



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(40)80/Ahd-South/2019-20 / 12862 To 12866
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-057-2019-20**
दिनांक Date : **30-10-2019** जारी करने की तारीख Date of Issue 01/11/2019
श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
Passed by Shri **Gopi Nath**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **MP/08/AC/Div-III/18-19** दिनांक: **20.05.2019** , issued by
Assistant Commissioner, Div-III, CGST, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Shrinath Products
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 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।

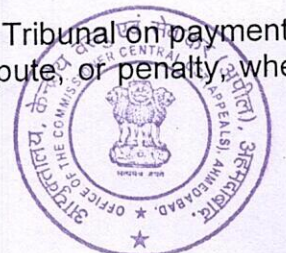
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER-IN-APPEAL

This appeal has been filed by M/s. Shrinath Products, 2803, GIDC, Phase-IV, Vatva, Ahmedabad-382445 (for short "appellant") against Order-In-Original No.MP/08/AC/Div-III/18-19 dated 20.05.2019 (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 AAACE4189MXM001 and also holding service tax registration AAACE4189MST001. Audit of the financial records of the appellant was carried out for the period 2013-14 to 2016-17 under which it revealed that there was non-payment of service tax in respect of legal service (for the period 2013-14 to 2016-17) and were short-payment of service tax in respect of Manpower Supply Service (for the period 2014-15, 2015-16 & 2016-17) and Security Service (for the period 2015-16). Thus a Show Cause Notice dated 12.07.2018 (for short "SCN") was issued by the Dy.Commissioner of CGST(Audit), Circle-II, Ahmedabad proposing demand of service tax amounting Rs.65,273/- under Section 73(1) by invoking extended period alongwith interest under Section 75 under the Finance Act, 1994. The penalty under Section 78 of the Finance Act, 1994 upon the appellant was also proposed. The adjudicating authority vide the impugned order confirmed the demand alongwith interest and penalty.

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

- (a) that the impugned order has been passed without discussion of evidences and on the basis of grounds of SCN only;
- (b) that they have furnished statements to prove that there was no short payment of service tax in respect of services of Manpower Service and Security Service;
- (c) that regarding Legal Service, the service of Shri Pankaj Murawal is received towards computing salaries, ESI Contribution and PF Contribution and recorded in accounts;
- (d) that there is no discussion or finding on the statements evidencing fully discharged service tax liability;
- (e) that demand is confirmed against the evidence of payment of service tax.

4. Personal hearing in the matter was held on 09.10.2019, wherein Shri P.G.Mehta, Advocate, appeared for the personal hearing and reiterated the submission of appeal memo for consideration.

5. I have carefully gone through the facts of the case, grounds of appeal in the appeal memorandum and the various plea putforth 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.



6. I find that there is no dispute over the liability of service tax under reverse charge mechanism. Moreover, the demand of service tax has been raised (i) due to the certain expenditure found under the head of Professional Fee Expenses pertaining to the service rendered by Shri Pankaj R. Murawal, Advocate and (ii) due to the difference in the figures reflected in the balance sheet and in the ST-3 returns in respect of the service pertaining to Manpower Service and Security Service. In the defence, the appellant has stressed upon that on receipt of the bills from service provider, the same were recorded in the books of account whereas service tax is paid after paying the amount of bill and accordingly the same are reflected in their ST-3 returns which might be the cause of difference. It has also been stressed upon by the appellant that the amount of service tax has been paid by them and statements for the same (being Annexure-A-1, Annexure-A-2, Annexure-A-3 and Annexure-B) have been prepared and submitted by them along with the reply to SCN. They have also submitted photocopies of the challans showing the payment of service tax towards their service tax liability. Now when I look at the available records I find that the appellant have submitted only the statements (as mentioned supra) before the adjudicating authority along with their reply to SCN. No challans were submitted by the appellant along with the statements to support the statements and their claim that the amount of service tax was paid by them. Therefore in absence of any corroborating evidence regarding payment of service tax, adjudicating authority rightly arrived at the conclusion that the assessee failed to prove that the service tax has been paid to the credit of Government Exchequer.

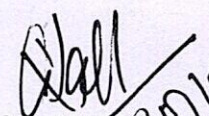
7. Since the challans regarding payment of service tax have been submitted by the appellant before me, perusal of the challans, the figures reflected in the statements being Annexure-A-1, Annexure-A-2, Annexure-A-3 and Annexure-B and the figures shown under the impugned order in respect of Manpower Service and Security Service at page-2 of the impugned order reveal that the service tax in respect of Security Service has been fully paid by the appellant. Therefore, the demand of service tax in respect of Security Service does not sustain and is hereby set aside. Regarding the demand of service tax in respect of Manpower Service, for the year 2014-15 and year 2016-17, I find that the due service tax has been paid by the appellant. Therefore the demand of service tax in respect of Manpower Service for the year 2014-15 and 2016-17 is also set aside. For the demand pertaining to the year 2015-16 in respect of Manpower Service, I find that certain amount has skipped from payment of service tax. Therefore the adjudicating authority has rightly demanded the service tax for such short payment. In view of this, the demand of service tax in respect of Manpower Service for the year 2015-16 under the impugned order is upheld.



8. Regarding the demand in respect of legal service, I find that the appellant has contended that the service rendered by Shri Pankaj Murawal is merely computed salaries, ESI contribution and PF contribution and recorded in accounts. However, the adjudicating authority in its para-18.1 of the impugned order has specifically mentioned that the payments have been made to Shri Pankaj R. Murawal, an Advocate, who has raised bills mentioning professional legal and labour consulting charges during the period from 2013-14 to 2016-17. The Rule 2(1)(cca) of Service Tax Rules, 1994 states that the 'legal service' means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority. Looking to this, I am not convinced with the contention put forth by the appellant more particularly when Shri Pankaj Muarawal, who is an Advocate, has raised the bills mentioning professional legal and labour consulting charges. I therefore uphold the impugned order for the demand of service tax in respect of the legal service received by the appellant.

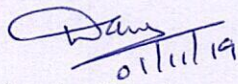
9. Regarding the imposition of penalty under Section 78(1) under the impugned order, I find that that the appellant is in the service tax regime since long and is also aware of the service tax law. Thus, I hold that where the demand of service tax has been upheld in the foregoing, the penalty imposed is also upheld. It goes without saying that demand of service tax has been upheld alongwith interest.

10. In view of the above, the appeal stands modified to the extent mentioned in the foregoing and disposed of in above terms accordingly.


(Gopi Nath)
Commissioner (Appeals)

Date: .10.2019

Attested



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



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

M/s. Shrinath Products,
2803, GIDC, Phase-IV,
Vatva, Ahmedabad-382445

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.