of service in the capacity

of Director to the said company, then only the service becomes liable to service tax at the end of that company being service recipient. This is the intention of law and therefore such words have been incorporated in the said rules and in the Notification. Further, I find that the CBEC, in their Circular No.115/9/2009-ST dated 31.07.2009 issued on the subject of Service tax on commission paid to Managing Director / Directors by the company has clarified that *"the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category 'Management Consultancy service'. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax"*. In other words, the service provided by the Director in the personal capacity to the Company, would be payable by the person who rendered such service and not by the company under Reverse Charge Mechanism. Hence, the finding of adjudicating authority to charge service tax under reverse charge mechanism under Rule 2(1)(d)(EE) of the Service Tax Rules, 1994 and Notification No.30/2012-ST as amended is not legally correct.

8.1 It is further observed that the same view has been taken by the Commissioner (Appeals), Ahmedabad earlier also in Order-in-Appeal No.AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 in case of M/s. Jay Pumps Pvt. Ltd. and in Order-In-Appeal No. AHM-CXCUS-003-APP-003-18-18 dated 27.04.2018 in case of M/s Advance Addmine Pvt Ltd.

9. As regards the liabilities of service tax in respect of car maintenance expenses, the appellant has contended that the same is only reimbursement of expenses which is outside the mandate of the reverse charge provisions. It is the case of the department that the said expenses are against renting of car services by the Directors to the company. I find that no material evidence in this regard has been placed on record by the department in support of their allegation. It is settled law that tax liability cannot be fastened on any transaction merely based on assumptions and presumptions. Further, in the present issue, the question as to who has to pay the tax liability would arise only when it stands proved that the transaction or activity in the case is taxable at the first instance. Nothing on record suggest that the Directors of the company has rendered services of car hiring or renting to the appellant company. It is a normal practice in the corporate sector that the employees are re-imbursed with vehicle running/maintenance expenses by their employers. It used to be a part of their remuneration and no element of service can be attributed to such transactions. Further, re-imbursable expenses are taxable only when they are incurred during the

course of provision of any service by the service provider. In the present case, no such service is provided by the Directors to the appellant company. In the absence of any element of service being established in the subject transaction, no service tax liability would arise against such transactions.

9. From the above discussion, I find that the appellant is paying rent of immovable property to the owner of the property and reimbursement of car maintenance expenses who happens to be its Director. However, it does not mean that the Director has rendered service to the appellant in the capacity of Director. The charge made by the adjudicating authority that the impugned activity attracted service tax under the reverse charge mechanism in terms of Rule 2(d)(EE) of Service Tax Rules, 1994 and Notification No. 30/2012-ST as amended is based on the incorrect surmise that the Director was providing the said service in his capacity as Director. Therefore, the demands of service tax are not sustainable in view of the above discussion and are hereby set aside. Since the demand has been set aside, the question of interest on demand and imposition of penalty does not arise.

10. In view of above discussion, I set aside the impugned order and allow the appeal filed by the appellant. The appeal stands disposed of in above terms.

18th November, 2020.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 18.11.2020.

Attested

(Anilkumar P.)
Superintendent (Appeals),
CGST, Ahmedabad.

BY R.P.A.D. / SPEED POST TO :

To,
M/s. Jagruti Electro Controls Pvt. Ltd.,
45, Gopi Industrial Estate,
Behind Ramdev Masala, Sarkhej Bavla Road,
Changodar, Ahmedabad-382210

Copy To:-

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone .
2. The Commissioner, CGST, Ahmedabad-North
3. The Deputy/Assistant Commissioner, CGST, Division-IV, Ahmedabad-North.
4. The Joint / Addl. Commissioner, (Systems) Ahmedabad North
5. Guard File.
6. P.A. File.