

	केन्द्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केन्द्रीय कर शुल्क भवन, सातवीं मजिल पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 079-26305065		टेलिफैक्स : 079-26305136

क फाइल संख्या : File No : V2(ST)10/RA/A-II/2017-18

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-465-17-18

दिनांक Date : 23/03/2018 जारी करने की तारीख Date of Issue 25/4/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No STC/25/KM/AC/D-III/16-17 Dated 16.03.2017

Issued by Asst Commr STC, Service Tax, Div-III, Ahmedabad

ध अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

M/s. National Institute of Design Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

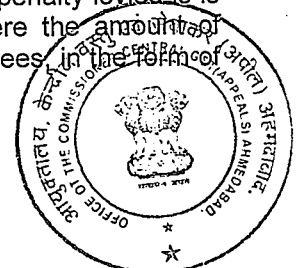
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर

आयुक्त, सहायक / उप आयुक्त अथवा **अधीक्षक** केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत “ माँग किए गए शुल्क ” में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

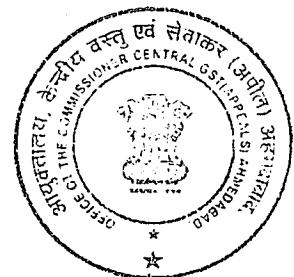
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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

The Assistant Commissioner, Service Tax, Division-III, Ahmedabad (henceforth 'the appellant'), on being authorized by the Commissioner of Service Tax vide review order No. 08/2017-18 dtd. 06.06.2017, has filed this appeal against the Order-in-Original No. STC/25/KM/AC/D-III/2016-17 dtd. 16.03.2017 (henceforth, "impugned order") passed by The Assistant Commissioner, Service Tax, Division-III, Ahmedabad (henceforth, "adjudicating authority") in the case of M/s National Institute of Design, Ahmedabad (henceforth the respondent).

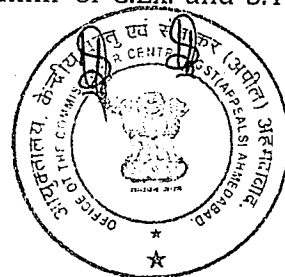
2. Briefly stated, the facts of the case are that a show cause notice, based on departmental audit, was issued to the appellant on 07.10.2016 for recovery of Service Tax of Rs. 2,48,118/- short paid by the respondents during **the period** 2011-12 to 2015-16 along with interest of Rs. 3,59,857/- and proposal of imposition of penalties under various sections of the Finance Act, 1994 (henceforth the 'Act') by invoking extended period of limitation. The service tax was sought to be demanded on the ground that the respondents made a payment of service tax of Rs. 11,62,132/- in January, 2015. The respondents had however charged fees on quarterly basis @ 5% of the total expenditure on project, plus service tax but it was noticed that the respondents had neither charged fees on quarterly basis nor paid service tax on such quarterly fee receipts though they had received funds for the project from time to time. The adjudicating authority noted that the respondent had submitted utilization certificate indicating the details of expenditure incurred only on completion of the consultancy project and submitted audited utilization certificate from the beginning of the scheme and have not claimed for the fees periodically as an expense from any grant received till 2014-15. The adjudicating authority further found that the respondent is renowned institution working under ministry of Government of India and therefore the intention to avoid/evade service tax is not justified and has made the service tax payment on receipt of their fees without delay. The adjudicating authority, vide the impugned order, dropped the proceedings initiated vide the show cause notice dtd. 07.10.2016.

3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That as per the provisions of Rule 3 (b) of the Point of Taxation Rules, 2011 (henceforth the POTR), the service tax liability arises as and when the payment towards the service to be provided is received;
- b) That as per the provisions of Rule 4A (1) of the Service Tax Rules, 1994, the respondent was supposed to have issued invoices on receipt of any payment towards taxable service which was received by them on quarterly basis but they failed to do so;



- c) That the adjudicating authority has not discussed in the impugned order as to why the objections raised by the audit team are not tenable nor any reference has been made anywhere in terms of any legal provisions to present a contrary view to the audit objection;
- d) That the rates of levy of service tax had changed from 10.30% in 2009-10 to 15% in 2015-16. Accordingly the consolidated payment of service tax made by the respondent is incorrect;
- e) The adjudicating authority, without going into the facts, has merely relied upon the fact that the respondent is a renowned institution working under Ministry of Govt. of India and as such intention to evade payment of service tax is not justified.
4. The respondent has filed their cross-objection against the appeal vide their letter dtd. 09.01.2018 in which they have contended that;
- a) It has been clearly stated in approval letter that the consultancy fees would be 5% of actual expenditure and not the grant amount received;
- b) From the perusal of the POTR, it can be observed that the date of completion of service is key element for deciding point when the liability to discharge service tax arises and if any advance is received as a consideration for provision of service, then irrespective of date of issue of invoice or completion of service, such advance would be taxed immediately;
- c) That as per Circular No. 144/13/2011-ST dtd. 18.07.2011, the service would be deemed to be completed only on completion of all the related activities and they have completed deliverables and other auxiliary services which enable them to issue invoice only January 8, 2015;
- d) They are required to demonstrate the value addition on their part and therefore, till the time the respondent does not provide such value addition services, the respondent would not be able to raise invoice irrespective of the fact that the respondent has incurred certain expenditure;
- e) Even if the grant is spent or expended, if the objectives of the scheme are not fulfilled, the respondent would not receive their fee and their this view is supported by the case of Agarwal Motors vs. CCE, Satna - 2015 (38) STR-775 (Tri.Del.);
- f) When the substance of transaction is to provide desired deliverable, form of transaction deciding consideration based on mere expenditure without providing required deliverable is not relevant as supported by the case laws of Karnataka State Beverages Corp. Ltd. vs. Commr. Of S.T., Bangalore - 2007 (8) STR-481 (Tri.Bang.) and Bhootpurva Sainik Socity vs. Commr of C.Ex. and S.T., Allahabad - 2012 (25) STR-39 (Tri.del.);



- g) They are eligible for consultancy fees of grant actually expended and not the grant received by the respondent;
- h) They had paid service tax at the prevailing effective rate as on January 30, 2015 and there was no short payment;
- i) The limitation of extended period cannot be invoked as their accounts are audited every year by CAG and they are filing service tax returns regularly and are providing full co-operation to the department and since there is no suppression of facts, the imposition of penalty and interest are not justified.

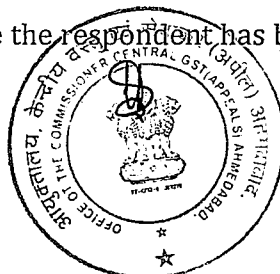
4. The personal hearing in the case was held on 09.01.2018 in which Shri Viral P. Rajyaguru (Controller of Finance & Accounts) appeared on behalf of the respondent. He reiterated the grounds of appeal.

5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions and cross objections submitted by the respondent.

6. The issue to be decided is that of point of taxation in view of the fact that the services were provided over a period of time continuously and the payment of service tax was made only once after the services were completed as viewed by the respondent.

7 I find that the POTR is containing provisions for determining when a service shall be deemed to have been provided. The Rule 3 (a) provides that the point of taxation shall be the time when the invoice for the service (provided or agreed to be provided) is issued but as per proviso (i) to the Rule 3, when the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service. The respondents have argued that they have completed deliverables and other auxiliary services which enabled them to issue invoice only on January 8, 2015 and they have issued the invoice on January 30, 2015 i.e. within the time period allowed in the rule. They have sought support from the CBEC Circular No. 144/13/2011-ST dtd. July 18, 2011. I find force in their argument as while going through the Memorandum of Understanding between the respondent and the Development Commissioner (MSME), Article 3.2.6 specifies the role of the respondent as designing, planning, coordinating, implementing, monitoring and validating the Design Clinic Scheme across the country and as per the correspondence documents presented before me, the respondent have completed the project in January, 2015 and have accordingly raised the invoice and have paid the applicable service tax.

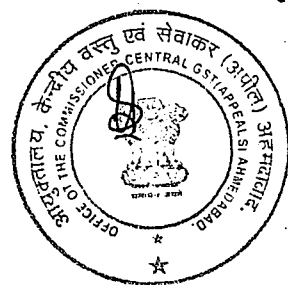
8 Now in the instant case, I find that the respondent was assigned to design, plan, coordinate, implement, monitor and validate the design clinic scheme across the country on behalf of DC(MSME and obviously this service has be viewed from different perspective than the normal services. Here the respondent has been receiving grant-in-



aid and the expenditure incurred on the project was to be refunded by way of grant-in-aid along with their fee. While going through the show cause notice, the para 4.2 clearly states the amount of actual expenditure incurred by the respondent during the years 2009-10 to 2014-15 and the para 4.3 states the amount of actual expenditure incurred by the respondent during the years 2011-12 to 2014-15 (up to December-2014). The amounts mentioned in para 4.2 and 4.3 of the show cause notice makes is absolutely clear that the whatever amount that the respondent have recovered is that of actual expenditures and no amount towards their fee has been received. The para 4.5 of the show cause notice clearly states that no fee has been received by the respondent. I find that the relevant part of the para 4.5 clearly states that "*But it is noticed that NID has neither charged fees on quarterly basis, nor paid service tax on such quarterly fee receipts though they have received funds for the MSME projects from time to time*". The para 5.1 of the show cause notice clearly states the year wise funds received from the service receiver but there is no mention of receipt of fee by the respondent. The para 20 of the impugned order clearly states that the respondent has charged their fee on completion of the assigned project and have paid applicable service tax. A very important aspect of the provision of service and payment thereof is that the fee of the respondent was to be calculated on the basis of total expenditure at a prescribed percentage.

9. I find that the respondent have contended in para 32 of their written submission which I quote "*Further, the Respondent submits that even if the grant is spent or expended, if the objectives of the scheme are not fulfilled, the respondent would not be contemplated to be completed / provided till the time required conditions are fulfilled by the service provider*". I find force in the contention by the respondent and I agree with the findings of the adjudicating authority as held in para 22 of the impugned order that as per the requirements of MSME, the respondent has submitted utilization certificate indicating the details of expenditure incurred only on completion of the consultancy projects and have submitted audited utilization certificate from the beginning of the scheme till November, 2015 and have not claimed their fee as expense from any grant received till financial year 2014-15 they completed deliverables and other auxiliary service which enabled them to issue the invoice only in January, 2015. They were not in a position to claim further fees till their projects completed to the best satisfaction of the authority/Ministry of MSME, Govt. of India. I find that the citation of *Agarwal Motors vs. Commissioner of Central Excise, Satna - 2015 (38) STR-775 (Tri. -Del.)* is applicable in their case and accordingly I find no grounds to interfere with the impugned order and I uphold the same.

10. In view of findings given above, I reject the appeal.



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

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

उमा शंकर

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक: 23.3.2018

सत्यापित

धर्मेंद्र उपाध्याय
(धर्मेंद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद
By R.P.A.D.

To,

1. The Dy. /Asstt. Commissioner,
CGST, Division-VI,
Ahmedabad (South)

2. M/s National Institute of Design,
Main Campus, Opp. Museum,
Near Sardar Patel Bridge,
Ahmedabad-380007.

Copy to:

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

