



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

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

7<sup>th</sup> Floor, GST Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/06/A-II/2017-18  
Stay Appl.No. NA/2017-18

726

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-276-2017-18  
दिनांक Date : 29-01-2018 जारी करने की तारीख Date of Issue

3/2/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. SD-02/40/AC/16-17 दिनांक: 27/01/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/s Maruti Infrastructure 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 aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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।

... 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 दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

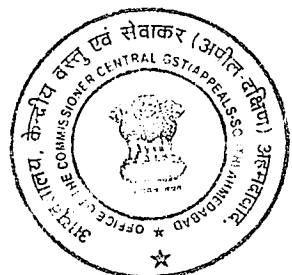
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हॉस्पिटल 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, Megharani 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 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 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 रूपए 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।

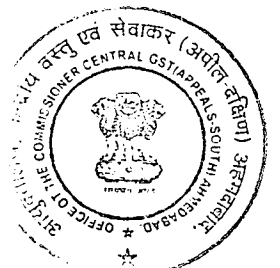
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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. Maruti Infrastructure Pvt. Ltd., Surmount, 802, Opp. Iscone Mega Mall, S. G. Highway, Satellite, Ahmedabad- 380 015 (STR AAAC M7976L ST001) (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number SD-02/40/AC/2016-17 dated 27.01.2017 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax, Div-II, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief are that M/s Shaili Paradigm Infratech Pvt. Ltd., Hyderabad (Main Contractor) during 2012-13 had given sub-contract work of Rs. 3,95,70,172/- to appellant to provide works contract service to M/s ONGC Petro Additions Ltd., Special Economic Zone (SEZ), Dahej but had not paid service tax of Rs. 19,56,350/- on it due to presumption that main Contractor is exempted vide para 2 of Notification No. 40/2012-ST dated 20.06.2012, to pay service tax as Service is provided to unit located in SEZ. They further presumed that appellant is eligible for exemption under clause 29(h) of the Notification No. 25/2012-ST. Sub-contractor providing services by of works contract to another contractor providing service which is exempt is exempted vide clause 29(h) of the Notification No. 25/2012-ST.

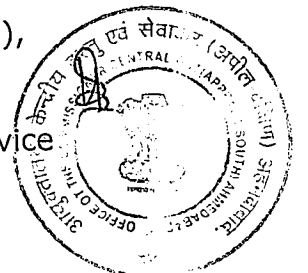
3. Adjudicating authority while confirming the whole demand and imposing penalty u/s 78 and 77(2) of FA, 1994 held that -

a. exemption under Notification 40/2012-ST has been availed without the SEZ Units having obtained Form A-1 prescribed as required under para 2(c) and para 2 (d) of Notification 40/2012-ST. Form A-1 dated 27.09.2012 submitted does not bear the name of Main Contractor M/s Shaili, Hyderabad for whom appellant has worked as sub-contractor, therefore service provided by main contractor becomes taxable and hence appellant is not eligible for exemption under clause 29(h) of the Notification No. 25/2012-ST.

b. Exemption vide clause 29(h) of the Notification No. 25/2012-ST can only be claimed if service rendered is un-conditionally exempted.

4. Being aggrieved with the impugned order, the appellants preferred an appeal on 06.04.2017 before the Commissioner (Appeals-II), Ahmadabad wherein it is contended that-

a. As per Section 26(1)(e) of the SEZ Act, 2005, exemption from service tax under Chapter-V of the Finance act, 1994 on taxable services



provided to a Developer or Unit to carry on the authorized operations in a Special Economic Zone.

- b. As per Section 2(m) of the SEZ Act, 2005, "export" means supplying goods or providing services from the Domestic Tariff Area (DTA) to a Unit or Developer.
- c. SEZ Act, 2005 overrides and eclipses provisions of any other law containing provisions contrary to SEZ Act, 2005,. As both, SEZ Act, 2005 and Finance Act, 1994 have been passed by Parliament, SEZ Act, 2005 is having overriding effect vide the provisions of Section 51.
- d. In the instance case appellant is situated in DTA and has provided service to SEZ Unit namely M/s ONGC Petronet. Hence by virtue of Section 2(m)(ii) of the SEZ Act, 2005 read with Section 26(1)(e) of the SEZ Act, 2005, no service tax is applicable on said service.
- e. Even if the conditions of Notifications No. 40/2012-ST has not been satisfied, the said services are exempted by virtue of provisions of SEZ Act which is prevailing over Finance Act, 1994.
- f. Appellant relied upon decision of Hon'ble Tribunal of Ahmedabad in case of Reliance Port and Terminals Ltd. Vs CCE, Rajkot [ 2015 (40) STR 200 (Tri. Ahmd)] and in case of Intas Pharma Ltd. Vs Commissioner, Service Tax, Ahmedabad [ 2013 (32) STR 543 (Tri. Ahmd)].

5. Personal hearing in the case was granted on 14.11.2017. Shree Bhagyashree Bhatt, Chartered Accountant, appeared before me and reiterated the grounds of appeal. Shee requested to condone the delay and stated that names not appearing in Form-A is procedural lapse. She Submitted citation of Reliance Port and Terminals Ltd. Vs CCE, Rajkot [ 2015 (40) STR 200 (Tri. Ahmd)] and Intas Pharma Ltd. Vs Commissioner, Service Tax, Ahmedabad [ 2013 (32) STR 543 (Tri. Ahmd)]

#### DISUSSION AND FINDINGS

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants, evidences produced at the time of personal hearing. In view of oral request made to condone the delay, I hereby condone the dely of 9 days in submitting appeal.





7 Question to be decided is whether or not service rendered by sub-contractor, authorized by main contractor, to SEZ unit is exempted, if the names of main contractor is not appearing in A-1 form submitted by recipient SEZ Unit.

**From SEZ Act, 2005 point of view**

8. I find that as per Section 2(m)(ii) of the SEZ Act, 2005 read with Section 26(1)(e) of the SEZ Act, 2005, Service rendered by DTA unit/provider to SEZ unit is treated as "export", therefore service rendered by sub-contractor or main Contractor is not liable for service Tax. Hon`ble Tribunal of Ahmedabad in case of Reliance Port and Terminals Ltd. Vs CCE, Rajkot [ 2015 (40) STR 200 (Tri. Ahmd)] at para 7 of decision it is held that-

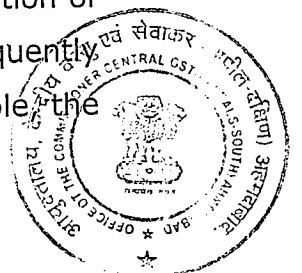
*"7. From the provisions contained in Section 26(1)(e) of the SEZ Act, read with Rule 30(10) of the SEZ Rules, 2006, it can be seen that no Service Tax is payable on the services provided by a service provider to a SEZ unit. Further, Sec. 51 of the SEZ Act also makes an over-riding provision that SEZ Act shall have effect even if there is anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any other law. It is accordingly held that Notification No. 9/2009-S.T. and amended Notification No. 15/2009-S.T. have been only issued to operationalize the exemption/immunity available to SEZ unit under Sec. 26(1)(e) of the SEZ Act, 2005."*

**From Finance Act, 1994 point of view**

9. Clause 29(h) notification no 25/2012-ST dated 20-06-2012 w.e.f. 01-07-2012 say that if the main contractor and sub-contractor are covered under works contract, the sub-contractor can claim exemption from service tax if main contractor is exempt from service tax.

10. Department point of view is that SEZ unit had given contract to Main Contractor i.e M/s Shaili Hyderabad, therefore SEZ unit should mention name of Main Contractor in form A-1 as required under para 2(c) and para 2 (d) of Notification 40/2012-ST for availing exemption. Due to this lapse, service rendered by Main Contractor has been denied exemption of Notification 40/2012-ST by the adjudicating authority. Consequently the adjudicating authority held that as Main Contractor service is taxable the





exemption, under clause 29(h) of the Notification No. 25/2012-ST, is not available to appellant, the sub-contractor.

11. I find that no invoice or any documentary evidence is produced to substantiate that service has been received by SEZ unit. Further I find that adjudicating authority has not examined whether service has been received by SEZ or not, which needs to be verified by adjudicating authority, for which case needs to be remanded back.

12. In view of facts and discussion herein above, the Adjudicating Authority is directed to decide the case afresh, for which case is remanded back to the Adjudicating Authority, after due compliance of the principles of natural justice and after proper appreciation of the evidences that may be put forth by the appellant before him. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority. These findings of mine are supported by the decision/order dated 03.04.2014 of the Hon'ble High Court, Gujarat in the Tax appeal No.276//2014 in the case of Commissioner, Service Tax, Ahmedabad V/s Associated Hotels Ltd. and also by the decision of the Hon'ble CESTAT, WZB Mumbai in case of Commissioner of Central Excise, Pune-I Vs. Sai Advantium Ltd and reported in 2012 (27) STR 46 (Tri. - Mumbai).

13. In view of above, appeal filed by the appellants is allowed by way of remand.

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

14. 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



To,  
M/s. Maruti Infrastructure Pvt. Ltd.,  
Surmount, 802, Opp.  
Iscone Mega Mall, S. G. Highway,  
Satellite , Ahmedabad- 380 015

**Copy to:**

- 1) The Chief Commissioner, Central Tax, Ahmedabad South .
- 2) The Commissioner Central Tax, CGST,Ahmedabad South.
- 3) The Additional Commissioner, Central Tax , Ahmedabad
- 4) The Asst. Commissioner, Central Tax, Div-VII, Ahmedabad South
- 5) The Asst. Commissioner(System), Hq, Ahmedabad South.
- 6) Guard File.
- 7) P.A. File.

