

 <p style="text-align: center;">केंद्रीय कर आयुक्त (अपील)</p> <p style="text-align: center;">O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015</p> <p style="text-align: center;">7th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015</p> <p style="text-align: center;">टेलीफोन : 079-26305065</p>	 <p style="text-align: center;">टेलीफैक्स : 079 - 26305136</p>
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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/123/Ahd-I/2016-17 79095 to 9099
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-121-2017-18
दिनांक 16.10.2017 जारी करने की तारीख Date of Issue 22-11-17

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Asst. Comm., Div-III केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं MP/19/AC/DIV-III/2016-17 दिनांक: 1/30/2017, से सृजित

Arising out of Order-in-Original No. MP/19/AC/DIV-III/2016-17 दिनांक: 1/30/2017 issued by Asst. Comm. Div-III Central Excise, Ahmedabad-I

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

**M/s Bhavin Industries
Ahmedabad**

कोई व्यक्ति इस अपील आदेश से अरांतोष 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) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतल 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।

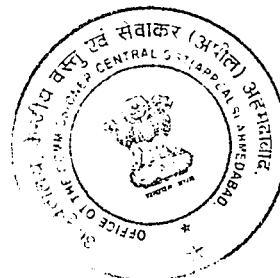
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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



... 2 ...

(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 मामलों 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 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 दिनोंक 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.

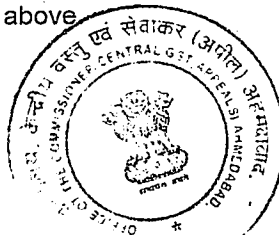
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 ओ-20, न्यू मैटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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

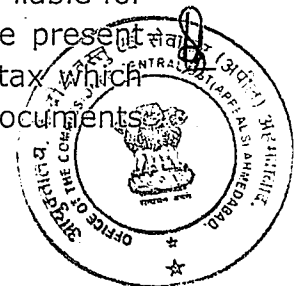
This is an appeal filed by M/s Bhavin Industries (herein after referred to as the appellants) against the OIO No. 19/AC/Div.III/2016-17 dtd. 27.01.2017 (herein after referred to as the impugned order) passed by the Assistant Commissioner.

2. The brief facts of the case are that during the course of audit, it was noticed that the appellants had received manpower Supply Service and they had paid 75% Service Tax under Notification No. 30/2012-ST dtd. 20.06.2012 (Sr. No. 8) and availed credit of Service Tax paid. The appellant is a "Proprietorship Firm" which is also proved from their Central Excise Registration Certificate bearing No. ADYPA4124CXM001 dtd. 06.04.2005 and is not covered under "Body Corporate" whereas as per the notification (supra), the taxable services provided or agreed to be provided by way of supply of manpower or security services to a business entity registered as body corporate, the receiver of the service is required to pay 75% (100% w.e.f. 01.04.2015) of the service tax. Since the appellants were not body corporate, they were not liable to pay service tax as per the Notification No. 30/2012-ST. Therefore the cenvat credit availed thereon was required to be recovered.

The Assistant Commissioner, vide the impugned order, confirmed demand of Rs. 7,11,509/- and imposed penalty of equal amount as per provisions of Section 11AC of the Central Excise Act, 1944 (herein after referred to as the said Act) read with Rule 15 (2) of the Cenvat Credit Rules, 2004 (herein after referred to as the CCR, 2004) respectively.

3. Being aggrieved by confirmation of demand of Rs. 7,11,509/- and imposition of penalty of equal amount, the appellants have filed this appeal on the following grounds:

- (a) The appellants have made the payment of service tax liability properly and validly and accordingly the availment of cenvat credit thereof is proper;
- (b) That the section 68 of the Finance Act, 1994 does not speak about that the recipient cannot pay Service Tax under Reverse Charge Mechanism if the recipient is a proprietorship firm;
- (c) That the appellants have paid service tax as recipient of service of manpower supply from the service provider under Notification No. 30/2012-ST dtd. 20.06.2012 (Sr. No. 8);
- (d) That as per various dictionaries, the definitions of a legal entity has been identified by a particular name also called corporation, corporate body or corporate entity, having distinct identity, legal personality and duties and rights etc. and they were under the impression that the service tax is required to be paid by the appellants;
- (e) That as per Notification No. 30/2012-ST dtd. 20.06.2012 (Sr. No. 8), it is prescribed that 100% service tax is payable by any person liable for paying tax other than service provider. It means that in the present case, the appellants being recipient of service liable to pay tax which has been paid by challan and the challan is one of the documents prescribed under Rule-9 of the CCR, 2004;



- (f) That allegation of suppression of facts is not acceptable as they are not a service provider but manufacturer of excisable goods duly registered;
- (g) That if the service provider has paid the service tax then under the provisions of Rule 3 of the CCR-2004, the credit of service tax so paid by the service provider is available as credit and therefore it is a case of revenue neutrality. Hence credit so taken by the appellant is not recoverable under the provisions of Rule 14 of the CCR-2004 view of above, imposing equivalent penalty is not correct.

4. The personal hearing in the case was held on 17.08.2017 in which Shri R. R. Dave, Consultant appeared on behalf of the appellants. He reiterated the grounds of appeal and submitted decisions of L G Electronics Vs. Commissioner of Central Excise and S. T., Noida - 2017 (48) S.T.R. 248 (Tri.-II), HDFC Standard Life Insurance Co. Ltd. Vs. Commissioner of C.Ex., Mumbai-II - 2017 (49) S.T.R. 301 (Tri.-Mum) and Orient Bell Ltd. Vs. Commissioner of C.Ex., Noida - 2017 (52) S.T.R. 56 (Tri.-All).

5. I have carefully perused the documents pertaining to the case and submitted by the appellant along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issue to be decided in the instant case is whether the appellants are body corporate and were accordingly eligible to pay service tax as per Notification No. 30/2012-ST dtd. 20.06.2012 (Sr. No. 8).

7. I find that the definition has been provided in the Service Tax Rules, 2004. According to the Service Tax Rules, 1994 (hereinafter referred to as the principal rules), in rule 2 (bc) "body corporate" has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956 (1 of 1956);

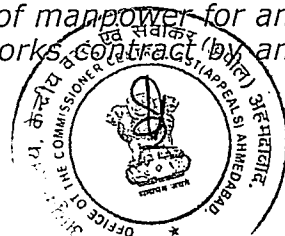
So to understand the meaning of "body corporate", we have to refer to clause (7) of Section 2 of the Companies Act, 1956 (1 of 1956) which defines body corporate as;

" (7) " body corporate" or" corporation" includes a company incorporated outside India but¹ does not include-
(a) a corporation sole;
(b) a co- operative society registered under any law relating to co- operative societies; and
(c) any other body corporate (not being a company as defined in this Act) which the Central Government may, by notification in the Official Gazette, specify in this behalf;]"

In view of the definitions given above, I am of the view that the appellants are not body corporate for the purpose of Service tax rules.

8. Now I find that the Notification No. 30/2012-ST dtd. 20.06.2012 (Sr. No. 8) has been issued for providing the payment of service tax by various categories as per prescribed percentage. As per this notification provision no. 1 (A) (v);

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any



individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory; (emphasis provided)

I find that the provisions of the notification are very clear and have provided percentage of service tax to be paid by the recipient of the services when these are provided to a business entity registered as body corporate only. As I have already held earlier that the appellants are not body corporate as defined in the Service Tax Rules, I find no reason to agree with their appeal on this point.

9. I would like to quote the charging Section 66B of the Finance act, 1994 which states that

*"SECTION 66B. Charge of service tax on and after Finance Act, 2012.—There shall be **levied** a tax and **collected in such manner** as may be prescribed."*

I find that in present 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.

10. Section 68(1) makes it mandatory for service provider to pay tax. Section 68(1) is reproduced as below

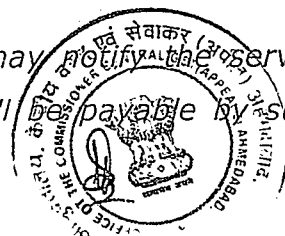
"(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed."

The analysis of above section 68(1) gives us vital points that tax shall be paid in such manner as may be prescribed.

11. Section 68 (2) makes it mandatory for Notified services, the receiver or receiver and provider on shared basis to pay the service tax. Section 68(2) is reproduced as below-

"(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such



person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider."

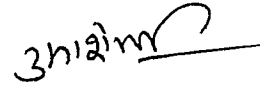
The analysis of above section 68(2) gives us vital points tax shall be paid in such manner as may be prescribed. Notification 30/2012-ST issued under section 68(2) for certain services has notified that recipient shall pay 100% tax in some services. Said notification has notified that in some services tax liability shall be shared between provider and receiver of service to the extent of percentage prescribed in notification.

12. The mandate of this section 68(1) and 68(2) 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(1) and 68(2) is that the person on whom the tax liability is cast, he only should discharge it and also in the manner specified.

10. I find that the appellants were fully aware of the provisions of the Notification No. 30/2012-ST that they were not falling within the prescribed conditions to pay service tax as prescribed therein and compliance with the conditions of a notification is a basic requirement for availing any benefit prescribed therein. I therefore do not agree with the argument given by the appellants that the demand is hit by limitation. I hold that the impugned order covering the period of demand as per the show cause notice is right. In view of the findings given, I find no reason to interfere with the impugned order.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stand disposed off in above terms.



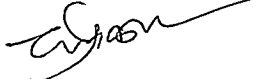
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

अहमदाबाद

Date: 16: 10.2017

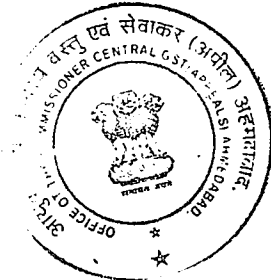
ATTESTED



(D.UPADHYAYA)
SUPERINTENDENT (APPEALS),
CENTRAL GST, AHMEDABAD.

BY R.P.A.D.

M/s. Bhavin Industries,
Plot No. 448,
Phase-II,
GIDC, Vatva,
Ahmedabad-382445



Copy To:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad (South).
- (3) The Assistant Commissioner, CGST, Div-III, Ahmedabad (South)
- (4) The Assistant Commissioner, Systems, CGST, Ahmedabad (South)
- (5) Guard File.
- (6) P.A. File.

