



(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 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 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 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।

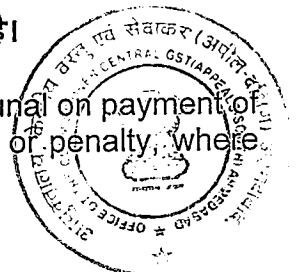
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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 of penalty, where penalty alone is in dispute."



**ORDER-IN-APPEAL**

Two appeals have been filed, one by M/s. Innovative Management services, 23-A, Harigiriraj Society, Opposite Paras Nagar, Vatva Road, Isanpur, Ahmedabad-382243 (hereinafter referred to as "the appellant") and other by the Assistant Commissioner of Central GST, Division-IV, Narol, Ahmedabad South Commissionerate (hereinafter referred to as "the department") in terms of the directions given vide Review Order No. 22/2017-18 dated 19.09.2017 issued by Commissioner, CGST, Ahmedabad South Commissionerate against the OIO No. SD-05/09/DKJ/DC/2017-18 dated 16.06.2017 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Division-V, Service Tax Commissionerate, Ahmedabad (hereinafter referred to as "the adjudicating authority").

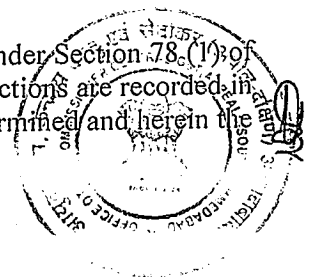
2. Briefly the facts of the case are that the appellant was engaged in providing "Manpower Recruitment or Supply Agency service" and defined as taxable service under Section 65B(44) of the Finance Act, 1994 and was registered at address 23-A, Harigiriraj Society, Opposite Paras Nagar, Vatva Road, Isanpur, Ahmedabad-382243 and was operating from non registered address 301, Pawan Plaza, 19, Sardar Patel Colony, Naranpura, Ahmedabad and a search was conducted by the preventive section of the Service Tax Commissionerate, Ahmedabd on the operational address of the appellant. On scrutiny of the documents viz. Service Tax Payment Ledger, Balance Sheet, Form 26AS, and invoices raised by them for the period 2011-12 to 2014-15, it was found that :

- (i) they had not discharged their service tax liability for the period from 2011-12 to 2014-15 amounting to Rs. 32,42,370/-.
- (ii) the appellant did not file any ST-3 returns during the period from 2011-12 to 2016-17.
- (ii) the appellant is inactive from financial year 2015-16 but they neither intimated the department nor surrendered registration.

2.1 Consequently, a show cause notice dated 17.01.2017 was issued *inter alia*, alleging that the appellant has suppressed the value of taxable service for the period 2011-12 to 2014-15 with an intention to evade payment of service tax; that they did not discharged their service tax liability and did not file ST-3 returns; that the department would never have known about the activity of the appellant, but for the search conducted by the Preventive Section, Service Tax Commissionerate, Ahmedabad. The said show cause notice therefore, proposed recovery of the service tax not paid under proviso to Section 73(1) of the Finance Act, 1994 along with interest and further proposed penalty under section 78 of the Finance Act, 1994. The said show cause notice was adjudicated by the adjudicating authority vide the aforementioned impugned order, wherein the adjudicating authority confirmed the demand along with interest and further imposed penalty under Section 78 of the Finance Act, 1994.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that:

- (i) the adjudicating authority imposed a penalty of 100% of service tax on them under Section 78(1) of the Finance Act, 1994. As per first proviso to Section 78 (1) *ibid*, if details of transactions are recorded in specified records then the penalty shall be reduced to 50% of the service tax, so determined and herein the





Ideally, this being a statutory right, the benefit ought to have been granted to the appellant, subject however, to the condition that the details relating to such transactions are recorded in the specified records. Since no finding has been recorded in this regard for non granting of the benefit of the aforementioned proviso, I feel that it would be prudent to remand back the matter to the original adjudicating authority with a direction to look into the matter and give a detailed finding as to whether the appellant is eligible for the benefit sought or otherwise.

6.2 I find that the appellant has also sought the benefit of the second proviso to Section 78(1) of the Finance Act, 1994, which states as follows:

**Second Proviso to Section 78(1) of the Finance Act, 1994 states as follows:**

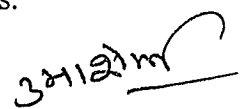
*Provided further that where service tax and interest is paid within a period of thirty days of the date of service of notice under the proviso to*

- (i) *sub-section (1) of section 73, the penalty payable shall be fifteen percent of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;*
- (ii) *the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the service tax so determined.*

Consequent to deciding the issue regarding granting the benefit of the first proviso to Section 78(1), the adjudicating authority is also directed to look into the merits of the above claim i.e. granting benefit of second proviso to Section 78(1). I further find that the department has in its appeal memorandum stated that the adjudicating authority erred in not imposing late fee despite the appellant failing to file returns for the period from 2011-12 to 2016-17. This issue may also be decided by the adjudicating authority while deciding the aforementioned matter. The adjudicating authority is further directed to adhere to the principles of natural justice while deciding these issues.


7. In view of the foregoing, both the appeals as mentioned in para (1) supra, are allowed by way of remand, to the adjudicating authority in terms of para, supra.

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



(उमा शंकर)  
आयुक्त (अपील्स)

Attested

  
(Vinod Lukose)  
Superintendent,  
Central Tax (Appeals), Ahmedabad





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