



सत्यमेव जयते

आयुक्त का कार्यालय),अपीलस(

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 26305065-079 : टैलेफैक्स 26305136 - 079 :



स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)198/Ahd-South/2018-19

12240-44

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-043-2019-20

दिनांक Date : 20-09-2019 जारी करने की तारीख Date of Issue 23-09-2019

श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित

Passed by Shri. Gopi Nath, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/DN-VI/07/DEM/SKC/Adani Ent./18-19 दिनांक: 21.12.2018 issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

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

Adani Enterprise 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 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.



- (क) 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।
- (A) 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.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) 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।

- (c) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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 पढ़ी 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, where penalty alone is in dispute."



ORDER-IN-APPEAL

This appeal has been filed by M/s Adani Enterprise Ltd. , Adani House, Near Mithakhali Circle, Navrangpura, Ahmedabad [hereinafter referred to as "the appellant"] against Order-in-Original NO.CGST/DN-VI/07/DEM/SKC/ADANI ENT./18-19 dated 21.12.2018 [in short-impugned order] passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad South [in short-adjudicating authority],wherein he has confirmed the demand of service tax.

2. The brief fact of the case are that the appellant are registered with service tax department under the categories of Business Auxiliary service, Port services, Management Consulting Service, Erection Commissioning & Installation Service ,etc having Service Tax registration No.AABCA2804LST001. It was observed by the audit that the appellant had entered into a contract with M/s Gujarat Energy Transmission Corporation Ltd.(GETCO) under the work order no. CE(Pro.)/11/400KV M-Z/S&E/2011/T-1 dated 23.10.2009 for "Erection of 400 KV D/C Mundra/Zerda Line no. 2330.563 KM transmission line on D/C tower with ACSR, Moose Conductor on Turnkey" during the period from April 2012 to June 2012 for Rs. 64,99,588/- but they had not paid service tax on the said service which was classified by them under the head of "Erection Commissioning & Installation Service" and has claimed the exemption on the basis of Board Circular No. 123/512010-TRU dated 24.05.2010. As per Schedule-1 of the work order, the order comprises of different nature of activity such as Check, survey, Excavation, installation of Steel re-enforcement in concrete foundation Sub-setting, concreting of foundation by M20/M15 mixture, Grounding of towers with pipe type earthing, Erection of super structure up to 6 meter extension etc. and each of the above jobs has a separate quantity, unit, rate & total value thereof by the appellant. Since all job carried out by them were of independent nature and were not covered under the definition of Laying of cables under or alongside roads and Laying of electric cables between grids/sub-station/transformer stations en-route as per the Board Circular dated 24.05.2010 .Therefore, it was taken stand by the department that the appellant was not entitle for service tax exemption and a show cause notice was issued to the appellant showing causes that why the service tax amounting to Rs. 8,03,349/- should not be demanded & recovered for wrong availment of exemption circular. The said Show Cause Notice was adjudicated vide the impugned order demanding the said service tax along with interest & penalty.



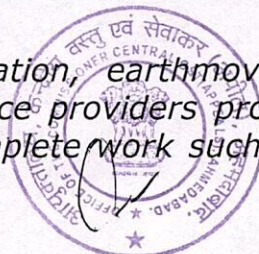
3. Aggrieved, the appellant has filed the instant appeal, wherein, they have submitted their arguments that nature of service provided by them to GETCO was in the nature of Erection of long distance electricity transmission lines on Turnkey basis and it was not falling within the scope of taxable service by relying upon Circular No. 123/512010-TRU dated 24.05.2010 and so Service Tax shall not be demanded. The appellant further added that once non-taxable work carried by them, then disclosure & furnishing of information to the department did not arise and in turn no material facts had been suppressed as alleged.

4. Hearing in the matter was held on 20.08.2019 wherein Shri Rahul Patel Chartered Accountant appeared for the same and reiterated the grounds of appeal and the submission of appeal memo for consideration.

5. I have carefully gone through the fact of the case on records, grounds of appeal in the Appeal Memorandum and oral submission made by the appellant at the time of hearing. I find that the adjudicating authority has demanded the service tax on various grounds. Now, let me examine the grounds of confirm demand and the appeal filed by the appellant.

6. I find that the adjudicating authority has demanded the service tax on the ground of denial of the Board Circular dated 24.05.2010 since the invoice described each job carried out by them and the value has been shown separately. On the contrary the appellant has defended that a contract for erection service for transmission line dated 23.10.2009 issued by M/s GETCO has been segregated in various activities under schedule -1 of part -B of work order but it does not mean that there is a separated contract for different activity and entire works falls within the said Board Circular and there is no liability of service tax. I find that the appellant had been awarded the contract on turnkey basis for erection of transmission line with ACSR Moose conductor between Mundra-Zerda having separate power stations which were to be connected through transmission lines by laying cables and the same cannot be laid without erection of towers at distance level. Therefore, erection of tower is inevitable for laying of transmission lines. I also find that said Board Circular dated 24.05.2010 covers situations where different activities have been undertaken for laying cables between grids/sub-stations/transformer stations en-route and the said facts can be gather from para2(iv) of the circular dated 24.05.2010 which is as under:

'site formation and clearance, excavation, earthmoving and demolition services' are attracted only if the service providers provide these services independently and not as part of a complete work such as laying of cables under the road'



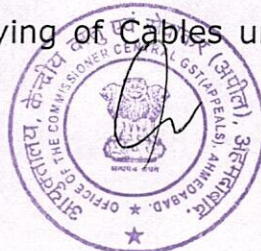
It is revealed from the above para that there is no liability of service tax when all activities are part of completion of work such as laying of cables and undeniable in this matter that Tender was issued for turnkey project consisting of various activity under Schedule -I part-B of work order. It is mentioned in the impugned order that contract was awarded to the appellant for erection of transmission line between Mundra-Zerda on turnkey basis , so it is squarely covered within the Board Circular dated 24.05.2010. I also find that at serial no .2 & 3 of the table of para 3 of the Board Circular dated 24.05.2010 , it is mentioned that :

"Laying of cables under or alongside roads and laying of electric cables between grids/sub-station/transformer station en-route are not taxable service under any clause of sub section (105) of Section 65 of the Finance Act, 1994"

7. In this case, the appellant was awarded the work order for laying the transmission line between two sub station and no service is applicable on the service provided by the appellant as per above said sub paras of the Board Circular dated 24.05.2010. Therefore the contention of the adjudicating authority that the each job carried out is of separate quantity , Unit, Rate & Total value thereof and Circular dated 24.05.2010 is not applicable and the appellant liable to service tax is not tenable and it is very narrow interpretation of the service provided & Clarification issued . On the based on fact , I conclude that Board Circular dated 24.05.2010 correctly covers the service under dispute provided by the appellant In this respect, I can also refer the judgment of CESTAT ,Principal Bench, New Delhi in the case of M/s U.P Rajkiya Nirman Nigam Ltd. [2016 (41) S.T.R.967 (Tri.-Del)]. The head note of the said decision is reproduced below:

Demand - Erection, Commissioning or Installation Service - Work of rural electrification - Service rendered squarely relating to transmission and distribution of electricity - In light of Notification No. 45/2010-S.T., no Service Tax recoverable in respect thereof - Similar demands raised against M.P. Power Transmission Co. Ltd. and Paschimanchal Vidyut Vitran Nigam Ltd. set aside in M.P. Power Transmission Co. Ltd. [2011 (24) S.T.R. 67 (Tri.-Del.)] and Paschimanchal Vidyut Vitran Nigam Ltd. respectively, in wake of provisions of impugned Notification - Impugned demand not sustainable and quashed - Section 73 of Finance Act, 1994. [paras 4, 5]Appeal allowed

8. Further , I also find that the adjudicating authority has demanded Tax on the ground that the appellant has to pay the service tax under the category of Erection, Commissioning & Installation service as it is taxable service. However, Board had clarified in the Circular No. 123/5/2010-TRU date 24.05.2010 at para 3 that laying of Cables under or alongside roads;



Shifting of overhead cables/wires for any reason such as widening /renovation of roads; laying of electric cables between grids/sub-station/transformer station en-route; laying of electric cables beyond the distribution point of residential localities; Railway electrification, electrification along railway track are not taxable. It is to be noted that said circular has taken all the related categories of services i.e work contract services, Erection, Commissioning & Installation service, Commercial or Industrial Construction services and then came to conclusion that the specified activities are not taxable. So specific service in the circular will covers the work carried out for GETCO by the appellant as it involves laying of long distance transmission lines between two power stations. Therefore, the work carried out by the appellant in this case was not falling within the scope of taxable services so defined and accordingly demand of Service tax is not tenable . Hence adjudicating authority's contention is not acceptable and legal. Therefore, I allow the appeal in this matter.

8. I view of above findings; I hereby allow the appeal and set aside the impugned order.

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

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

Nath
20/9/19

(GOPI NATH)

आयुक्त (अपील्स)

Commissioner (Appeals)
CGST, Ahmedabad

Date : 20.09.2019

Attested

(Atanu Kundu)
Superintendent (Appeals),
CGST(Appeals),Ahmedabad.

By RPAD,

To,

M/s Adani Enterprises Ltd.,
Adani House, Near Mithakhali
Circle, Navrangpura, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad-South.
3. The Joint Commissioner, Central Tax, Ahmedabad-South
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South.
5. The Assistant Commissioner, CGST, Div-VI, Ahmedabad South
6. Guard File.



