



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)42/Ahd-South/2018-19
Stay Appl.No. /2018-19

5817105821

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-031-2018-19
दिनांक Date : 07-08-2018 जारी करने की तारीख Date of Issue

23/8/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WS07/O&A-06/PV/AC/2017-18 दिनांक: 28.03.2018
issued by Assistant Commissioner, Div-VII, Central Tax, Ahmedabad-South

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

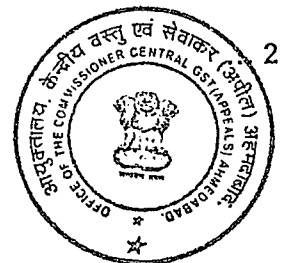
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

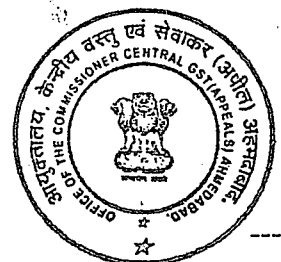
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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 हॉस्पिटल 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 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 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।

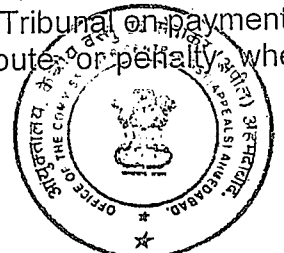
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER IN APPEAL

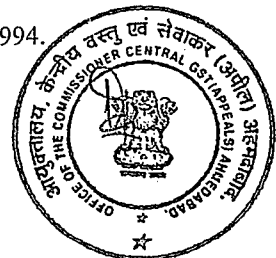
This appeal has been filed by M/s. Aashir Engineering Private Limited, 41, Shyamal Row House, 1-A, 132 Feet Ring Road, Ahmedabad [for short – ‘appellant’] against OIO No. CGST/WS07/O&A-06/PV/AC/2017-18 dated 28.3.2018 passed by the Assistant Commissioner, Central Tax, Division VII, Ahmedabad South Commissionerate [for short – ‘adjudicating authority’].

2. Briefly, the facts are that internal audit vide FAR No. 684/2015-16 dated 22.12.2015 raised an objection that the appellant had not paid service tax in respect of the income shown under the head ‘*services and maintenance contract income*’. Consequently, a show cause notice dated 22.11.2016, was issued to the appellant *inter alia* alleging that they had not paid service tax by wrongly availing the benefit of notification Nos. 40/2012-ST dated 20.6.2012, 12/2013-ST dated 1.7.2013 and 7/2014-ST dated 11.7.2014; that they had failed to produce Form A-1 along with the list of taxable services as was required for the authorized operations approved by the Approval Committee; that the services provided were *manpower supply service*; that since manpower supply service is not included in the list of services specified at Sr. No. 13 of the notification no. 25/2012-ST dated 20.6.2012, they were not eligible for the exemption granted by the said notification. The show cause notice, therefore, demanded service tax not paid of Rs. 19,60,718/- for the FYs 2013-14 and 2014-15, by invoking extended period, along with interest and further proposed penalty on the appellant under sections 76, 77 and 78 of the Finance Act, 1994.

3. This notice was adjudicated vide the aforementioned impugned OIO dated 28.3.2018, wherein the adjudicating authority confirmed the demand of service tax along with interest and further imposed penalty under sections 77 and 78 of the Finance Act, 1994.

4. Feeling aggrieved, the appellant has filed this appeal, raising the following grounds:

- that for the FY 2013-14, the value of services provided under Operation and Maintenance is Rs. 46,41,449/-, while Assistant Commissioner, has confirmed the value of Rs. 61,46,205/-; that in respect of FY 2014-15 also, the value of services provided under operation and maintenance was Rs. 25,51,934/- while the adjudicating authority has confirmed the value of Rs. 97,17,212/-; that these value also includes services other than operation and maintenance of CETP; that for accounting purpose all the services rendered to M/s. Zydu Infrastructure P Limited has been shown under the head maintenance and contract income; that this covers Works contract service, maintenance or repair service and operation & maintenance of CETP; that this issue was also pointed out before the original adjudicating authority however the same was ignored;
- that the agreement dated 1.4.2013 for “*operation of common effluent treatment plant and water/sprinkler system for Pharmez*” nowhere mentions that the appellant has to provide ‘manpower supply service’;
- that the adjudicating authority has erred in classifying the service as manpower supply service; that since the nature of the service is operation and maintenance of common effluent treatment plant it should be classified under ‘maintenance and repair service’
- that since the service maintenance and repair is mentioned in form A-2, they are eligible for ab initio exemption;
- that they had pointed it out to the adjudicating authority and had provided him copy of all the invoices but it was ignored;
- that they had disclosed everything in the returns filed with the department and had never tried to hide the value of taxable services in the books of accounts as well as in the returns filed with the department;
- that extended period is not invocable;
- that penalty is not imposable under sections 77 and 78 of the Finance Act, 1994.



5. Personal hearing in the matter was held on 24.7.2018, wherein Shri Amrish J Amin, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal. He also submitted copy of the agreement entered into by the appellant with M/s. Zyodus Infrastructure Private Limited on 1.4.2013 to show that it is a works contract.

6. I have gone through the facts of the case, the grounds of appeal and the oral submissions made during the course of personal hearing. The question to be decided is whether the appellant is liable to pay service tax as confirmed by the adjudicating authority or otherwise.

7. Before dwelling into the issue, I would like to reproduce the relevant extracts of the following:

Notification No. 40/2012-S.T., dated 20-6-2012

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ and used for the authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

2. *The exemption contained in this notification shall be subject to the following conditions, namely :-*
(a) *the exemption shall be provided by way of refund of service tax paid on the specified services received by a unit located in a SEZ or the developer of SEZ and used for the authorised operations :*

Provided that where the specified services received in SEZ and used for the authorised operations are wholly consumed within the SEZ, the person liable to pay service tax has the option not to pay the service tax ab initio instead of the SEZ unit or the developer claiming exemption by way of refund in terms of this notification

(d) *for the purpose of claiming ab initio exemption, the unit of a SEZ or developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, in addition to the list specified under condition (c); the unit of a SEZ or developer who does not own or carry on any business other than the operations in SEZ, shall declare to that effect in Form A-1;*

(e) *the unit of a SEZ or developer claiming the exemption shall declare that the specified services on which exemption and/ or refund is claimed, have been used for the authorised operations;*

Notification No. 12/2013-S.T., dated 1-7-2013 [which superseded the above notification]

2. *The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations :*

Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ab initio, subject to the conditions and procedure as stated below.

3. *This exemption shall be given effect to in the following manner :*

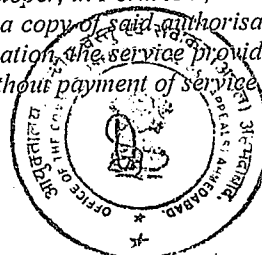
(I) *The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.*

(II) *The ab initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely :-*

(a) *the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);*

(b) *on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;*

(c) *the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;*



(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax;

(e)

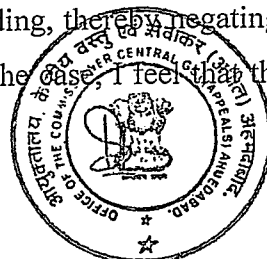
Notification No. 25/2012-S.T., dated 20-6-2012

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
- (c) a building owned by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) and meant predominantly for religious use by general public;
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;

8. Briefly summarizing the facts, I find that the appellant was providing certain services to M/s. Zydus Infrastructure Private Limited, an SEZ unit, the income from which was reflected under the head 'services and maintenance contract income' in the financial records. Internal Audit, raised an objection that the appellant had not paid service tax on the said income by wrongly availing exemption under notification Nos. 40/2012-ST dated 20.6.2012, 12/2013-ST dated 1.7.2013 and 7/2014-ST dated 11.7.2014. Thereafter, the appellant informed the audit that the service provided by them was exempted vide serial no. 13 of notification No. 25/2012-ST dated 20.6.2012. However, a show cause notice was given to the appellant contending that the appellant was not eligible to avail the benefit of notification Nos. 40/2012-ST dated 20.6.2012, 12/2013-ST dated 1.7.2013 and 7/2014-ST dated 11.7.2014 as they had failed to fulfill the conditions specified in the notifications; that the service provided by the appellant was *manpower supply service*, which did not find a mention under Serial no. 13 of the notification, supra, and therefore, benefit of the said exemption was also not available. The notice further stated that as the pollution control or effluent treatment plant was located in the factory the exemption was not available. The condition specified for claiming the benefit of notification Nos. 40/2012-ST dated 20.6.2012, 12/2013-ST dated 1.7.2013 and 7/2014-ST dated 11.7.2014, was that the SEZ unit had to furnish a declaration in form A1 verified by the specified officer of SEZ, in addition to the list of taxable service as are required for the authorized operations approved by the approval committee of taxable services; that the appellant had failed to produce Form A-1 along with the list of taxable services; that they had produced a copy of Form A-2, whose list of specified services, did not specify 'man power supply' against the appellant.

9. The grounds raised by the appellant are mentioned in brief, supra. The appellant has firstly questioned the computation of value of taxable service in the show cause notice which was upheld in full by the adjudicating authority. It is contended that this was pointed out to the adjudicating authority, which appears to be true, since the contention finds a mention in para 13(iii) and (iv) of the impugned OIO. **However, on going through the impugned OIO, I find that the adjudicating authority has given no finding, which I believe should have been the first thing that was to be addressed.** Even if the adjudicating authority felt that the amount mentioned was correct, he should have put forth such a finding, thereby negating the contention of the appellant in the OIO, in clear terms. This not being the case, I feel that the OIO as far as this contention is concerned, is not a speaking order.



10. Secondly, the appellant's next contention is that the service provided should fall under the 'management maintenance or repair service' and not under 'Manpower recruitment or supply agency service'. Though the adjudicating authority has emphatically held that it is manpower /labour supply service [para 13(i), page 9 of the impugned OIO] after going through the agreement. However, what is ignored by the adjudicating authority is examination of the appellant's claim that the services rendered were management maintenance or repair service and not manpower supply. There is no finding as to why the contention of the appellant is not correct. Even to this extent the impugned OIO appears to be a non speaking order.

11. Since the adjudicating authority has not given any findings on the core issues raised by the appellant, the impugned OIO cannot be termed as a speaking order. The Hon'ble Supreme Court in the case of Kranti Associates Private Limited [2011(273) ELT 345], on the importance of issuing a speaking order, has held as follows:

51. Summarizing the above discussion, this Court holds :

- (a) *In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- (b) *A quasi-judicial authority must record reasons in support of its conclusions.*
- (c) *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- (d) *Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- (e) *Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- (f) *Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- (g) *Reasons facilitate the process of judicial review by superior Courts.*
- (h) *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the Life blood of judicial decision making justifying the principle that reason is the soul of justice.*
- (i) *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*
- (j) *Insistence on reason is a requirement for both judicial accountability and transparency.*
- (k) *If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*
- (l) *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.*
- (m) *It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).*
- (n) *Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".*
- (o) *In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".*

12. In view of the foregoing, since no reasoning is given in the impugned OIO on the contentions raised by the appellant, it would be difficult for me to give my findings in the matter.



Therefore, it would be prudent to remand it back to the adjudicating authority to pass a speaking order in the matter, discussing in detail each and every issue raised by the appellant and giving a specific finding on the issues, as pointed out supra. The adjudicating authority is also directed to decide the matter within one month from the receipt of this order. Needless to state, that the adjudicating authority will adhere to the principles of natural justice, while deciding the matter. I would also like to reiterate that I have not given my findings on the merits of the issue.

- 12.1. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
12.1. The appeal filed by the appellant stands disposed of in above terms.


उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date: 7.08.2018

Attested


(Vinod Lukose)
Superintendent (Appeal)
Central Tax, Ahmedabad.

BY R.P.A.D

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Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Addl./Joint Commissioner, (Systems), Central Tax, Ahmedabad South Commissionerate.
4. The Dy. / Asstt. Commissioner, Central Tax, Division VII, Ahmedabad South Commissionerate.
5. Guard file.
6. P.A

