

	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 079-26305065		टेलीफैक्स : 079 - 26305136

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)62/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-059-2018-19
दिनांक Date : 13-09-2018 जारी करने की तारीख Date of Issue _____ 23/10/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. AC/02/Div-II/2018-19 दिनांक: 01.06.2018 issued by Assistant
Commissioner, Div-II, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Parth Equipments 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) केंद्रीय 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।



(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 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।

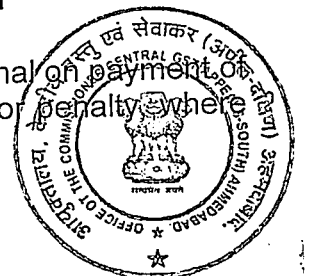
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This appeal has been filed by M/s. Parth Equipments Limited, 4208, Phase VI, GIDC, Vatwa, Ahmedabad [for short – ‘appellant’] against OIO No. AC/02/Div II/2018-19 dated 1.6.2018 passed by the Assistant Commissioner, CGST, Division II, Ahmedabad South [for short – ‘adjudicating authority’].

2. Briefly, the facts are that consequent to an internal audit, a show cause notice dated 11.4.2016 was issued to the appellant *inter alia* alleging that they short paid service tax under RCM on GTA, Legal service and Security Services amount to Rs. 74,653/-.

3. This notice was adjudicated vide impugned OIO dated 1.6.2018, wherein the adjudicating authority confirmed the demand of Rs. 74,653/- along with interest and further imposed equivalent penalty under section 78(1) of the Finance Act, 1994. The amount already paid towards duty and interest was appropriated against the said demand.

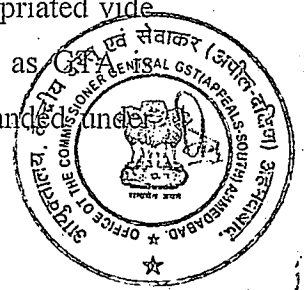
4. Feeling aggrieved, the appellant has filed this appeal raising the following grounds:

- that the demand in respect of GTA pertains to FY 2011-12 & 2013-14 and that the disputed amount was paid along with interest to buy peace as the amount involved was marginal; that the short payment was on account of reconciliation and the reason could be exemption available on Rs. 750/- and Rs. 1500/-; that since the cost and time involved for identifying individual entry of reconciliation for the past period is difficult and costly, therefore they had made the payment;
- that reconciliation per say cannot be the basis of the demand; that the department should have identified the entries against which tax was not paid and then allege suppression with intent to evade tax; that the payment showed their bonafide and was not an admission;
- regarding legal services they were liable to pay tax on such services and since the services are for the purpose of business there are clearly admissible as credit and therefore since credit was available, the situation is revenue neutral;
- that the entire demand is barred by limitation;
- that in respect of security services, M/s. Jay Bharat Intelligent Security Services, since the service provider has paid full service tax, the question of demand of tax from them is not tenable; that they had enclosed certificate issued by them showing the details of tax collected and paid by them bill wise for the FY 2012-13 & 2013-14;
- that in respect of the other two service providers M/s. Advance Guarding and Facility Services & Royal Security Services that since CENVAT credit of security service is available, the situation is revenue neutral.

5. Personal hearing in the matter was held on 7.9.2018 and Shri S.J.Vyas, Advocate appeared on behalf of the appellant. He reiterated the grounds of appeal.

6. I have gone through the facts of the case, the grounds of appeal and the oral averments raised during the course of personal hearing. I find that the question to be decided is whether the appellant is liable for payment of service tax on reverse charge mechanism along with interest and whether the imposition of penalty is correct or otherwise.

7. As is evident, the demand is in respect of three services viz. **GTA, Legal service and Security Services**, under Reverse Charge Mechanism(RCM). In respect of GTA, the appellant has paid the service tax short paid along with interest, which stands appropriated vide the impugned OIO. The appellant, is only disputing the penalty imposed as far as GTA concerned. In respect of Legal Service and Security service, service tax is demanded under

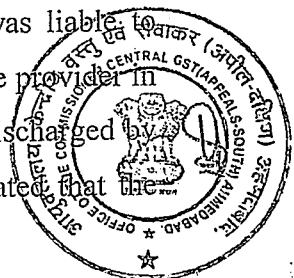


RCM, the appellant is not disputing the service tax but has stated that since the matter is revenue neutral, and as they would be eligible for availment of CENVAT credit of the tax paid, there is no revenue implication.

8. The appellant as far as demand on **GTA** is concerned, has stated that he paid up the amount along with interest to buy peace. Now this is no argument to not pay penalty. Penalty was proposed and imposed under Section 78(1) of the Finance Act, 1994. Since the short payment of service tax was account of suppression of facts, which the adjudicating authority has dealt with in detail, I find that the appellant is liable for penalty and thus his argument that no penalty is imposable, since they had paid the service tax along with interest to buy peace, is rejected. The appellant has also raised a contention that it was on account or reconciliation that short payment was noticed and that it could be because of various reasons and that it was for the department to point out those entries wherein duty was not paid. The argument lacks merit. The department after reconciliation has pointed out a short payment. The appellant if he was so convinced, should have proved before the department that there was no short payment, more so since the appellant is not questioning the reconciliation. In view of the foregoing, I uphold the confirmation of duty, demand of interest and imposition of penalty in respect of GTA.

9. Now coming to the demand in respect of Legal service, wherein service tax is demanded based on RCM. The appellant while questioning the demand on limitation has only stated that the matter is revenue neutral, since consequent to their paying the service tax demanded, they would be eligible for CENVAT credit. However, while making the argument, the appellant forgets that the demand is raised by invoking extended period and therefore, in terms of Rule 9(1)(bb) of the CENVAT Credit Rules, 2004, the appellant would not be eligible for the CENVAT Credit and therefore, the argument of revenue neutrality is not tenable. The adjudicating authority in para 8.5 of his impugned OIO has given reasoning for invoking extended period. The appellant, I find, has not put forth any argument, to show as to how the invocation of extended period is not correct. The argument is therefore rejected.

10. Going on to the last aspect, wherein the service tax is demanded on security services again on RCM basis. I find that in respect of M/s. Jay Bharat Intelligent Security Services, the appellant states that they have paid the entire tax. A certificate to the effect that they had paid 100% service tax for the year 2012-13 & 2013-14, issued by the proprietor of M/s. Jay Bharat Intelligent & Security services is also enclosed with the appeal papers. The reason for not accepting the certificate is clearly mentioned by the adjudicating authority in his OIO in para 7.2. The appellant is silent on the findings of the adjudicating authority. Even otherwise, the liability of the appellant in terms of notification No. 30/2012-ST dated 20.6.2012, wherein the service recipient is required to pay 75% of the service tax liability while 25% is to be discharged by the service provider. The appellant being the service recipient was liable to discharge his service tax [ie. 75%]. He cannot take shelter to the fact that the service provider in this case discharged the entire tax. What is his liability as per the statute, is to be discharged by him. In respect of the other two service providers, the appellant has again reiterated that the



matter is revenue neutral, since consequent to their paying the service tax demanded, they would be eligible for CENVAT credit. However, while making the argument, the appellant forgets that the demand is raised by invoking extended period and therefore, in terms of Rule 9(1)(bb) of the CENVAT Credit Rules, 2004, the appellant would not be eligible for the CENVAT Credit and therefore, the argument of revenue neutrality is not tenable.

11. In view of the foregoing, I uphold the impugned OIO. The appeal filed by the appellant is rejected.

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

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 13/09/2018.

Attested

Virrod Lukose

(Virrod Lukose)

Superintendent (Appeal)

Central Tax, Ahmedabad.

BY R.P.A.D

M/s. Parth Equipments Limited,

4208, Phase VI,

GIDC, Vatwa, Ahmedabad

Copy to:-

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

