



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,

Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)182/Ahd-South/2018-19 / 10655 to 10659

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-06-2019-20
दिनांक Date : 15-05-2019 जारी करने की तारीख Date of Issue 21/05/2019

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

ग Arising out of Order-in-Original No. CGST/DEM/05/BSM/AC/DIV-VIII/18-19 दिनांक: 19.12.2018
issued by Assistant Commissioner, Div-VIII, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Joshi Technologies International Inc.
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.

(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 हास्पिटल कम्पाउण्ड, मेघाणी 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 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

M/s Joshi Technologies International Inc. 701- Parshwanath Square, Near Titanium, Prahladnagar Garden, Ahmedabad-380015 (hereinafter referred to as "the appellant") has filed this appeal against Order-in-Original No. CGST/DEM/05/BSM/AC/DIV-VIII/18-19 dated 19.12.2018 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise, Division-VIII, Ahmedabad-South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case is that based on Audit Report, a show cause notice dated 02.11.2017 was issued to the appellant for non-payment of service tax amounting to Rs.42,80,066/- under reverse charge mechanism as per provisions of Section 68 (2) of the Finance Act, 1994 (for brevity "the Act") read with notification No.30/2012-ST dated 20.06.2012 on royalty charges being paid by them to the government of India. The said royalty payments are being made by them on monthly basis for oil exploration. It was alleged that the service tax was due on services received by them by way of assignment of right to use natural resources. Vide the impugned order, the recovery proceedings were confirmed with interest liability and equal penalty under Section 78 of the Act and also imposed penalty of Rs. 4,28,006/- under Section 76 of the Act.

3. Being aggrieved, the appellant has filed this appeal on the following grounds:

a) that the royalty is paid towards the transfer of title in immovable property and is hence outside the purview of service tax and royalty is an intangible asset for which right to use is granted by the Government and hence not exigible to service tax. Rule 5 of the Petroleum and Natural Gas Rules, 1959 empowers state government to grant a license or lease in respect of any land vested in a state government and rule 14 empowers collection of royalty. On perusal of these rules, it is clear that royalty paid by the appellant to the government is nothing but a consideration paid towards the lease of land located at the designated oilfields;

b) Section 65 B (44) of the Act which defines services to mean any activity carried out by a person for another for consideration, and includes a declared service, but shall not include an activity which constitutes merely;- a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Indian constitution. Accordingly, leasing of land at the designated oilfields is



transfer of title in immovable property and hence outside the purview of service tax;

c) That the adjudicating authority has violated the principles of natural justice by not providing an opportunity of being heard and passing an ex-parte order against the appellant and hence the impugned order is not a speaking order;

d) That they never had the intention to evade payment of service tax and the issue of payment of service tax on royalty effected the whole industry. Further it is not mandatory to levy penalty as there was no mens rea or malafide intent;

e) That penalty is not imposable when there is mass unawareness as held in the case of H.M. Singh And Co. vs. Commissioner of Customs, C.Ex. & Service Tax – 2015 (37) STR-172 (All.);

4. A personal hearing in the matter was held on 16.02.2017. Shri Amal P Dave, Advocate appeared for the same and reiterated the grounds of appeal. He further submitted that there is no suppression in the matter.

5. I have carefully gone through the facts of the case and submissions made by the appellant. The limited point to be decided in the matter is relating to non-payment of service tax paid on royalty paid to the government under reverse charge mechanism.

6. First of all I take up the argument given by the appellant that the impugned order is in breach of principles of natural justice as they were not given any opportunity of being heard. From the records and from para 5 of the impugned order, I find that the appellant were given personal hearing on four occasions between 23.03.2018 to 10.12.2018 i.e. four times in around 9 months which is a very considerable time yet they failed to avail of the opportunity of being heard in person. I therefore find no force in this argument and reject the same. I hold that the impugned order does not suffer from any illegality on this account.

7. From the facts of the case, it is seen that the appellant are engaged in oil and gas exploration on the fields allotted to them on payment of royalty which is paid on monthly basis in terms of Production Sharing Contract entered with Government of India on 27.07.2004. Now I find that the adjudicating authority has held in para 8 of the impugned order that the appellant were liable to pay service tax as service recipient w.e.f. 01.04.2016 for the services provided by Government by way of assignment of right to use natural resources to them and for which the appellant had to pay royalty on periodical basis. The Government provides license to various companies including Public Sector



Undertakings for exploration of natural resources like oil, hydrocarbons, iron ore, manganese, etc. For having assigned the rights to use the natural resources, the licensee companies are required to pay consideration in the form of annual license fee, lease charges, royalty, etc to the Government. The activity of assignment of rights to use natural resources is treated as supply of services and the licensee is required to pay tax on the amount of consideration paid in the form of royalty or any other form under reverse charge mechanism. The service i.e. assignment of rights is not exempted from payment of service tax as is evident from the notification No.30/2012-ST dated 20.06.2012 in which vide entry no. 6, it is stipulated that in respect of services provided or agreed to be provided by Government or local authority except the excluded services specified therein will be liable to payment of 100% service tax by the recipient of the service.

I have perused the circular no. 192/02/2016-Service Tax dtd. 13.04.2016 issued by the Central Board of Excise & Customs which has specifically clarified in point No. 14 that the service tax paid on royalty in respect of natural resources shall be available as cenvat credit leaving thereby no doubt that the service tax is to be paid on royalty.

8. Now I will take up the argument given by the appellant that that the royalty is paid towards the transfer of title in immovable property and is hence outside the purview of service tax and royalty is an intangible asset for which right to use is granted by the Government and hence not exigible to service tax. The counter to this argument has been given in the order in the case of Udaipur Chambers Of Commerce and Industry Vs. Union of India cited at 2018 (8) G.S.T.L. 170 (Raj.) and the relevant part is reproduced as under:

"There is no transfer of immovable property too as the lease granted is only to excavate mineral from the leased area and that activity at the most can be physical transfer of property by its "renting" as prescribed under Section 65(90a) of the Act of 1994, but not the transfer of title in immovable property. Section 65(90a) pertains to transfer of immovable property by renting and that includes leasing of immovable property for use in furtherance of business and commerce. The absence of the word "title" in this provision is quite important and that indicates the entire activity as transfer of possession of the immovable property for its use or consumption by way of renting, letting, leasing, licensing or by other similar arrangements, as the case may be. The exclusion under Section 65B(44) is for transfer of title in immovable



property, which is conspicuously absent in the grant of lease for mining operations. The [title] of the mining area admittedly retains with the State even on execution of mining lease to excavate mineral from the leased area."

From the findings of the Hon'ble High Court of Rajasthan, it is very clear that the use of field for specified purpose subject to periodical payment of consideration i.e. royalty in the instant case, cannot be considered as mere transfer of title and therefore the argument given by the appellant is rejected.

9. The appellant has defended themselves by giving arguments and have submitted that penalty cannot be imposed. I find that there was no confusion in the service tax law about leviability of service tax on the service being provided by them and there was further clarification through the circular dtd. 13.04.2016 about the levy of service tax on the amount of royalty. In view of this, I find that the arguments given by the appellant cannot be accepted and the case laws cited by them in their support are not acceptable as the facts of the case are completely clear here and the legal position is also well settled.

9. In view of the statutory provisions, case law and department's circular dtd. 13.04.2016, I conclude that appellant has not discharged his tax liability in the prescribed manner on the service which is liable to payment of service tax. Therefore, I uphold the demand of service tax with interest and consequently uphold penalty imposed.

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

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

उमाशंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)
केंद्रीय कर, अहमदाबाद
दिनांक: . . .2019

सत्यापित

R.P.A.D.

(धर्मेन्द्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

By R.P.A.D



To
M/s Joshi Technologies International Inc.
701- Parshwanath Square,
Near Titanium,
Prahladnagar Garden,
Ahmedabad-380015

Copy to:-

1. The Chief Commissioner, CGST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad (South)
3. The Dy/Asst. Commissioner, CGST, Division-VIII, Ahmedabad (South).
4. The Assistant Commissioner, System-Ahmedabad (South)
- ✓ 5. Guard File.
6. P.A. File.