



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

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

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/174/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

162870/632

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-358-2017-18
दिनांक Date : 26-02-2018 जारी करने की तारीख Date of Issue *20/3/2018*

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

ग Arising out of Order-in-Original No. MP/21/DEM/2017-18 दिनांक: 28/11/2017 issued by Assistant
Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
JEE Pumps
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, 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 मेटल 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, 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 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 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 (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

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

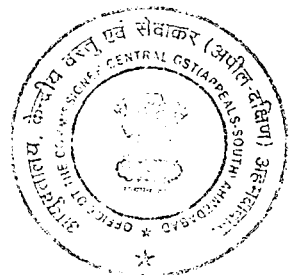
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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

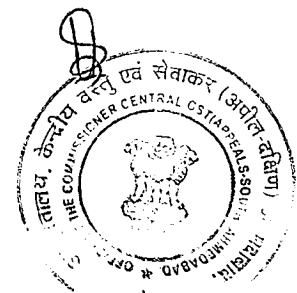
M/s Jee Pumps (Guj) Pvt.Ltd. situated at L-1 & L-2, GIDC Odhav, Ahmedabad-382415 (hereinafter referred to as 'the appellant') is holding Central Excise Registration No. AABCJ1330JXM001 and engaged in the manufacture of Industrial Pumps and spares of pumps falling under CH 84 of the first Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). The appellant is also holding Service Tax Registration No. AABCJ1330JSD001 and is availing CENVAT credit under Cenvat Credit Rules, 2004 (CCR, 2004). The appellant has filed the present appeal being aggrieved by Order-in-original No.MP/21/Dem/2017-18 dated 28/11/2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, GST & Central Excise, Division-V, Ahmedabad-I (hereinafter referred to as 'the adjudicating authority').

2. During the course of audit of the records of the appellant such as Balance sheets for the years 2012-13, 2013-14, 2014-15 and 2015-16, it was observed that Director of the said appellant company, Shri Prakash Maganbhai Patel is owners of factory premises have entered into an agreement with the said appellant company for renting of the factory premises viz. L-1 & L-2, GIDC Odhav, Ahmedabad-382415 for an agreed upon consideration. It was further observed that said appellant has totally paid rent of Rs.5,06,250/- in F.Y. 2012-13; Rs,9,00,000/- in F.Y. 2013-14, Rs.9,00,000/- in the financial year 2014-15 and Rs. 6,41,000/- in the financial year 2015-16. It appeared that in terms of Notification no. 30/2012-ST dated 20/06/2012, w.e.f. 07/08/2012, services rendered by Directors are to be considered as taxable service and Service Tax was payable on 100% on gross amount of payments for service received from the Directors. As provided in Rule 2(d) (EE) of Service Tax Rules, 1944, the person liable to pay Service Tax in relation to service provided or agreed to be provided by a Director of a company to the said company was the recipient of such service. However, the appellant had failed to declare such taxable value in their S.T.-3 returns and had failed to pay Service Tax under reverse charge mechanism on renting services received from its Directors. Therefore, a SCN F.No.VI/1(b)-65/C-IV/Audit-I/AP-15/Ahmd/2016-17 dated 24.03.2017 hereinafter 'the SCN') was issued to the appellant demanding Service Tax amounting to Rs.3,74,793/- under proviso to Section 73(1) of the Finance Act, 1994 (hereinafter F.A.,1994); demanding interest under the provisions of Section 75 of F.A.,1944 and proposing penalty on the appellant under Section 78 of F.A.,1994. In the impugned order, the adjudicating authority has confirmed the demand for Service Tax and interest as proposed in the SCN and has imposed a penalty of Rs.3,74,793/- on the appellant under Section 78 of F.A.,1994.

3. The main grounds of appeal in the appeal filed by the appellant are as follows:

i) The adjudicating authority has erred in interpretation of the words 'provided or agreed to be provided by a director of a company or body corporate to the said company or the body corporate' stated vide Notification No. 45/2012-ST dated 7.8.2012.

ii) The demand of Service Tax from the appellant would be undue in terms of principle for natural justice as it would be double taxation. The service Tax on 'Renting of Immovable property Service' provided by Shri Prakash Maganbhai Patel to the company has been duly self assessed and paid by him in his personal capacity. Hence demanding service tax for the same service would amount to double taxation as service tax has already paid by him. The St-3 return filled by Shri Prakash Maganbhai Patel has been enclosed.



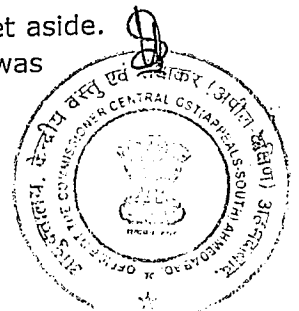
- iii) They placed reliance on the following decisions;
- Mandev Tubes Vs. C.C.Ex Vapi STO 2009 CESTAT 720.
 - Unique Investment Centre Vs. Commissioner STO 2007 CESTAT 5.
 - Shakti Securities Vs. Commissioner of C.Ex. Belgaum STO 2008 CESTAT 199.
- iv) They contested for suppression of facts and extended period as previous audit for the period from January, 2010 to February 2015 has been done and there was no objection for the same.

4. Personal hearing in the appeal was held on 06/02/2018. Mr. Pankaj Harjani, ACA appeared on behalf of the appellant and reiterated the grounds of appeal. He submitted that service tax on renting of immovable property has been paid by Director.

5. I have carefully gone through the facts of the case on records and submissions made by the appellant. The issue for decision before me is whether the appellant company was liable to pay Service Tax under reverse charge mechanism in terms of Rule 2(1) (d) (EE) of Service Tax Rules, 1994 read with Notification No.30/2012-ST dated 20/06/2002 towards Renting of immovable property service received from Shri Prakash Maganbhai Patel, Director of the appellant company.

6. In terms of Rule 2(1)(d)(EE) of Service Tax Rules, 1994, as amended vide Notification No. 46/2012 dated 07/08/2012, the person liable for paying tax in relation to service provided or agreed to be provided by a Director of a company to the said company is the recipient of such service. Further in terms of Notification No.30/2012-ST dated 20/06/2002, as amended vide Notification No. 45/2012-S.T. dated 07/08/2012, in respect of services provided or agreed to be provided by a Director of a company to the said company, 100% of the tax is payable by the person receiving the service. The demand along with interest has been confirmed in the impugned order and penalty under Section 78 of FA, 1994 has been imposed on the appellant for failure to pay Service Tax in accordance with Rule 2(1)(d)(EE) of Service Tax Rules, 1994 read with Notification No. 46/2012 dated 07/08/2012 with regards to such services that were held as provided by its Directors to the appellant company. The contention of the appellant in the grounds of appeal is that the Renting of immovable property service provided by the Directors were chargeable to Service Tax at the end of the Directors and was not to be charged from the appellant as reverse charge mechanism was not applicable to such services. The appellant has also contended that the Directors in their capacity as service providers had paid the due service tax and they enclosed the ST-3 Return for the disputed period filed by Shri Prakash Maganbhai Patel.

7. The undisputed fact in the present case is that the premise of the factory of the appellant is owned by person who is also Director of the appellant. However, it does not mean that the Director had rendered service to the appellant company. The rent received by the person was in his personal capacity and not in the capacity as Directors of the appellant company. Therefore, Service Tax was payable by the individual persons and by virtue of the fact that he had paid the service tax, no Service Tax is liable to be recovered in the present case. There is no merit in the charge made by department that the impugned activity attracted Service Tax under the reverse charge mechanism in terms of Rule 2(d)(EE) of Service Tax Rules, 1994 and Notification No.30/2012-ST as amended. Therefore, the demand for Service Tax and interest as confirmed in the impugned order is not sustainable and is liable to be set aside. Moreover, this is a case of interpretation and just because the appellant was



holding a different opinion from the stand taken in the audit objection against them; it does not mean that there was suppression of facts on part of the appellant. The ingredients such as suppression of facts, mis-statement, mis-declaration, fraud etc. with intent to evade payment of Service Tax is required to be substantiated with evidence in order to impose penalty under Section 78 of the Finance Act, 1994. Penalty imposed on the appellant under Section 78 is not legally tenable in the present case.

8. In view of the above discussion, the impugned order is liable to be set aside. The appeal filed by the appellant is allowed with consequential relief.

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

9. The appeal filed by the appellant stands disposed of in the above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:- 26.02.2018

ATTESTED

K.H. Singhal
(K.H. Singhal)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

BY R.P.A.D.

M/s Jee Pumps (Guj) Pvt.Ltd.
L-1 & L-2, GIDC Odhav,
Ahmedabad-382415

Copy To:-

1. The Chief Commissioner, Central Tax, GST Ahmedabad zone, Ahmedabad.
2. The Principle Commissioner, Central Tax, GST Ahmedabad-South.
3. The Assistant Commissioner, Central Tax, GST Division-V, Ahmedabad South.
4. The Assistant Commissioner, System-Ahmedabad South.
- ✓ 5. Guard File.
6. P.A. File.

