



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

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

7<sup>th</sup> Floor, GST Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)110 /Ahd-I/2017-18  
Stay Appl.No. /2017-18

350670  
3510

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-477-2017-18  
दिनांक Date : 28-02-2018 जारी करने की तारीख Date of Issue

6/6/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

Arising out of Order-in-Original No. CGST-VI/Ref-14/GUJCOMASOL/2017-18 दिनांक: 31.08.2017  
issued by Assistant Commissionr, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Gujrat State Co-operative Marketing Federation 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 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।

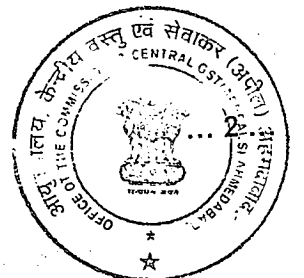
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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।



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादक 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.

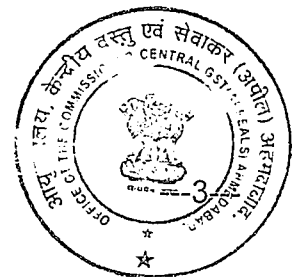
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 हास्पिटल 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 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।

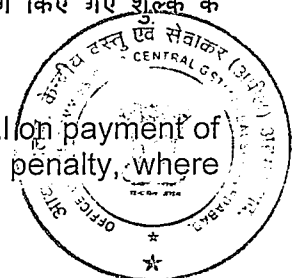
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



**ORDER - IN - APPEAL**

M/s. Gujarat State Co-operative Marketing Federation Ltd, 49, Shrimali Society, N P Patel Sahkar Bhavan, Navrangpura, Ahmedabad 380009 (henceforth, "appellant") has filed the present appeal against the Order-in-original No. CGST-VI/REF.-14/GUJCOMASOL/17-18 dated 31.08.2017 (henceforth, "impugned order") issued by the Assistant Commissioner, CGST Division-VI (Vastrapur), Ahmedabad - South (henceforth, "adjudicating authority").

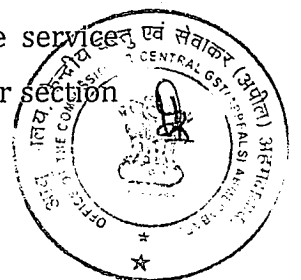
2. The facts of the case, in brief, are that the appellant, a service tax registrant, filed a refund claim for Rs.4,46,316/- on 09.02.2017 under section 11B of the Central Excise Act, 1944 in respect of service tax paid by mistake on security services received in 2015-16 and 2016-17. The Adjudicating authority rejected the claim on the ground that it was required to be proved that service providers were within exemption limit of Rs.10 Lakh prescribed in Notification No.33/2012-ST, because, if that was not the case, appellant had correctly paid the service tax under reverse charge which was to be paid by the service providers after collecting from the appellant.

3. Aggrieved with the impugned order, appellant is in appeal and the main grounds of appeal, in brief, are as follows-

3.1 Appellant refers to Notification No.30/2012-ST and states that where security services are provided by an individual, HUF or partnership firm to business entity registered as body corporate, 100% service tax will have to be paid by the service receiver under reverse charge mechanism. Further, as per appellant, body corporate does not include a cooperative society in terms of clause (7) of section 2 of the Companies Act, 1956, and therefore, they were not liable to pay the service tax on reverse charge basis and the amount of service tax paid inadvertently should be refunded back to them as no tax shall be levied or collected, except by authority of law.

3.2 Appellant states that when the tax has been paid without the authority of law then the same is treated as 'deposit' and should be refunded as and when claimed for. Appellant has relied on numerous decisions in this regard, including the Supreme Court's decision in Mafatlal Industries Ltd case.

3.3 Appellant refers to section 68 of the Finance Act, 1994 to state that second part - 68(2) - has a superiority and overrides first part -68(1); that therefore, in case of services falling under reverse charge there is no option for the service receiver एवं सेवाकर (अपील) section recipient but to pay the service tax; that since their case does not fall under section



68(2); that this does not mean that they fall under section 68(1) wherein service provider has to make the payment of service tax; that the refund cannot be rejected on the ground that they have made payment on behalf of the service providers.

4. In the personal hearing held on 06.02.2018, Shri Manoj Shah, Chartered Accountant reiterated the grounds of appeal.

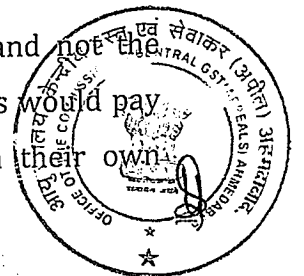
4.1 In the additional submissions given during personal hearing, there is no additional point in fact and hence I do not repeat the grounds already submitted.

5. I have carefully gone through the appeal wherein rejection of refund of service tax paid by mistake has been challenged. As per appellant, they were not liable to pay service tax in 2015-16 and 2016-17 on the security services received because reverse charge envisaged under Notification No.30/2012-ST did not apply to them.

5.1 It is a fact that the appellant has paid the stated amount of service tax on reverse charge basis by self assessing their tax liability under Notification No.30/2012-ST read with Section 68(2) of the Finance Act, 1994. However, the fact that appellant kept on paying the service tax on reverse charge basis for two years without knowing about their liability to pay is unconvincing to the hilt because it is a large organization where statutory audits are conducted at regular intervals and it is surprising that it never occurred to anybody that a fairly large sum of money was being paid towards a tax liability of someone else. Therefore, the argument that tax was paid inadvertently is not a convincing argument.

5.2 Further, in the era of self assessment, an assessee himself assesses the service tax due and files a return of self assessment. Where service recipient has fully paid the tax and filed the returns, there is no reason for the department to go behind the service providers for the same transactions as in such a case focus of the department has shifted from service provider to service recipient. The appellant cannot take a plea that tax was paid by mistake, because if appellant gets back the amount paid as service tax, the department stands to lose the legitimate revenue on the service activity. This act of the appellant may be a scheme to divest the department of revenue on a service activity by first paying the service tax as if covered under reverse charge mechanism and later on claiming refund of the same amount feigning inadvertence and ignorance of law.

5.3 Even if service providers were liable to pay the service tax and not the service recipient (appellant), the fact remains that the service providers would pay the amount collected from the service recipient only and not from their own



pockets. The burden of tax would therefore be borne by the recipient and not the service providers. Therefore, even if the service recipient (appellant) has paid the service tax, it is only a technical error as the service tax to be paid by the service providers was to be collected from the service recipient only.

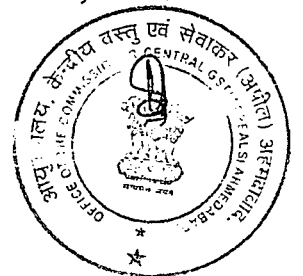
5.4 Further, it is possible that the service providers entered into some kind of oral agreements with the appellant shifting the tax liability from service providers to service recipient and service recipient (appellant) kept on paying the tax accordingly. As held by Hon'ble Supreme Court in the case of **Rashtriya Ispat Nigam Ltd v. Dewan Chand Ram Saran** [2012 (26) S.T.R. 289 (S.C.)], service tax is an indirect tax and an assessee can contract to shift the liability and there is nothing in law to prevent them from entering into an agreement regarding burden of tax. Also, it may be a ploy of the appellant in accepting and paying the tax liability of service providers and later on, when it was too late for the department to recover the tax from service providers due to time barring, claim refund of the tax already paid.

5.5 Further, I would like to quote CESTAT, Ahmedabad's decision in the case of **Navyug Alloys Pvt Ltd v. Commr. of C. Ex. & Cus., Vadodara-II** [2009(13) STR 421 (Trib.-Ahmd.)] wherein service tax paid by the service provider against the service recipient's liability to pay was held to be a valid payment of service tax. Similarly, the same Tribunal, in the case of **Mandev Tubes v. Commr. of C. Ex., Vapi** [2009(16) STR 724 (Trib.-Ahmd.)], found that when the service tax on GTA service stood paid by the transporters, second time confirmation of demand was uncalled for. Hon'ble Tribunal's logic was that to demand service tax from the service recipient, when the service provider had paid, amounted to technical or mechanical implementation of the notification specifying the person liable to pay the tax. I quote para 3 of the CESTAT order-

3. The Commissioner in his impugned order has nowhere disputed that the service tax on the GTA services so availed by the appellant already stands paid by the transporters. He has only gone by the technical and mechanical implementation of the notification to hold that it was the responsibility of the assessee to deposit the amount. However, the fact remains that the tax amount stands deposited with the exchequer as the same was paid by the transporters, second time confirmation from the appellant is not called for. On this short ground itself I set aside the impugned order and restore the order of the Original Adjudicating Authority. Appeal allowed in above terms.

5.6 I am, therefore, of the view that payment of service tax made by the appellant in this case is a valid payment and cannot be refunded.

6. In view of foregoing discussion, I uphold the impugned order and reject the appeal.



7. 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)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested

*S. Hudda*

(Sanwormal Hudda)

Superintendent

Central Tax (Appeals)

Ahmedabad

By R.P.A.D.

To,

M/s. Gujarat State Co-operative Marketing Federation Ltd,

49, Shrimali Society, N P Patel Sahkar Bhavan,

Navrangpura, Ahmedabad 380009

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 Asstt./Deputy Commissioner, CGST Division-VI(Vastrapur), Ahmedabad - South.
5. Guard File.
6. P.A.

