

केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX	
केंद्रीय कर शुल्क भवन	Floor: Central Excise Building
सातवां मजिल पॉलिटेक्निक के पास	Near Polytechnic
आम्बावाडी अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
फोन : 079-26305065	टेलिफैक्स : 079-26305136

क जाइल संख्या : File No : **V2(ST)0300/A-II/2016-17 / 10387 to 10394**
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-181to183-17-18**
 दिनांक Date : 22-11-2017 जारी करने की तारीख Date of Issue 05-12-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No **AHM-SVTAX-000-JC-028-16-17** Dated **27.01.2017** Issued by Joint Commissioner STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s. SPL and GDC Joint Venture
Jai Kishan Bagri
K.J.Rawal

Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
 Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is less, Rs.5000/- where the amount of service tax & interest demanded & penalty



more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. दशासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 86 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 हैं -

- (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 होगा।

4. 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,

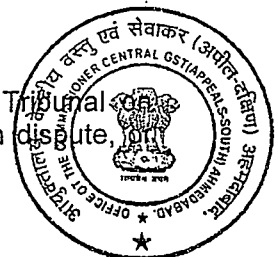
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

4(1) इस संदर्भ में, 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।

4(1) In view of above, an appeal against this order shall lie before the Tribunal on the 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

Following three appeals, all dated 27.03.2017 have been filed against the Order-in-Original number AHM-SVTAX-000-JC-028-16-17 dated 27.01.2017 (hereinafter referred to as 'impugned orders') passed by the Joint Commissioner, Service, HQ, Ambawadi, Ahmadabad (hereinafter referred to as 'adjudicating authority');

Appeal No.	Filed by
V2(ST)300 /A-II/ 2016-17	M/s. SPL & GDC Joint Venture (PAN No. AAGA S2418B), 301-303 Prema Arcade, Opp Doctor House, Near Parimal Garden, Ellisbridge, Ahmedabad (hereinafter referred to as 'appellant')
V2(ST)301 /A-II/ 2016-17	Shri K. J. Rawal Director, Gannon Dunkereley Company (GDC)
V2(ST)302 /A-II/ 2016-17	Shri Jai Kishan Bagri, Director, Simplex Projects Ltd (SPL)

2.1 The facts of the case, in brief, are that the appellant, not registered with Service Tax Department, provided "works contract service- Section 65(105)(zzzza)" of Rs. 24,20,39,221/- to Ahmedabad Municipal Corporation (in brief "AMC") by way of constructing Multistory Parking at Kankariya area of AMC, from 2011-12 to 2015-16 and did not pay the service tax under the presumption that Multistory Parking constructed being non-commercial in nature and being owned by AMC, is exempted from service tax by virtue of following authority-

- Pre-negative period up to 30.06.2012-. Service provided for the construction of a new building or civil structure, not primarily for the purpose of commerce and industries was exempt in terms of clause (b) of definition of "works contract Service" given at Section 60(105)(zzzza). Multistory Parking constructed being non-commercial in nature and being owned by AMC, it is exempted.
- Post-negative period from 01.07.2012- exempted vide entry No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012.

2.2 Appellant had not paid service tax of Rs. 1,04,29,970/- on works contract in construction of Multistory parking for period 2011-12 to 2015-16 and service tax of Rs. 71,905/- on maintenance work of said Multistory parking carried out in 2014-15 and 2015-16. Service tax short paid was Rs. 1,05,01,874/- [Rs. 1,04,29,970/- (Annexure- A to SCN) + Rs. 71,905/- (Annexure- B to SCN)



2.3 Total short payment of duty Rs. 1,05,01,874/- was confirmed vide impugned OIO u/s 73(1) by invoking extended period along with imposition of penalty of Rs. 1,05,01,874/- u/s 78 of FA, 1994, Rs. 10,000/- u/s 77(1) of FA, 1994 and Rs. 10,000/- u/s 77(2) of FA, 1994. Interest was also ordered to be recovered u/s 75 of CEA, 1944. Rs. 50,000/- Personal Penalty was imposed u/d 78A of FA, 1994, on each Shri Shri K. J. Rawal Director, Gannon Dunkereley Company (GDC) and Shri Jai Kishan Bagri, Director, Simplex Projects Ltd (SPL) vide impugned OIO.

3. Being aggrieved with the impugned order, the above three appellants filed an appeal wherein it is stated that simply recovering user charges just to meet the maintenance cost does not mean that AMC is using Multistory parking for commercial purposed. In support of their contention appellant relied upon the judgment in case of B. G. Shirke Construction Technology Pvt. Ltd V/s CCE, Pune [2014 (33) STR 77 (Tri- Mum.)]. Regarding Personal penalty imposed u/s 78A of FA, 1994, it is submitted that Shri Shri K. J. Rawal Director, Gannon Dunkereley Company (GDC) and Shri Jai Kishan Bagri, Director, Simplex Projects Ltd (SPL) have acted bonafiedly and there is no intention to evade the Service tax, therefore penalty can not be imposed upon them.

4. Personal hearing in the case was granted on 07.11.2017. Shri Rajkumar Agrawal, Consultant , on be half of all three appellant, appeared before me and reiterated the grounds of appeal. Consultant submitted the Hon`ble Karnataka H. C. Judgement in case of mPortal India Wireless Solution P. Ltd. [2012 (27) STR 134. Kar]. They submitted additional submission where in at para 3.6 of said submission it is stated that providing parking facility to citizens is statutory duty municipality under Article 243W read with 12th Schedule of Constitution. During course of hearing 15 days time was given to submission of project report of parking lot by AMC.

5. I have carefully gone through the facts of the case on records, grounds of all three appeals stated in the Appeal Memorandum and oral/written submissions made by the appellants. I find that appellant has not submitted project report of parking lot by AMC, though 15 days time was given in hearing. I shall decide all three appeals in this common order as all three appeals are originated from same OIO.



6. Issue to be decided is that, whether multistory parking built at Kankariya area of Ahmedadabad by AMC is non- commercial or commercial in nature. Adjudicating authority has held it to be commercial in nature for following two **REASONS**.

- i. In SCN it is alleged that parking facility constructed by appellant is commercial in nature but appellant have failed to prove that it is non-commercial in nature.
- ii. Parking facility constructed by appellant for AMC is not free of charge for its users.

7.1 Regarding **REASON (i)** above, I am considered view that onus was on appellant to prove, by of producing ledger A/c maintained by AMC and project report of said multistory parking , that said multistory parking is not used for earning profit by AMC. What is alleged in SCN, ought to have answered by evidence by appellant. Appellant had failed to establish that it is used for non-commercial purpose .

7.2 At para 5 of OIO it is mentioned that revenue had called for certain clarification from AMC in respect of said multistory parking, vide their letter dated 28.03.2016 addressed to city Engineer, AMC, but no reply has been received. Appellant had produced, during course of hearing, the copy of letter dated 16.05.2016 of AMC in response to said revenue letter dated 28.03.2016, addressed to the Principal Commissioner, Service Tax, Ahmadabad, wherein it is stated by Addl. City Engineer of AMC, that the collection of charges for parking of vehicles at parking are towards recovery of maintenance charge and there is no motive of making any profit or commercial gain by AMC. Said dated 16.05.2016 of AMC is not supported by Account ledger of said multistory parking so as to establish that AMC is earning profit out of user charges collected. Further, I have called for project report during course of hearing but same has not been submitted by appellant. It is only from project report and Account ledger one can understand that AMC is not earning any profit out of it. In view of above I am in complete agreement with reason (i) resorted by the adjudicating authority to confirm the demand.

8.1 Now I shall discuss issue regarding **REASON (ii)** above. This issue is to be decided in context two periods i.e. pre-negative period (period up to 30.06.2012) and post-negative period (period from 01.07.2012)



8.2 I find that for period up-to to 30.06.2012, service tax on works contracts of non-commercial buildings is not required to be paid in terms of the circular No 80/10/2004-ST dated 17/09/2004. The said circular has clarified that-

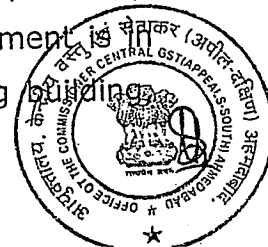
- a. if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax
- b. that to ascertain the commercial or non-commercial nature, approved plan of building has to verified.

Para 13.2 of said circular is reproduced as below-

"13.2 The leviability of service tax would depend primarily upon whether the building or civil structure is "used, or to be used" for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax.

9.1 Appellant has not produced "project report" and "approved plan" of said multistory buildings to substantiate, the said structure as 'non-commercial nature as required under above said circular. Therefore benefits of said circular can not be extended to appellant for pre-negative period.

9.2 Appellant has relied upon the judgment , in case of B. G. Shirke Construction Technology Pvt. Ltd V/s CCE, Pune [2014 (33) STR 77 (Tri-Mum.)] wherein it is held that collection of usage charges by Government of Maharashtra for upkeep of the public property can not be interpreted to mean that project is commercial in nature. I find that, said judgment is case of sports stadium and present case is of Multistory parking building



therefore said judgment is not squarely applicable. Further, in said judgment it is held that mere collection of "user charge" does not mean that stadium built by Maharashtra Government is commercial. In this regard I observe that appellant has not substantiated that, so called "user charges" collected by AMC does not contain profit element in it

10.1 Appellant had relied upon judgment in case of M/s Dinesh Chandra Agrawal Infracom (P.) Ltd V/s CCE [2011 (30) STT 75 (Ahd- CESTAT)] wherein it is held that the amenities, listed in clause 17 of Twelfth Schedule of Article 243W of Constitution of India, provided to its citizens is a part of duties and functions of the state and such function can not be held for the purpose of undertaking any commercial activity. I completely agree with the adjudicating authority that said judgment is not applicable to present case as structure constructed are different in both the cases and as in said case, no user charges were collected.

10.2 Appellant has not produced any evidence to establish that motive of AMC is not to "recover the cost" and not to "earn profit" out of user charges. Therefore I hold that said multistory parking is used for commercial purpose and consequently appellant is liable for payment of service tax for period up to 30.06.2012.

11. Further, for period after 30.06.2012, appellant has relied upon sr. No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012 for claiming exemption from payment of service tax. Para 12(a) of Exemption Notification No. 25/2012-ST dated 20.06.2012 is as below

"12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;"

I have earlier held that the appellant has not proved that said multistoried building is used for non-commercial purpose and has also not proved that



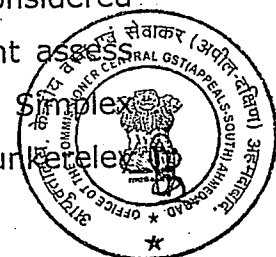
AMC is not earning any profit out of user charges. Therefore, I hold that for period after 30.06.2012 also, appellant is not eligible for exemption under sr. No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012 so far it relates execution of works contract in construction of Multistory Stadium at Kankariya.

12. In view of forgoing discussion Whole demand of Rs. Rs. 1,04,29,970/- (annexure A to the SCN) demanded on execution of works contract demanded for period 2011-12 to 2015-16, in relation construction of Multistory parking is correctly confirmed and correctly ordered to be recovered along with interest, in impugned OIO.

13. Maintenance and repairing work of Non-Commercial civil work is also not exempted vide under sr. No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012 but said Multistory parking is commercial in nature as I concluded in forgoing paras. Therefore appellant is not eligible for exemption for said Maintenance and repairing work. I hold that, demand of Rs. Rs. 71,905/- (annexure B to the SCN) demanded on maintenance and repair work carried out on said Multistory parking building, for period 2014-15 to 2015-16, is correctly confirmed and correctly ordered to be recovered along with interest, in impugned OIO.

14.1 Now coming to imposition of penalty under Section 78 and 78A. The adjudicating authority has imposed the said penalty on the grounds of suppression with intent to evade payment of duty. In the present case, non payment of service tax, by the appellant was unearthed during the course of Audit and subsequent inquiry undertaken by the Department. Had it not been detected by the Department, the said evasion would have gone unnoticed. Shri Jai Kishan Bagri, Director, Simplex Projects Ltd (SPL) and Shri K. J. Rawal Director, Gannon Dunkereley Company (GDC) was responsible to execute whole project. Such duty evasion had occurred under their nose. Hence, the adjudicating authority was justified in invoking extended period of limitation and for imposition of penalty under Section 78 and 78A.

14.2 Having upheld whole demand of Rs. 1,05,01,874/-, I am considered view that, penalty under section 78, 77(1) and 77(2) on appellant assess and Personal Penalty u/s 78A on Shri Jai Kishan Bagri, Director, Simplex Projects Ltd (SPL) and Shri K. J. Rawal Director, Gannon Dunkereley



Company (GDC) is correctly imposed. I upheld all penalty, interest imposed under section 78, 77(1) and 77(2) on appellant assessee and Personal Penalty imposed u/s 78A.

15. In view of above, I reject all the three appeals filed by (i) appellant assessee, (ii) Shri K. J. Rawal and by (iii) Shri Jai Kishan Bagri. I upheld the impugned OIO.

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

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

R.R. Patel
(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD.

By R.P.A.D.:

To,

(1)

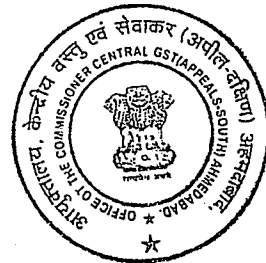
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301-303 Prema Arcade,
Opp Doctor House, Ellisbridge
Near Parimal Garden,
Ahmedabad.

(2)

Shri Jai Kishan Bagri,
Director, Simplex Projects Ltd (SPL)
Opp Doctor House, Ellisbridge
Near Parimal Garden,
Ahmedabad

(3)

Shri K. J. Rawal
Director, Gannon Dunkereley Company (GDC)
Opp Doctor House, Ellisbridge
Near Parimal Garden,
Ahmedabad



Copy To:

The Chief Commissioner, Central Tax, Ahmedabad.

The Commissioner Central Tax, GST South, Ahmedabad-.

The Additional Commissioner, Central Tax , GST South, Ahmedabad

The Asst. Commissioner, Div-VII, Ahmedabad South, Central Tax

The Asst. Commissioner(System), GST South, Hq, Ahmedabad.

~~Guard File.~~

P.A. File.

