केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

सत्यमेव जयते

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015

☎: 079-26305065

टेलेफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No . V2(ST)/12/RA/A-II/2017-18 /871 to 875
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-274-2017-18**
दिनॉक Date : **25-01-2018** जारी करने की तारीख Date of Issue 08/02/18

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

ग Arising out of Order-in-Original No. **SD-06/17/AC/M&Co Advisers/16-17** दिनॉक: **27/03/2017** issued by Assistant Commissioner, Central Tax, Ahmedabad-South

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

M/s M & Co. Advisers and Consultants 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 :

(i) 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 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 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 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।

(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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियग, 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 सीगा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदावाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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 cuty / 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 rominate 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 (प्रक्रियाविधि) 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.

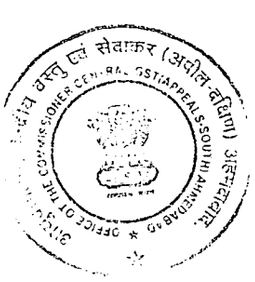
⇨ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

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 order arises out of an appeal filed by the then Assistant Commissioner, Service Tax Division-II, Ahmedabad (in short 'appellant') in terms of Revieworder No.11/2017-18 dated 21.06.2017 passed by the Review Authority under Section 84(1) of the Finance Act, 1994 against Order-in-Original No.SD-06/17/AC/M&Co Advisor/16-17 dated 27.03.2017 (in short 'impugned order') passed by the then Assistant Commissioner, Service Tax Division-VI, Ahmedabad (in short 'adjudicating authority') in case of M/s. M & Co Advisors & Consultants Pvt. Ltd., 2nd Floor, B-Wing, Premium House, Near Gandhigram Railway Station, Ahmedabad-380009 (in short 'respondent').

2. Briefly stated that during the course of audit of the records of the respondant, it was noticed that during the period July-2012 to August-2013 said respondent hired manpower from M/s. Dataline Computer Services, a proprietory firm and service provider, and further supplied to various organization, companies etc. the said service provider charged full service tax @12.36% on the full value of invoices raised to the respondent(i.e. service receiver) and paid to govt. account. The respondent availed full cenvat credit of service tax paid to the service provider. In fact, the respondent being limited company, was required to pay service tax @75% under Reverse Charge Mechanism vide Notifn. No.30/2012-ST dated 20.06.2012 readwith provisions of Section 68(2) of the Finance Act, 1994 and Rule 2(1)(d)(i)(F)(b) of the Service tax Rules, 1994. Hence, SCN dtd.07.03.2016 was issued for recovery of wrong availment of Cenvat credit of Rs. 13,28,980/- alongwith interest and imposition of penalties under the provisions of the Finance Act, 1994 and rules made thereunder. This demand was dropped by the adjudicating authority vide impugned order on the ground that revenue neutralilty based on various case laws of higher appellate forum.

3. Aggrieved with the impugned order, the review authority directed the appellant to file the present appeal on the ground that there is no provisions in the Finance Act, 1994 or the rules made thereunder to shift the liability on the service provider to pay service tax when the same is to be discharged by the service recipient under reverse charge mechanism.

4. The respondent has also filed cross objection against the grounds of appeal by the appellant wherein, interalia, submitted that:

- SCN makes no attempt to show the basis of classification under manpower service category. In its absence, application of rule/notification have no relevance. They being service recipient of service, classification of service cannot be examined in the hands of recipient. The invoices issued by the service provider are for data entry

and do not even remotely suggest/support the classification under manpower service category.

- As per circular no.341/18/2004-TRU dated 17.12.2004, if the service tax due on transportation of a consignment has been paid or is payable by a person liable to pay service tax, it should not be charged from any other person to avoid double taxation.

5. Personal hearing in the matter was held on 19.12.2017. Shri Darshan Belani, Chartered Accountant, appeared on behalf of the respondent and explained the case.

6. I have carefully gone through the appeal memorandum, submission made at the time of personal hearing and evidences available on records. I find that the main issue to be decided is whether the demand dropped by the adjudicating authority vide impugned order is just, legal and proper or otherwise. Accordingly, I proceed to decide the case on merits.

7. Prima facie, I find that the SCN dated 07.03.2016 was issued for wrong availment of cenvat credit and demand of service tax short paid/unpaid Rs.13,28,980/- by the respondent under category of 'Manpower Supply Agency Service' under Reverse Charge Mechanism under Notifn. No.30/2012-ST dated 20.06.2012 readwith provisions of Section 68(2) of the Finance Act, 1994 and Rule 2(1)(d)(i)(F)(b) of the Service tax Rules, 1994 whereunder the respondent is liable to pay service tax as service recipient. But since the same is paid by the service provider, the adjudicating authority has dropped the demand being revenue neutral and ruling of the higher appellate forum on the subject matter. The review authority has mainly stressed that as per the provisions contained in Rule 2ibid and Section 68(2)ibid read with said notification, the service recipient is liable to pay service tax on said services availed and this liability cannot be shifted on the service provider. In this connection, I find that it is true that there is no provision in the Act or the Rules made thereunder to shift liability by the person liable to pay it. However, payment of service tax by the service provider is also not disputed in the impugned order. I find that there is catena of case laws of various Hon'ble Tribunals on the similar matter wherein it is held that no tax/duty can be charged twice on the same service and the adjudicating authority has followed it judiciously.

8. As regards cross-objection filed by the respondent, I find that the respondent has disputed classification of services provided by the M/s. Dataline Computer Services, a proprietary concern. I find the SCN alleges the hiring manpower from said M/s. Dataline and supply them to various organizations. I find that instead of contesting this aspect, the respondent has tried to mislead the fact. I find tha the

copies of relevant bills submitted by the respondent is cryptic in nature since data entry work carried out at what rate is missing vis-à-vis volume of data entry made and how the final amout charged is arrived at in order to escape from the liability to pay service tax under RCM being consulting firm. I find that had there been data entry work carried out on job work basis, they must have entered into contract and produced copy of the same in this regard. But, I find that the respondent is silent on this aspect. I observe from the SCN, the respondent's reply and service provider's declaration that the category understood by the revenue is 'Manpower Supply Service' and by the service provider is 'Business Auxiliary Services' (BAS). As per section 68(1) the respondent (i.e. service receiver) is required to pay tax if service is 'Manpower Supply Services'. As per section 68(2), for 'Manpower Supply Services' both of them were required to discharge the service tax liability to the extent the percentage mentioned in notification no. 30/2012-ST.

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 for the sake of ease:

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

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

11. Section 68 (2) makes it mandatory for notified services i.e the receiver or receiver and provider on shared basis to pay the service tax. Section 68(2) is reproduced for the sake of ease:

> *"(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the*

केन्द्रीय वस्तु एवं सेवाकर (अपील-वित्त) आयुक्तालय OFFICE OF THE COMMISSIONER CENTRAL GST(APPEALS) SOUTH AHMEDABAD

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 point that the 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 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. Tax collected through any other person will be violative of Article 265 of Constitution of India as well as statutory provision of Section 66B ibid read with section 68(1) and 68(2)

13. 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:

"..... *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).

14. In view of the above decision of Hon'ble High Court, if the Hon'ble Tribunal's decision in the case of Kakinada Seaport is applied, it will lead to very absurd situation. 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. The present tax administration is very thinly manned based on workload assessment assigned by Board and it will cripple the system if additional workload is added which has not been envisaged while liberalizing rules as well as deciding the work load of the present day setup and may lead to a situation where revenue is compromised. An important question arises, can dependant be saddled with additional responsibilities, which could be detrimental to revenue and which are against the statutory / constitutional provisions? Such situation may lead to chaos as stated by Hon'ble High Court of Bombay in its order of Nicholas Piramal [(2009 (244) ECT 321(Bom)].

> *"It was then sought to be contended by pointing out to illustrative cases which are also noted in the majority view of the Tribunal, of the hardship that would be occasioned if the interpretation sought to be advanced on behalf of the petitioner is not accepted. We may only mention that hardship cannot result in giving a go-by to the language of the rule and making the rule superfluous. In such a case it is for the assessee to represent to the rule making authority pointing out the defects if any. Courts cannot in the guise of interpretation take upon themselves the task of taking over legislative function of the rule making authorities. In our constitutional scheme that is reserved to the legislature or the delegate. It is not open to countenance such an argument as the Finance Minister while providing for a presumptive tax under Rule 57CC had realised this difficulty. This presumptive tax has been continued in Rule 6. Hardship or breaking down of the rule even if it happens in some cases by itself does not make the rule bad unless the rule itself cannot be made operative. At the highest it would be a matter requiring reconsideration by the delegate. In support of their contention, learned counsel has sought to rely on the judgment of K.K. Varghese v. ITO - 1981 (4) SCC 173 to contend that the interpretation, which is manifestly absurd and if unjust results follow that interpretation that has to be avoided. The Court there observed that a task of interpretation of a statute or enactment is not a mechanical task. It is more than a mere reading of a mathematical formulae because few words possess the precision of mathematical symbols. We may refer to the relevant provision relied upon by learned counsel.*

> *".....We must therefore eschew literalness in the interpretation of Section 52 sub-section (2) and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible, unless of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation. It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction (vide Luke v. Inland Revenue Commissioner). The Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision. We think that, having regard to this well-recognized rule of interpretation, a fair and reasonable construction of Section 52 sub-section (2) would be to read into it a condition that it would apply only where the consideration for the transfer is understated or in other words, the assessee has actually received a larger consideration for the transfer than what is declared in the instrument of transfer and it would have no application in case of a bona fide transaction where the full value of the consideration for the transfer is correctly declared by the assessee."*

Reliance next was placed on the judgment in CIT v. J.H. Gotla reported in (1983) 4 SCC 343. The Court there observed that:

> *"Where the plain interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction."*

15. 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..."*** . I find that in case of:

(a) DHARAMENDRA TEXTILE PROCESSORS 2008 (231) E.L.T. 3 (S.C.), it is held as under:

> *"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."*

(b) PARMESHWARAN SUBRAMANI 2009 (242) E.L.T. 162 (S.C.), it is held as under:

> *"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]"*

16. **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.

17. Tribunal judgments cited by appellant in the impugned order has not dealt with this vital Constitutional point of Article 265. Hon'ble Tribunal has also not considered the legal position as well as constitutional provision in their orders.

18. Hon`ble Punjab and Haryana High Court in case of Idea Cellular [2016(42) STR 823] has clearly stated that-

> *".....the collection of VAT on activation of SIM cards is not relatable to any statutory provision. 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".*

19. In view of the Constitutional and statutory provisions, I conclude that the respondent has not discharged his tax liability. I

find that respondent has not declared this service receipt at any point of time to the department and filed ST-3 returns. Such receipt is revealed by department only during the course of audit of the records of the respondent and therefore it can be construed as suppression of facts from the department and violation of provisions of the Finance Act, 1994 as charged in the SCN dated 07.03.2016 is hereby confirmed. Accordingly, I order as under:

(a) Rs.13,28,980/- (Rs. Thirteen lakhs twenty eight thousand nine hundred eighty only) wrongly availed Cenvat credit is disallowed under Rule 14 of the Cenvat credit Rules, 2004.

(b) Demand of service tax of Rs. 13,28,980/- (Rs. Thirteen lakhs twenty eight thousand nine hundred eighty only) along with interest is confirmed and ordered to be recovered under Section 73(2) and 75 of the Finance Act, 1994 respectively from the respondent;

(c) Penalty under Section 76 of the Finance Act, 1994 is waived.

(d) Penalty of Rs.13,28,980/- (Rs. Thirteen lakhs twenty eight thousand nine hundred eighty only) is imposed under Section 78 of the Finance Act, 1994 on the respondent.

20. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है। The appeals filed by the appellant stand disposed off in above terms.

(उमा शंकर)
आयुक्त (अपील्स)

Attested:

(B.A. Patel)
Supdt.(Appeals)
Central GST, Ahmedabad.

BY SPEED POST TO:

M/s. M & Co Advisors & Consultants Pvt. Ltd.,
2nd Floor, B-Wing, Premium House,
Near Gandhigram Railway Station,
Ahmedabad-380009.

केन्द्रीय वस्तु एवं सेवाकर (अपील) आयुक्तालय, अहमदाबाद. OFFICE OF THE COMMISSIONER CENTRAL GST(APPEALS) AHMEDABAD

Copy to:-

(1) The Chief Commissioner, Central Tax, Ahmedabad Zone.

(2) The Principal Commr, CGST, Ahmedabad South (RRA Section).

(3) The Asstt. Commr, CGST Division-VII(Vastrapur), Ahmedabad South.

(4) The Asstt. Commr(System), CGST , Ahmedabad-South.
(for uploading OIA on website)

(5) Guard file

(6) P.A. file.