



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क. फाइल संख्या : File No : V2(ST)119/A-II/2016-17
Stay Appl.No. NA/2016-17

4759
4763

ख. अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-032-2017-18
दिनांक 25.07.2017 जारी करने की तारीख Date of Issue _____

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग. Joint Commissioner, केन्द्रीय कर, Service Tax द्वारा जारी मूल आदेश सं
AHM-SVTAX-000-JC-002-16-17 दिनांक: 17/05/2016, से सृजित

Arising out of Order-in-Original No AHM-SVTAX-000-JC-002-16-17 दिनांक: 17/05/2016 issued by
Joint Commissioner, Central Tax, Service Tax

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

M/s Rahul Engineers and Contractors.
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person a aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में 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 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.

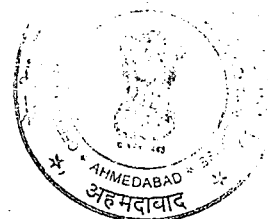
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, 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 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।

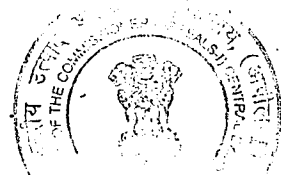
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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."



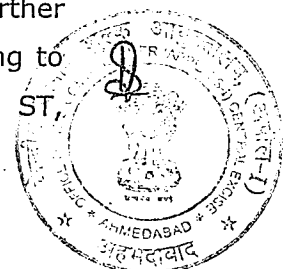
ORDER IN APPEAL

M/s. Rahul Engineers and Contractors, 16, S. M. Road, Tagore Park, Ambawadi, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number AHM-SVTAX-000-IC-002-16-17 dated 17.05.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Joint Commissioner, Service Tax, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants were engaged in design and construction work related to water supply projects of Government of Gujarat. On the basis of an information that the appellants had provided works contract service without being registered with the Service Tax department, an investigation was carried out and relevant documents for the financial years 2010-11, 2011-12, 2012-13 and 2013-14 were obtained from the appellants. During investigation it was seen that the appellants had provided services of construction, as a sub-contractor, related to water supply projects and the only works they had done were of M/s. Sanjay Construction Co. for Balasinor Nagarpalika and M/s. Navkar Engineers for Thara Nagarpalika. Thus, a show cause notice dated 12.06.2015 was issued to the appellants. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax of ₹6,54,092/- under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994. He also imposed penalties under Section 77(1), 77(2) and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellants preferred the present appeal before me. The appellants argued that the adjudicating authority has wrongly demanded the Service Tax of ₹6,54,092/- by claiming the service in dispute as works contract service. They further stated that the works executed by the appellants in respect of project of Balasinor Municipality and Thara Nagarpalika were not in the nature of turnkey project. It is wrong to hold the works as taxable services under clause (e) of explanation to Section 65(105)(zzzza) of the Finance Act, 1994 despite the fact that the works involving construction of building, civil structure, pipelines etc. shall be governed by clause (b) of explanation to Section 65(105)(zzzza) of the Finance Act, 1994.

4. Personal hearing in the case was granted on 19.06.2017 wherein Shri Rahul Patel, Chartered Accountant, appeared before me on behalf of the appellants. Shri Rahul Patel reiterated the grounds of appeal and further submitted copy of a judgment of the CESTAT, Bangalore (LB) pertaining to the case of M/s. Lanco Infratech Ltd. & others vs. the CC, CE & ST, Hyderabad.



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5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that the appellants have provided certain services to the main contractors (M/s. Sanjay Construction and M/s. Navkar Enggs.) in relation to water supply projects and have received a particular amount in return of rendering the service. The main contractors were involved in laying of pipeline in relation to water supply projects of Balasinor Municipality and Thara Nagarpalika. The work was basically pertaining to laying of pipelines, distribution network, building of water tanks, setting up machinery etc. A part of that work was sub-contracted to the appellants. The adjudicating authority has included the work, performed by the appellants, in the category of turnkey projects and termed the same to be liable for Service Tax. In this regard, I would like to quote certain related contents of the CBEC Circular number 116/10/2009-ST dated 15.09.2009 [2009 (16) S.T.R. (C9)] as below;

"On a reference being received by the Board, two following issues were examined for a clear understanding of facts. The first is regarding leviability of service tax on construction of canals for Government projects.

1. As per section 65 (25b) of the Finance Act, 1994 "commercial or industrial construction service" means —

(a) construction of a new building or a civil structure or a part thereof; or

*(b) construction of **pipeline** or conduit; or*

(c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

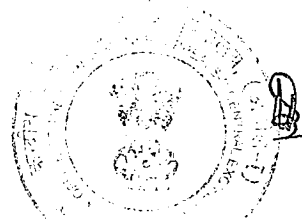
*(d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, **pipeline** or conduit,*

which is —

(i) used, or to be used, primarily for; or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in,

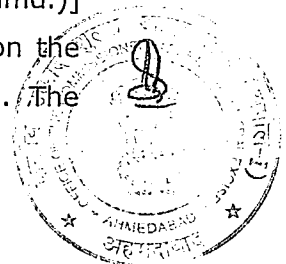


commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

2. Thus the essence of the definition is that the "commercial or industrial construction service" is chargeable to service tax if it is used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry. As the canal system built by the Government or under Government projects, is not falling under commercial activity, the canal system built by the Government will not be chargeable to service tax. However, if the canal system is built by private agencies and is developed as a revenue generating measure, then such construction should be charged to service tax.

3. The second issue is about Government taking up construction activity of dams, buildings or infrastructure construction etc. through EPC (Engineering Procurement & Construction) mode. The said service is covered under section 65 (105) (zzzza) of Finance Act, 1994. The said section itself excludes works contract in respect of dams, road, airports, railways, transport terminals, bridges & tunnels executed through EPC mode. Hence works contract in respect of above works even if done through EPC mode are exempt from payment of service tax."

Thus, from the above, I, very clearly decipher that the issue is about Government taking up construction activity of dams, irrigation projects, buildings or infrastructure construction etc. through turnkey or EPC (Engineering Procurement & Construction) mode. The said service is covered under Section 65(105)(zzzza) of Finance act, 1994. The said section itself excludes works contract in respect of dams, tunnels, canals or irrigation projects, road, airports, railways, pipelines, conduits, transport terminals & bridges executed through such turnkey or EPC mode. Hence works contract in respect of above works, even if done through turnkey or EPC mode, are exempt from payment Service Tax. Moreover, the pipelines that are laid for the distribution of water in the Municipality/ Nagarpalika area, are meant for public welfare and not for any kind of commercial benefits and therefore the appellants are by no way liable for Service Tax. In the case of Dinesh Chandra Agarwal Infracon Pvt. Ltd. vs. C.C.E., Ahmedabad, the Hon'ble CESTAT, West Zonal Bench, Ahmedabad [2011 (21) S.T.R. 41 (Tri.-Ahmd.)] very clearly proclaimed that no Service Tax is required to be levied on the service of laying of pipeline for water supply for public distribution. The CESTAT further quoted that;



"The perusal of the above duties and functions of the Board clearly show that sale of water is not the primary function of the Board. **It is also clear that the water purchased by the Board is being distributed to rural and urban areas for the purpose of irrigation and drinking at different rates which are subsidized and even the operating cost also does not stand recovered by them.** To setup an establishment for water supply is a part of the duties and functions of the State to provide its citizens with a better living. In these circumstances, it cannot be held that laying of pipelines for the Board is for the purpose of undertaking any commercial activities by the Board, and the appellant would be covered by said services by making him liable to payment of service tax."

The same has been further specifically clarified in the Notification number 25/2012-ST dated 20.06.2012. The relevant portion of the said notification is submitted 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;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

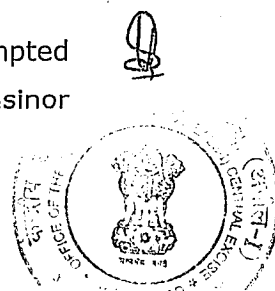
(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) **pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or**

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;"

Thus, I proclaim that the service provided by the appellants is exempted from payment of Service Tax as the said service was provided to Balasinor

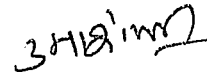


Municipality and Thara Nagarpalika. The said service i.e. laying of pipeline for water supply was ultimately used for the benefit of the local public and hence, is surely exempt from payment of Service Tax.

6. In view of the discussion held above, I hereby set aside the impugned order and allow the appeal.

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

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



(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

25.07.2017

ATTESTED


(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.

To,

M/s. Rahul Engineers and Contractors,

16, S. M. Road,

Tagore Park, Ambawadi,

Ahmedabad- 380 015.

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad (South).
- 3) The Dy./Asst. Commissioner, Central Tax, Division-VI, Ahmedabad (South).
- 4) The Asst. Commissioner (System), Central Tax, Ahmedabad (South).
- 5) Guard File.
- 6) P.A. File.