



सत्यमेव जयते

आयुक्त का कार्यालय),अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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DIN-20201164SW0000817631

स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)5/North/Appeals/2020-21

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-34/2020-21**
दिनांक Date : **20.11.2020** जारी करने की तारीख Date of Issue : **04.12.2020**

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

ग Arising out of Order-in-Original No. **06/DC/D/2019-20/AKJ** दिनांक: **29.01.2020**, passed by
Assistant/Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad-North

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

Appellant- M/s Vimlachal Print & Pack Pvt. Ltd., 5, Saket Industrial Estate, Survey No.
437, Near Changodar-Bawla National Highway, Moraiya-382213, Tal-Sanand, Dist.-
Ahmedabad.

Respondent- The Deputy Commissioner, CGST & Central Excise, Division-IV, Ahmedabad
North, Ahmedabad

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 पूर्वोक्त धारा को
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।

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 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.

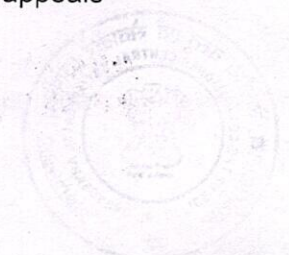
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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. 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 Appellate 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. Vimlachal Print & Pack Pvt. Ltd., 5, Saket Industrial Estate, Survey No. 437, Near Changodar-Bawla National Highway, Moraiya- 382 213, Tal. Sanand, Dist- Ahmedabad [hereinafter referred to as the 'appellant'], against Order-In-Original No. 06/DC/D/2019-20/AKJ dated 29.01.2020 (hereinafter referred as "impugned order") passed by the Deputy Commissioner, CGST, Division-IV, Ahmedabad North Commssionerate (hereinafter referred to as the "adjudicating authority").

2. The facts of the matter, in brief, are that the appellant is engaged in the manufacture and clearance of excisable goods viz. Poly coated Printed/Plain Paper in Reel, Polyester Printed LD Laminated in Reel and Polyester Printed and LD Laminated Pouch in pcs, falling under Chapter 39 of the First Schedule to the Central Excise Tariff Act, 1985. It was having Central Excise Registration No AAACV000QXM001 and Service Tax Registration No. AAACV000QST001. During the course of scrutiny of financial records of the appellant by the departmental Audit for the period from April-2014 to June-2017, certain audit observations were raised vide FAR No. 548 dated 04.11.2019. The observations relevant to present appeal made by audit is that the appellant has paid rent to the Directors of the firms towards the renting of immovable property belonging to the Directors. 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 Notification No.30/2012-ST dated 20.06.2012, it was proposed to tax the consideration amounting to Rs.10,44,000/, Rs.11,40,000/-, Rs.12,36,000/- and Rs.3,33,000/- received during F.Y. 2014-15, F.Y. 2015-16, F.Y. 2016-17 and April, 2017 to June, 2017 respectively. Accordingly, a Show Cause Notice dated 19.11.2018 was issued to the appellant for recovery of service tax amounting to Rs.4,89,728/- on renting of immovable property services provided by Director under Reverse Charge Mechanism (RCM) under proviso to Section 73(1) of the Finance ACT, 1944 alongwith Interest under Section 75 of the Finance Act, 1994. Penalty was also proposed to be imposed under Section 78 of the Finance Act, 1994.

2.1 The adjudicating authority, vide impugned order dated 29.01.2020, has confirmed the demand of service tax amounting to Rs. 4,89,728/- against the nonpayment of service tax on renting of immovable property provided by Director



under RCM under Section 73(1) of Finance ACT, 1944 along with interest. He also imposed penalty of Rs. 4,89,728/- under the provisions of under Section 78(1) of the Finance Act, 1994.

3. Being aggrieved by the impugned order dated 29.01.2020, the appellant has filed the instant appeal on the grounds that:

- that principles of judicial discipline was not followed in as much as that the identical matter decided by the Commissioner (Appeals) vide OIA No. AHM-EXCUSE-003-APP-0257-17-18 dated 23.03.2018 in case of M/s Jay Pump Pvt. Ltd., Gandhinagar referred by them has not been considered and followed;
- that the distinction between renting of immovable property service and Director service has been lost sight by the department ;
- that the adjudicating authority has not taken into consideration the clarification given by CBEC under its Circular No. 115/9/2009-ST dated 31.07.2009. On perusal of the clarification by the Board, it clearly reveals that entity of Director while working with company and while working independently differs;
- Renting of Immovable Property Service is not covered under Notification No. 30/2012-ST. Hence, service tax liability cannot be saddled on them;
- That services rendered by Director to the company is chargeable to service tax under reverse charge mechanism, meaning thereby services rendered by a person in the capacity of Director is chargeable under reverse charge mechanism, however service rendered by Director in personal capacity is not covered under reverse charge mechanism;
- that since there is no tax liability, question does not arise for interest and penalty. The demand for extended period of limitation is not sustainable as there was no malafide. Further, the case is also revenue neutral.

4. Personal hearing in the case was held on 23.10.2020. Shri P. G. Mehta, Advocate, appeared for the hearing. He re-iterated the submissions 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. It is observed that the issue to be decided in the case is whether the appellant is liable to pay service tax in respect of rent paid to Director for personal property given on rent to the company, 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 have paid Rs.10,44,000/, Rs.11,40,000/-, Rs.12,36,000/- and Rs.3,33,000/- during F.Y. 2014-15, F.Y. 2015-16, F.Y. 2016-17 and April, 2017 to June, 2017 respectively as rent to the Director of their firm for renting to company the property owned by the Director. 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 the adjudicating authority has not taken into consideration the clarification given by CBEC under its Circular No. 115/9/2009-ST dated 31.07.2009 that entity of Director while working with company and while working independently differs. 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. 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.

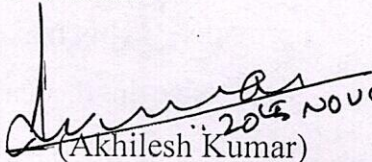
8.1 It is further observed that the same view has been taken by the Commissioner (Appeals), Ahmedabad earlier also in Order-in-Appeal No.AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 in case of M/s. Jay Pumps Pvt. Ltd. which was relied upon by the appellant. Therefore the demand of service tax is not sustainable in view



of the above discussion and hereby set aside. Since the demand has been set aside, the question of interest on demand and imposition of penalty does not arise.

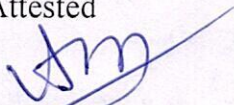
9. From the above discussion, I find that the appellant is paying rent of immovable property to the owner of the property who happens to be its Director. However, it does not mean that the Director has rendered service to the appellant in the capacity of Director. The charge made by the adjudicating 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.


(Akhilesh Kumar)
Commissioner (Appeals)
Ahmedabad
/2020
20th NOVEMBER
2020.



Attested


(Atul B Amin)
Superintendent (Appeals)
CGST, Ahmedabad

By R.P.A.D

To

M/s. Vimlachal Print & Pack Pvt. Ltd.,
5, Saket Industrial Estate, Survey No. 437,
Near Changodar-Bawla National Highway,
Moraiya- 382 213, Tal. Sanand,
Dist- Ahmedabad

Copy to:

1. The Principal Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, CGST, Ahmedabad North
3. The Deputy Commissioner, CGST, Division -IV, Ahmedabad North
4. The Assistant Commissioner, System-CGST Ahmedabad North
5. Guard File.
6. P.A. File.