



आयुक्त (अपील) का कार्यालय,  
Office of the Commissioner (Appeal),  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
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)100/Ahd-South/2019-20/12872 TO 12876
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-056-2019-20**  
दिनांक Date : **25-10-2019** जारी करने की तारीख Date of Issue \_\_\_\_\_
- श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित  
Passed by Shri **Gopi Nath**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **MP/09/AC/Div-III/18-19** दिनांक: **21.05.2019** , issued by  
Assistant Commissioner, Div-III, CGST, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Jagson Colorchem 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.



(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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 अनुसूचि-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 .

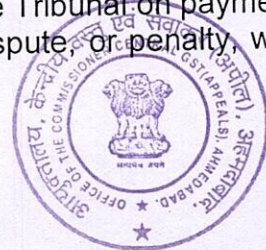
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Jagson Colorchem Ltd., Plot No. 5601-4, GIDC, Phase-II, Vatva, Ahmedabad-382 445 (for short "appellant") against Order-In-Original No.MP/09/AC/Div-III/18-19 dated 21.05.2019 (for short "impugned order") passed by the Assistant Commissioner of CGST, Division-III, Ahmedabad South Comm'rate (for short "adjudicating authority").

2. The facts of the case in brief are that the appellant is a manufacturer, holding central excise registration no.AAACJ7664CXM001 and also holding service tax registration no.AAACJ7664CST001. Audit of the financial records of the appellant was carried out for the financial year 2015-16 and 2016-17 under which it revealed that the appellant has paid the rent to their Directors towards the renting of immovable property pertaining to the Directors. Since the service provided by a Director of a company or a body corporate to the said company or body corporate appeared to be liable to service tax under Notification No.30/2012-ST dated 20.06.2012, as amended, a Show Cause Notice dated 12.07.2018 was issued by the Dy. Commissioner of Circle-II, Central Tax Audit, Ahmedabad proposing demand of service tax amounting Rs.3,35,250/- under Section 73(1) alongwith interest under Section 75 of the Finance Act, 1994. Penalty upon the appellant was also proposed under Section 78 of the Finance Act, 1994. The adjudicating authority vide the impugned order confirmed the demand along with interest and penalty.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds :

- (a) that the said service was not provided in capacity of Director of the Company but was provided in their individual capacity;
- (b) that service provided in personal capacity can not be considered as service provided in the capacity of Director as the person might happen to be a director of the service recipient company;
- (c) that the company is paying rent to the Directors for being the owner of the premises and Director is receiving the amount in the capacity of an owner of the property;
- (d) that they rely on the Order-in-Appeal No. AHM-EXCUS-003-APP-3-18-19 dated 27.04.2018 passed by the Commissioner (Appeals) of Central Excise, Ahmedabad in case of M/s. Advance Addmine Pvt. Ltd., Ahmedabad.

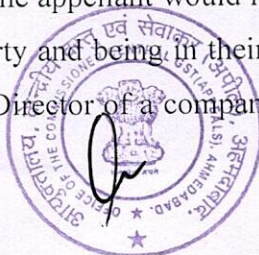
4. Personal hearing in the matter was held on 09.10.2019, wherein Shri D.K.Trivedi, Advocate, appeared for the personal hearing and reiterated the submission of appeal memo for consideration and requested to consider the Order-In-Appeal referred by them in the grounds of appeal.



5. I have carefully gone through the facts of the case, grounds of appeal in the appeal memorandum and the various plea put forth in the appeal memorandum and during personal hearing. The issue to be decided is whether the appellant is liable to pay service tax as confirmed in the impugned order and interest thereof alongwith penalty.

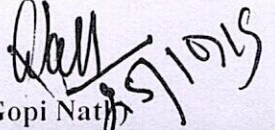
6. The facts which are coming out of the records reveal that the owners of the immovable property have provided their property on rent to the appellant and receiving rent from the appellant. Thus, owners of the property have become service providers and appellant has become service recipient in view of Section 65B(44) which states that the service means any activity carried out by a person for another for consideration. The rent has become consideration in the activity in the present matter. This service is covered under renting of immovable property and is liable for payment of service tax, though it is pertinent to mention that after the introduction of negative list, the classification of service is not longer required for charging service tax. Section 68(1) of the Finance Act, 1994 states that the person providing the taxable service to any person shall pay the service tax. Thus in view of Section 68(1) the owners of the property were required to pay the service tax.

7. However, in the case on hand, the owners of the property were also the directors of the appellant. Rule 2(d)(EE) of the Service Tax Rules, 1994 states that the recipient of the service is liable to pay service tax in case of a service provided or agreed to be provided by a Director of a company or a body corporate to the said company or body corporate. Since the owners of the property found to be the Directors of the appellant, the adjudicating authority has confirmed the demand of service tax on the appellant being service recipient in view of Rule 2(d)(EE) read with Notification No.30/2012-ST dated 20.06.2012 as amended vide Notification No.45/2012-ST dated 07.08.2012. The appellant has contended that the said service was provided by the owners of the property in their individual capacity and not in the capacity of Director of the Company and therefore service provided in personal capacity can not be considered as service provided in the capacity of Director. They further contended that they are also paying the rent to the persons being the owner of the property and not being the Directors of the appellant. I find force in the contentions of the appellant that just because the owners of the property are Director of the appellant, the appellant can not be held liable to pay the service tax being the service recipient. The fact which can not be ignored in the case on hand is that the owners of the property have provided their property on the rent to the appellant and getting the rent from the appellant being the owners of the property and not being the Directors of the appellant. Appellant is also paying the rent to the owners being the owners of the property (who have provided service to the appellant) and not being the Directors of the appellant. Had the Directors of the appellant given their property on rent to some other company, the Directors of the appellant would have been held liable to pay the service tax being the owner of the property and being in their individual capacity as service provider. This makes it clear that if the Director of a company is providing any sort



of service in the capacity of Director to the said company, then only the service becomes liable to service tax at the end of that company being service recipient. This is the intention of law and therefore such words have been incorporated in the said rules and in the Notification. In the present case, I find that the appellant is paying rent of immovable property to the owners of the property who happen to be its Directors. But it does not mean that the Directors have rendered service to the appellant in the capacity of Directors. The charge made by the adjudicating authority that the impugned activity attracted service tax under the reverse charge mechanism in terms of Rule 2(d)(EE) of Service Tax Rules, 1994 and Notification No. 30/2012-ST as amended is based on the incorrect surmise that the Directors were providing the said services in their capacity as Directors. Therefore the demand of service tax is not sustainable in view of the above discussion and hereby set aside. Since the demand has been set aside, the question of interest on demand and imposition of penalty does not arise. The same view has been taken by the Commissioner(Appeals) earlier also in Order-In-Appeal, relied upon by the appellant and also in Order-in-Appeal No.AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 in case of M/s. Jay Pumps Pvt. Ltd.

8. In view of the above, the appeal of the appellant is allowed and the same stands disposed of in above terms accordingly.

  
( Gopi Nat )  
Commissioner (Appeals)

Date: .10.2019

Attested

  
01/11/19

(Jitendra Dave)  
Superintendent (Appeal)  
CGST, Ahmedabad.



**BY R.P.A.D. / SPEED POST TO :**

M/s. Jagson Colorchem Ltd.,  
Plot No. 5601-4, GIDC,  
Phase-II, Vatva,  
Ahmedabad-382 445.

Copy to :

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