



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

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

☎ : 079-26305065

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)91&92/Ahd-II/2017-18
Stay Appl.No. NA/2016-17

183510
1839

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-395to396-2017-18
दिनांक 19.03.2018 जारी करने की तारीख Date of Issue

23/3/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Assistant Commissioner, Div-II, STC, Ahmedabad द्वारा जारी मूल आदेश सं SD-02/48/AC/2016-17 दिनांक: 15/03/2017 से सृजित

Arising out of Order-in-Original No. SD-02/48/AC/2016-17 दिनांक: 15/03/2017 issued by Assistant Commissioner, Div-II, STC, Ahmedabad.

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

Shri Pushpendra Shukla
M/s. Margdarshak Consultats 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 who is 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 :

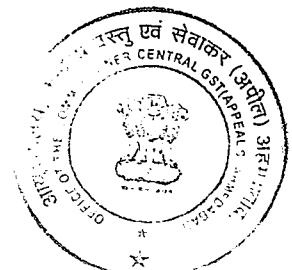
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(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.

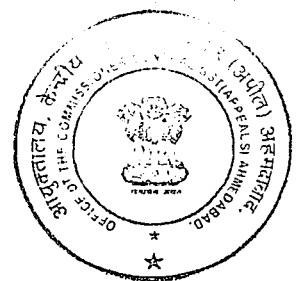
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.



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 यथार्थिती 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथार्थिती 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 penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s. Margdarshak Consultants Pvt. Ltd., and Shri Pushpendra Shukla Director of M/s. Margdarshak Consultants Pvt. Ltd., situated at 410, Shitiratna Complex, Nr. Panchwati Circle, C.G.Road, Panchwati, Ahmedabad (hereinafter referred to as "the appellants"), has filed the present appeal against the Order-in-Original No.SD-02/48/AC/2016-17, Dated 15.03.2017 (hereinafter referred to as 'impugned orders') passed by the Asst.Commissioner, Div-II, Service Tax, Ahmedabad. (Hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, that on the basis of intelligence gathered by the preventive wing of service tax, HQ Ahmedabad, that the said appellant is engaged in providing taxable services under the category of Man-power recruitment /supply agency. They had practice of filling ST-3 returns beyond due date and on scrutiny of the ST-3 Returns it was revealed that they were not paying the service tax properly, during the course of visit on 13.01.2016, and verification of the relevant documents it was noticed that they have filed ST-3 returns for April-2014 to Sep-2014 but ST-3 Returns for the subsequent period has not been filed by them. They have paid the service Tax of Rs.27 lakhs during the year 2015-16 out of which Rs. 4 lakh was for the previous financial year. Statement of Director Shri Pushpendra S.Shukla was recorded. On reconciliation of figures of taxable income as reflected in their books of accounts viz. Balance sheet/income ledger, viz-a-viz taxable value declared in their Half yearly ST-3 returns filed. A SCN F.No.SD-02/SCN-41/Margrakshak/O & A/2016-17 was issued to them for demanding service tax to the tune of Rs.11,89,230/-for the period 2011-12 to 2015-16. Out of which Rs. 8,12,630/- was confirmed vide impugned OIO. u/s 73(1) with interest liability u/s 75 and with equal penalty u/s 78. Penalty of Rs. 50,000/- was imposed u/s 78A on the director Shri Pushpendra Shukla.

3. Being aggrieved the appellant has filed the present appeal on the grounds;

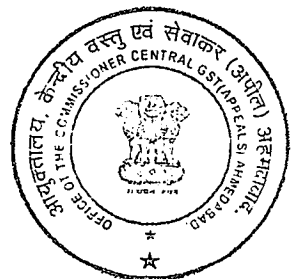
(i) That the impugned order has been passed by the adjudicating authority in violation of natural justice, as he has failed to consider the submissions made by them.

(ii) The appellant was following receipt basis method for payment of service tax and continued to pay the service tax as and when payments were received, the first adjudicating authority has stuck to the cut off the financial year and decided upon the service tax liability on a financial year basis.

4. Being aggrieved Shri Pushpendra Shukla Director of the company has also filed an appeal against the impugned order imposing penalty of Rs. 50000/- u/s.78A of the Finance Act.1994, on the ground that required mensrea has not been established. There is no suppression of value of taxable services and thereby no short payment or evasion of tax and all the tax has been paid along with interest.

5. Personal hearing in the case was granted on 14.11.2017, Shri Deepak Purswani C.A. and Shri Pushpendra Shukla Director of the company, appeared they reiterated Grounds of Appeal. He submitted that his case of reconciliation has not been considered by the lower authority. They have filled additional written submission on 22nd Nov,2017.

6. I have carefully gone through the facts of the case on records, grounds of appeal, put forth by the appellant. Additional submission all the case relied upon by them. ST-3 returns for the period 2011-12 to 2015-16. The question to be decided is whether service tax demand on the basis of



reconciliation of taxable value as per 26AS, Balance Sheet and ST-3 return difference is justifiable or not.

6.1 The entries mentioned in Form 26AS are only indicative and not necessarily the income of the appellants in the present case. The appellants had submitted details of 3 (Three) of their clients for FY 2015-16, who have deducted TDS on provisional basis, without any bills being raised by the appellants. Details of the said transactions are listed below:

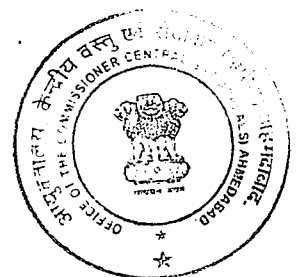
- (a) M/s Vodafone Mobile Services Ltd., Gujarat Circle (Rs.9,00,000) deducted the TDS in FY 2015-16 but actual services were completed in FY 2016-17.
- (b) In another case of M/s Vodafone Mobile Services Ltd., Odisha Circle (Rs.1,00,000), TDS of Rs.10,000/- was deducted in the month of March 2016, showing an income of Rs.1,00,000/- however, no services were provided for the said amount during 2015-16 and during entire financial year of 2016-17.
- (c) M/s Tata Teleservices Ltd. (Rs. 5,45,387) where TDS was deducted by the client company but the same did not belong to appellant. However, these entries appeared in the appellant's Form 26AS for FY 2015-16. The appellant has taken up the matter with his client to reverse these entries. However, this amount was taken as appellant's income in the show cause notice as also by the First adjudicating authority in the impugned order.

6.2 An amount of Rs.15,45,387 should be reduced from their income for FY 2015-16, as these entries were taken as income in the show cause notice only based on their presence in Form 26AS Whereas in fact this was not their income for the financial year 2015-16 and was only taken in 26AS by the deductors, M/s Vodafone Mobile Services Ltd. and M/s Tata Teleservices Ltd. in the said year on provisional basis. **They have submitted copy of ledger Accounts of M/s Vodafone Mobile Services Ltd., Gujarat Circle, M/s Vodafone Mobile Services Ltd., Odisha Circle, M/s Tata Teleservices Ltd, and M/s. Bosch Limited for the year 2015-16 and 2016-17 to prove that the services which were not rendered by them during 2015-16 were adjusted or provided during 2016-17 or TDS was adjusted by the deductor.**

6.3 The impugned order considered the total differential income of Rs. 59,68,250/- as taxable value, confirmed the demand of service tax and ordered recovery of the same along with interest. Where as in table at page 11 of OIO Excess taxable value shown in column in between 6 and 7 on which the appellant has paid the service tax has not been considered by the adjudicating authority.

2011-12: Excess Taxable value shown is Rs. 765686/- on which service tax has been paid.

2012-13: Difference in Value as per column-6 of page 11 of OIO is Rs.13,54,530. It is apparent from the table submitted by the appellant that income of Rs. 18,59,015/- which was recorded in the 26AS for the financial year 2012-13 was received in the financial year 2013-14 and consequently service tax of Rs. 2,29,774/- was paid in the financial year 2013-14. In view of this, confirmation of demand of Rs. 1,67,399/- in the impugned order would result in to payment of service tax twice.



2013-14: Difference in Value as per column-6 of page 11 of OIO is Rs.8,32,069. It is apparent from the table submitted by the appellant that income of Rs. 24,74,328/- which was recorded in the 26AS for the financial year 2013-14 was received in the financial year 2014-15 and consequently service tax of Rs. 3,05,825/- was paid in the financial year 2014-15. In view of this, confirmation of demand of Rs.1,02,844/- in the impugned order would result in to payment of service tax twice.

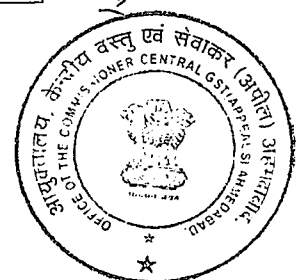
6.4 Rule 6(4A) of the Service Tax Rules, 1994 allows the assessee to adjust the excess payment of service tax in the succeeding month in which such excess payment has been made. The Adjudicating authority has concluded from the facts presented before him that the appellant has paid service tax on excess taxable value of Rs.7,65,686 in Financial Year 2011-12 and on excess taxable value of Rs.20,68,873/-, for the year 2014-15. As per the appellants further submission dated 22.11.2017 wherein they have submitted the table as below.

Financial Year/Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Taxable value as per Audited Financials	11045457	9802802	14188626	13221015	21667350
Less-Gross Value of Debtors where service tax deferred	-1385240	-1859015	-2474329	0	0
Add- Gross Value of Debtors of previous year, where service tax paid in next year	471939	1385240	1859015	2474329	0
Expected value in ST-3 return	10132156	9329027	13573312	15695344	21667350
Actual Value as per ST-3.return	10806351	8725040	13584495	15695344	19634869
Excess/Short.	-674195	603987	-11183	0	2032481

From the above, it is amply clear, the appellant has paid all the taxes due to it and there is no taxable income, which has escaped service tax. It has only deferred the payment of tax by following receipt basis of payment.

6.5 As per OIO Demand for the year 2015-16 for Rs 5,42,387/- has been confirmed whereas as per submission made by the appellant as detailed below for 2015-16.

Details	As per ST-3 Return	As per Audited Financial Statements.
Taxable Value	19634869	21667350
Service Tax on above (Including Cesses)	2759664	3054380
Paid in cash(Excluding	2762925	2924744



Interest)		
Paid through Cenvat	129636	129636
Short/(Excess) Paid	-132897	0

They have submitted details of challans also to evidence the payment of Service Tax. In view of above it is amply clear that they have made the payment of service tax along with the interest, which has been overlooked by the adjudicating authority though the adjudicating authority has discussed the facts of payment of service tax for the financial year 2015-16 at para 21 of OIO, hence demand for the year 2015-16 is required to be **re-verified**.

6.6 As regards confirmation of demand for the period 2012-13 and 2013-14, the appellants submission dated 22.11.2017 that the difference is due to payment of service tax on receipt basis value deferred has been included in the subsequent year and tax has been paid. **This is required to be verified**. Also interest on delayed payment i.e. Service Tax paid on receipt basis, whereas it is levied on accrual basis, is also required to checked and verified, whether the appellant has paid along with interest or not.

7. In view of above discussed facts it is concluded that reconciliation of figures with ST-3 return, Form 26 AS and Balance Sheet for the relevant period is required to be reconsidered. Hence impugned order is set aside, and remanded back for re-verification of documents and statements submitted by the appellant. Order is up held to the extent of appropriation of late fees under section 70 of Finance Act, 1994.

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

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

M/s. Margdarshak Consultants Pvt. Ltd.
410, Shitiratna Complex, Nr. Panchwati Circle,
C.G.Road, Panchwati, Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Pr. Commissioner Central Tax, GST South, Ahmadabad-.
- 3) The Asst. Commissioner, Central Tax., Div-VI, Ahmadabad-South .
- 4) The Asst. Commissioner (System), GST South, Hq, Ahmadabad.
- 5) Guard File.
- 6) P.A. File.



