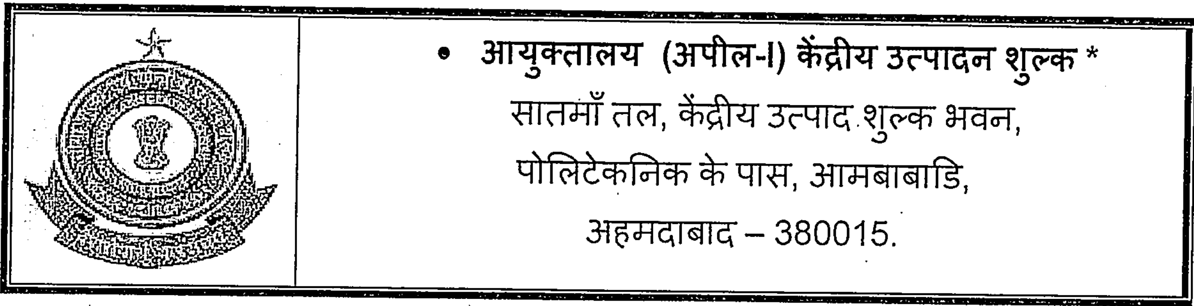


<u>रजिस्टर्ड डाक ए.डी. द्वारा</u>

क फाइल संख्या : File No : V2(32)/72/Ahd-I/2016-17 /1103-1107
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-075-2016-17**
दिनाँक 22.03.2017 जारी करने की तारीख Date of Issue 27/03/2017

<u>श्री उमा शंकर</u> आयुक्त (अपील-I) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Asstt. Commissioner, Div-V केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं **MP/03/Dem/2016-17** दिनाँक: **03/08/2016,** से सृजित

Arising out of Order-in-Original No. **MP/03/Dem/2016-17** दिनाँक: **03/08/2016** issued by Asstt. Commissioner,Div-V Central Excise, Ahmedabad-I

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

**M/s. Synpol Products Pvt.Ltd.
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 a 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 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।

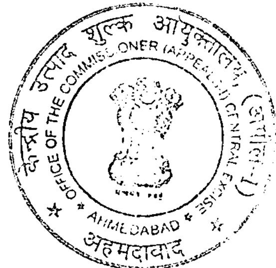
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

(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.

(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।



(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 मामलें 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।

(c) 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 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।

(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 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.

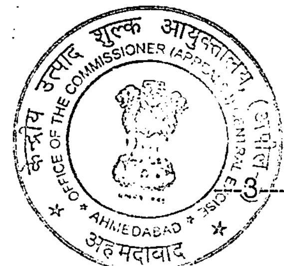
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.



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:

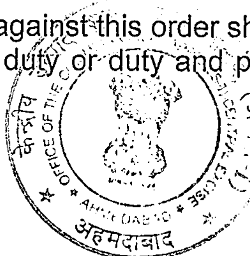
(i) amount determined under Section 11 D;

(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

M/s Synpol Products Pvt Ltd., 77, GVMM, Odhav, Ahmedabad, Gujarat (hereinafter referred to as "the appellant") has filed this appeal against Order-in-Original No.MP/03/Dem/2016-17 dated 03.08.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise, Division-V, Ahmedabad-1 (hereinafter referred to as "the adjudicating authority").

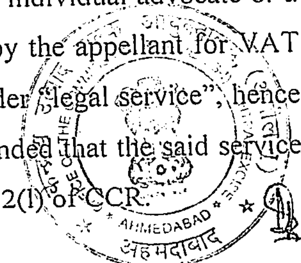
2. Briefly stated, the facts of the case is that based on Audit Report, a show cause notice dated 15.02.2016 was issued to the appellant for recovery of wrongly availed Cenvat credit amounting to Rs.17,739/- towards service tax paid on Consultant service such as VAT consultancy, return preparation etc by treating them as "legal service" under reverse charge mechanism as per entry No.5 of notification No.30/2012-ST dated 20.06.2012. Vide the impugned order, the recovery proceedings were confirmed with interest liability and also imposed penalty of Rs.8,870/- under Rule 15(2) of Cenvat Credit Rules, 2004 r/w Section 11 AC (1) (c) of Central Excise Act, 1944.

3. Being aggrieved, the appellant has filed this appeal on the ground that they had availed service of Company Secretary as well as Chartered Accountants in relation to their manufacturing activities and have given various professional services viz legal and consultancy services; that any service provided in relation to advice, consultancy or assistance in any branch of law in any manner is chargeable to service tax under entry No.5 of notification No.30/2012-ST, hence eligible for taking credit on such service; that the true scope of Rule 2(l) of Cenvat Credit Rules, 2004 (for short CCR) has been lost sight of in the adjudication proceedings; that the adjudicating authority has grossly erred in confirming the demand on a finding that the services availed by them do not all under the definition of legal services or input services. The transactions taken place in the instant case was revenue neutral; hence no proceedings are required to be initiated against the appellant.

4. A personal hearing in the matter was held on 16.02.2017. Shri Amal P Dave, Advocate appeared for the same and reiterated the grounds of appeal. He further submitted that there is no suppression in the matter.

5. I have carefully gone through the facts of the case and submissions made by the appellant. The limited point to be decided in the matter is relating to admissibility of input service credit of service tax paid on consultancy services under reverse charge mechanism.

6. The adjudicating authority has denied the said credit on the grounds that the appellant has paid the service tax for the service of consultant under reverse mechanism charge, vide entry No. 5 of notification No.30/2012-ST dated 20.06.2012; that the said notification stipulates that the recipient shall pay 100% service tax in respect of services provided by individual advocate or a firm of advocate by way of "legal services"; that the service availed by the appellant for VAT consultancy, CA service and return preparation etc are not covered under "legal service", hence the said notification is not applicable to their service. He further contended that the said service does not fall under the definition of input service as defined under Rule 2(l) of CCR.



7. From 2011, as per Rule 2(l) of CCR, "Input service" means- any service,-

(i) *used by a provider of taxable service for providing an output service; or*

(ii) *used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*

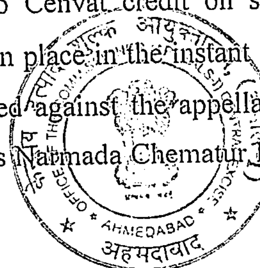
and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, business exhibition, ***legal services****, inward transportation of inputs or capital goods and outward transportation upto the place of removal;*

Rule 2(cca) of Service Tax Rules, 1994 stipulates that "legal Service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representation services before any court, tribunal or authority.

8. From the above definition, it is very much evident that service like advice, consultancy or assistance in any branch of law in any manner is a legal service and a person who receives such services in relation to their business activities is eligible to take credit of service tax paid on such services as "input service". In the circumstances, argument that the service of consultant do not fall under the definition of "input service" is incorrect.

9. In the instant case, I observe that the appellant had paid the service tax on the said services under reverse charge mechanism as per entry No.5 of notification No.30/2012-ST dated 20.06.2012, which stipulates that "in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services". The adjudicating authority has contended that the service tax payment under RCM vide notification *supra* prescribes for service in respect of individual advocate or a firm of advocates only and none of the service received by the appellant was from an advocate or a firm of advocates; that service tax was not liable to pay by the appellant under RCM under "legal service" vide notification *supra* and therefore, credit availed is illegal.

10. As is stated above, undisputed facts indicate that the appellant had availed services of consultancy in relation to their business activities which is covered under "legal service". In the instant case, dispute arises in a situation that when the appellant is not liable to pay service tax under RCM vide entry No.5 of the notification supra as the said notification applies only in case of service provided or agreed to be provided by individual advocates or a firm of advocates, they are not eligible for credit on such wrong payment of tax. Though the consultancy service like advice, consultancy or assistance is falls under "legal service", it does not falls under the definition of "Advocates". I observe that the adjudicating authority has accordingly held that the payment of service tax is illegal and no Cenvat credit on such payment is available. The appellant argued that the transactions taken place in the instant case was revenue neutral; hence no proceedings are required to be initiated against the appellant. They relied on decisions of Hon'ble Supreme Court in the case of M/s Narmada Chematur Pharmaceuticals Ltd [2005 (179)



ELT 276] and CCE V Coca Cola India Pvt Ltd [2007 (213) ELT 490 in this regard. The Hon'ble Supreme Court Hon'ble Supreme Court took a view that the situation was revenue neutral and therefore no duty was payable.

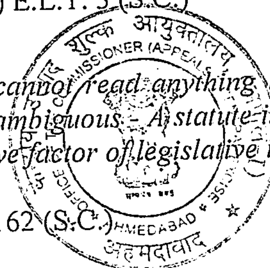
11. Section 66B of the Finance act, 1994 which stipulates that the tax shall be ***levied and collected in such manner*** as may be prescribed. In that situation, the taxes have been levied on service provider and service receiver in certain manner and only that person in such manner as prescribed can discharge the tax liability. Further Section 68 *ibid* makes it mandatory for notified service receiver to pay the service tax. The mandate of this section is very clear and does not give any scope of interpretation leading to the conclusion that the tax liabilities cast on one person could be discharged by any other person in the manner which is not prescribed by the law. The plain and simple reading of section 68 (2) is that the person on whom the tax liability is cast, he only should discharge it and also in the manner specified. Tax collected through any other person will be in violation of Article 265 of Constitution of India as well as statutory provision of Section 66B ibid. I observe that the Hon'ble High Court of Mumbai has interpreted it in case of Idea Cellular [2016(42)STR 823]. Hon'ble High Court has very clearly stated that the rules must

> "..... *As postulated by Article 265 of the Constitution of India a tax shall not be levied except by authority of law i.e., a tax shall be valid only if it is relatable to statutory power emanating from a statute. The collection of VAT on the sale of SIM cards, not being relatable to any statutory provision, must be held to be without authority of law and as a consequence non est....* " (para 12).

When anybody is paying somebody's taxes liabilities and ask department to cross verify it and seek exemption of penalty on the ground of revenue neutralities, may lead to a situation where tax may be paid in one jurisdiction with a request to cross verify such tax payments in different jurisdiction. This will also be nightmarish for the tax administration, which will cause a lot of stress on the tax administration which has not envisaged such cross verification in the reduced manpower regime and rules have been framed keeping in view the administrative infrastructures and intent of legislature. I observe that the Hon'ble High Court of Bombay in its order of Nicholas Piramal [(2009 (244) ELT 321(Bom)] held that "the rule must ordinarily be read in its literal sense unless it gives rise to an ambiguity or absurd result"

12. In a catena of judgments the Apex court has ruled that "Enlarging scope of legislation or legislative intention is not the duty of Court when language of provision is plain - Court cannot rewrite legislation as it has no power to legislate..."

DHARAMENDRA TEXTILE PROCESSORS 2008 (231) E.L.T. 3 (S.C.)



Interpretation of statutes - Principles therefor - Court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous - A statute is an edict of the legislature - Language employed in statute is determinative factor of legislative intent.

PARMESHWARAN SUBRAMANI 2009 (242) E.L.T. 162 (S.C.)

Interpretation of statutes - Legislative intention - No scope for court to undertake exercise to read something into provisions which the legislature in its wisdom consciously omitted - Intention of legislature to be gathered from language used where the language is clear - Enlarging scope of legislation or legislative intention not the duty of Court when language of provision is plain - Court cannot rewrite legislation as it has no power to legislate - Courts cannot add words to a statute or read words into it which are not there - Court cannot correct or make assumed deficiency when words are clear and unambiguous - Courts to decide what the law is and not what it should be - Courts to adopt construction which will carry out obvious intention of legislature. [paras 14, 15]

13. Article 265 of the Constitution of India state that "*Taxes not be imposed saved by the authority of law. No taxes shall be levied or collected except by authority of law*". Therefore no tax shall be levied or collected without an authority of law. It further states that "Taxes not to be imposed save by authority of law". Article 265 contemplates two stages - one is levy of tax and other is collection of tax and that levy of tax includes declaration of liability and assessment, namely, quantification of the liabilities. After the quantification of the liability follows the collection of tax and it should be only by an authority of law.

14. In view of the Constitutional and statutory provisions, I conclude that appellant has not discharged his tax liability in the prescribed manner. Therefore, in the instant case, I uphold the demand of duty with interest and consequently uphold penalty imposed.

15. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है। The appeal filed by the appellant stands disposed of in above terms.

उमाशंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date :22.03.2017

Attested

(Mohanan V.V)

Superintendent (Appeals-I)

Central Excise, Ahmedabad

By R.P.A.D

To

M/s Synpol Products Pvt Ltd.,

77, GVMM, Odhav,

Ahmedabad, Gujarat

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Commissioner, Central Excise, Ahmedabad-I
3. The Deputy/Assistant Commissioner, Division-V, Ahmedabad-1.
4. The Assistant Commissioner, System-Ahmedabad -I
5. Guard File.
6. P.A. File.