



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

Ambavadi, Ahmedabad-380015

सातवीं मंजिल, पोलिटेकनिक के पास,

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)168/Ahd-South/2018-19 / 10457 to 10462

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0179-2018-19
दिनांक Date : 28-03-2019 जारी करने की तारीख Date of Issue 09/05/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/DEM/06/BSM/AC/DIV-VIII/18-19 दिनांक: 19.12.2018
issued by Assistant Commissioner, Div-VIII, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**Space Plan System
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 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 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 हारिपटल 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 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."



ORDEDR-IN-APPEAL

This appeal has been filed by M/s Space Plan System, 703, Pinnacle Business Park, Corporate Road, Prahladnagar, Ahmedabad [hereinafter referred to as "the appellant"] against Order-in-Original No.CGST/DEM/06/BSM/AC/Div-VIII/18-19 dated 19.12.2018 [hereinafter referred to as "the impugned order] passed by the Assistant Commissioner of CGST, Division-VIII, Ahmedabad South [hereinafter referred to as "the adjudicating authority"].

2. The facts of the case is that while auditing the records of M/s Balas Industries by the Central Excise Officers, it was noticed that the said party had paid Commission for the sale of their product to the appellant, amounting to Rs.32,34,319/- for the period from October 2011 to June 2014. It was also observed that the said service provided by the appellant is falling under the service category of "Business Auxiliary Service" before 01.07.2012 and taxable service after 01.07.2012. On scrutiny of records of the appellant, it was further observed that the appellant has neither paid service tax on the said taxable service nor taken any service tax registration in respect of service rendered. Accordingly, a show cause notice dated 18.04.2017 was issued to the appellant for demanding service tax amounting to Rs.3,98,529/- with interest and imposition of penalty under Section 70, 76,77 and 78 of the Finance Act, 1994. Vide the impugned order, the adjudicating authority has confirmed the demand with interest and imposed penalty of Rs.1,99,265/- under Section 78; Rs.20,000/- under section 70; and Rs.5,000/- under Section 77(1) of the Finance Act.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that the adjudicating authority has failed to consider the fact that there was no suppression of material facts or willful misstatement or fraud etc or any contravention of law with intention to evade payment of service tax; that they had discharged service tax liability when the department brought into notice and even before issuance notice. Therefore, penalty imposed by the adjudicating authority is not correct.

4. Personal hearing in the matter was held on 26.03.2018. Shri Nirav Patel, Chartered Accountant appeared for the same and reiterated the grounds of appeal. He further submitted additional written submission.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing.

6. At the outset, I find that the issue involved in the case is that during October 2011 to June 2014, the appellant has failed to pay service tax liability amounting to



Rs. 3,98,529/- in respect of taxable value of Rs. 32,34,319/- received by them from M/s Balalas Industries towards service viz. commission for sale rendered; that they also not taken service tax registration. This fact was noticed by the department while auditing the records of the appellant. Accordingly, the appellant has paid the service tax amount in dispute with interest on 14/15-10-2016.

7. From the above, it is very clear that the appellant has not disputed liability of service tax and interest thereon on the taxable value received towards service rendered by them during the relevant period. I find that they only disputed imposition of penalties. They argued that since they had made the liability of tax with interest before issuance of show cause notice, no penalties are imposable on them. The appellant argued that as per explanation to Section 73(3) of FA, no penalty under any of the provisions of this Act or the rules made there under shall be imposed in respect of payment of service tax under this sub-section and interest thereon. I find that the said explanation can apply only where the ingredients of suppression of facts have not established. In the instant case, it is an undisputed fact that the non-payment of service tax by the appellant and non registration with department for the service rendered came into the light only at the time of audit of the records maintained by the appellant. Otherwise, it would have been escaped. Therefore, in this case clear suppression of facts with an intention to evade tax liability is proved. Therefore, Section 73(4) of FA is applicable and penalties imposed by the adjudicating authority under Section 78, 77 and 70 are absolutely correct and I uphold the same.

8. The appellant has relied on case laws viz M/s Radhe Residency [2016 (042) STR 0065-Tri Ahm]; M/s Tejas Agency [2014(34) STR 03-Guj] and M/s Adecco Flexione Worforce Solution Ltd[2012 (26) S.T.R. 3 (Kar.)]. I find that all the above cited case laws are not applicable to the instant case, looking into the facts of the instant case. In case of M/s Radhe Residency case, Hon'ble Tribunal has held that no intention to evade payment of Service Tax can be attributed on assessee's part, hence penalty under Section 78 of FA is not applicable. In case of M/s Tejas Agency, the Hon'ble High Court of Gujarat has held that when there is a finding of fact that the case was not a case of non-payment of Service Tax with an intention to evade the payment of same, question of applying sub-section (4) of Section 73 of Finance Act, 1994 and resultantly exclusion of application of sub-section (3) ibid would not arise. In case of M/s Adecco Flexione Workforce, the Hon'ble High Court of Karnataka has decided the issue regarding imposition of penalty under Section 76 of FA where tax liability with interest paid.



9. In view of above discussion, I find that no interference is required in the impugned order and uphold the same. The appeal filed by the appellant is rejected.

30/11/2019

उमा शंकर)
प्रधान आयुक्त (अपील्स)
Date : .3.2019

Attested

(Mohanah V.V.)
(Mohanah V.V.)
Superintendent (Appeal),
Central Tax, Ahmedabad.



By RPAD.

To,
Space Plan System, 703,
Pinnacle Business Park, Corporate Road,
Prahlanagar, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central GST, Ahmedabad South.
3. The Joint Commissioner, CGSt, Ahmedabad South
4. The Assistant Commissioner, System, CGST, Ahmedabad South
5. The Assistant Commissioner, CGST, Dn.VIII, Ahmedabad South
- ✓ 6. Guard File.
7. P.A.