



सत्यमेव जयते

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



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टेलिफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)33/EA-2/Ahd-South/2019-20 / 15842 T 015901

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-47/2020-21

दिनांक Date : 28-09-2020 जारी करने की तारीख Date of Issue 13/10/2020

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No CGST/WS07/O&A/OIO-05/MK/AC/2019-20 dated 04/02/2020 issued by Assistant Commissioner, Div-VII, Central Tax, Ahmedabad-South.

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

M/s Thousand Islands Hotels & Resorts Private Limited,
Shapath-IV, 5-8TH Floor, Prahaladnagar, S.G.Highway, Satellite, 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 issued under the Central Excise Act 1944, 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 गलत 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 मांगों 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 मुआवजे 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) केंद्रीय 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) विनिर्माण 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, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

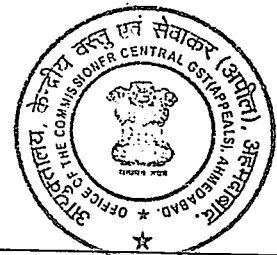
(1) केंद्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

Under Section 112 of CGST act 2017 an appeal lies to :-

(क) उपरोक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केंद्रीय 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 लिफ्ट 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) एक 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.

- (10) 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)

- (11) 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:

- (vii) amount determined under Section 11 D;
(viii) amount of erroneous Cenvat Credit taken;
(ix) 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।

6(I) 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.

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/ Goods and Services Tax (Compensation to states) Act, 2017, may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



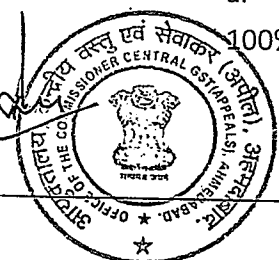
ORDER-IN-APPEAL

This order arises out of an appeal filed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad South (hereinafter referred to as the 'appellant') in pursuance of Review Order No. 29/2019-20 dated 04.02.2020 passed by the Principal Commissioner, CGST, Ahmedabad South against Order-in-Original No. CGST/WS07/O&A/OIO-05/MK/AC/2019-20 dated 25.10.2019 [hereinafter referred to as 'impugned order'] passed by the Assistant commissioner, CGST, Division-VII, Ahmedabad South [hereinafter referred to as 'adjudicating authority'] in case of M/s. Thousand Island Hotels and Resorts Private Limited, Shapath-IV, 5-8TH Floor, Prahalad Nagar, S.G.Highway, Satellite, Ahmedabad [hereinafter referred to as 'respondent'].

2. Facts of the case, in brief, are that the respondent is registered with the department having Service Tax registration no. AADCT5907BSD001 and providing and receiving services viz. Architect Service, Works Contract Service, Manpower Recruitment/Supply Agency Service and Hotel, Inn, Club and Guest House Service defined under erstwhile Section 65 (105)(p), Section 65 (105)(zzzza), Section 65 (105)(k) and Section 65 (105)(zzzzw) of the Finance Act, 1994 respectively. The detailed scrutiny of the records of respondent was conducted by the departmental officers and it was noticed that the respondent has received various taxable services from various service providers during F.Y. 2012-13 to 2014-15 while involved in construction of a Hotel Project in Sasan, Gir Forest, Gujarat. Further, the respondent being a company was liable to pay the Service Tax on the services received under Reverse Charge Mechanism, mainly under Works Contract, from the propriety firms as per Notification 30/2012-ST dated June 20, 2012. However, instead of following the laid down procedure of Service Provider and Receiver paying 50% of the Service Tax liability each, the 100% tax liability was borne by the Service Provider. A SCN vide F.No. WS07/SCN-09/O&A/1000 ISLANDS/17-18 dated 22.03.2018 was issued to the respondent by the department wherein total Service Tax demand of Rs. 7,47,276/- under proviso to Section 73(1) along with applicable interest and penalty under Section 76, 77 and 78 of the Finance Act, 1994 was made. The demand was dropped by the Adjudicating Authority vide the Order in Original No. CGST/WS07/O&A/OIO-05/MK/AC/2019-20 dated 25.10.2019. The adjudicating authority has relied upon the judgement of Hon'ble Tribunal in case of Lilason Breweries v/s Commissioner of Central Excise [(2010) 24 STT 279 (CESTAT, NEW DELHI BENCH)] and Umasons Auto Compo Private Limited v/s Commissioner of Central Excise, Aurangabad [(2014) 42 taxmann.com 347 (Mumbai-CESTAT)].

3. Being aggrieved with the impugned order, the appellant department has filed the instant appeal. The ground of appeal preferred by the department are as under:

a. There is nothing on record to prove that the said Service Providers had paid 100% Service Tax on the services so rendered to the assessee. Thus, the plea of revenue



neutrality and reliance on case laws of M/s Lilason Breweries and M/s Umasons Auto Compo Private Limited is entirely misplaced;

b. The Service Recipient i.e. Respondent being a private limited company was liable to pay 50% of the Service Tax payable in respect of the service portion in execution of the Works Contract;

c. If the Service Provider paid the tax liability in addition to 50% then he was free to claim refund of the excess payment.

4. The Respondent has vide letter dated 21.09.2020 submitted written submission as well as cross-objection with regard to appeal filed by the department. In the above mentioned submission, the respondent stated facts of the case and made reference to the various case laws.

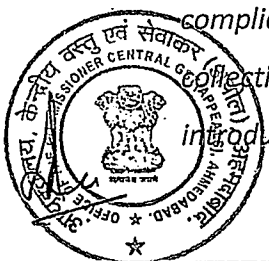
5. Personal Hearing in the case was held on 22.09.2020. Ms Pranali Thakore, Chartered Accountant, appeared for hearing on behalf of the respondent. She reiterated submissions made in cross-objection.

6. I have carefully gone through the facts of the case available on record, grounds of appeal in appeal memorandum and submissions made by the respondent at the time of hearing. I find that the issue to be decided in the present appeal is whether the respondent is liable to pay Service Tax as recipient of service under Reverse Charge Mechanism in terms of Notification 30/2012-ST dated 20.06.2012 under the category of Works Contract Service even when the entire tax liability has been discharged by the service providers. The demand pertains to Financial Years 2012-13, 2013-14 and 2014-15.

7. It is observed that the government has vide Notification No. 30/2012-ST dated June 20, 2012 fastened the liability of payment of Service Tax on the service receivers under Reverse Charge Mechanism. As per the said notification, w.e.f. 01.07.2012, the service receivers were required to discharge 50% of the Service Tax liability in respect of Works Contract Service. In the case at hand, the respondents, being a Private Limited Company, were supposed to discharge 50% of the Service Tax in respect of services received from firms in question namely M/s Radhe Construction and M/s Darsh Techno Skill. However, it is observed that the invoices raised by the service providers, who are proprietorship firms, to the respondent, who is a company, 100% of Service Tax has been borne by the service provider.

8. It is further observed that the rationale behind Reverse Charge Mechanism was explained by CBEC in para 12 of the letter D.O.F. No. 334/1/2012-TRU, dated 16.03.2012 which reads as under:

"12. It has been noticed that a number of registrants collect the tax but do not pay the same to the Department. This is a serious loss of the revenue even though the compliant section at the recipient end is often not benefited. To ensure proper collection, while not inconveniencing small business, a new scheme is proposed to be introduced."



9. It is observed that the Adjudicating Authority has observed under Para 20.4 of the impugned order that the Service Provider has paid up the total Service Tax liability including that of the respondent. The relevant portion of the order is reproduced verbatim:

"However, in the instant case the service provider of the said assessee has borne 100% tax liability and the said assessee make full payment of Service Tax to their service provider. Therefore, I find that the demand of Service Tax again under partial reverse charge would lead to double taxation. I find there is a revenue neutral case and there is no loss of revenue to the government because government has received entire amount of service tax on services rendered."

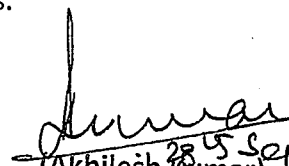
9.1 It is also observed from the SCN that the relevant invoices mentions tax liability and there is no dispute that the same was paid by the respondents to the service provider. Under the circumstances, the contention of the department that there is nothing on record to substantiate payment by service provider lacks support both on facts as well as judicial pronouncements. Some of them have been relied by respondents in their cross-objection.

10. It is apparent from the case records that the respondent was liable to pay 50% of the Service Tax liability under Reverse Charge Mechanism as Service Receiver but they did not discharge their tax liability. Instead, the Service Provider has discharged their tax liability. Hence, it is observed that the appellant has not followed the procedure prescribed regarding discharging of Service Tax liability. However, this procedural lapse does not fasten the liability of Service Tax payment on them.

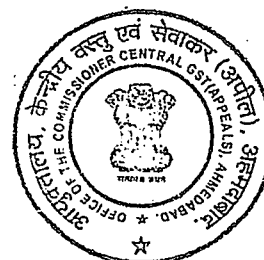
11. I find that the case law of Transpek Silox Industries Private Limited v/s Commissioner of Central Excise, Vadodara-I [2018(17) G.S.T.L. 434 (Tri.-Ahmd.)] is squarely applicable in the case at hand. The Hon'ble Tribunal, while setting aside the demand in that case, had observed that in a case where Service Provider pays 100% of the Service Tax, the Service Receiver is not required to pay the tax as it would result in double taxation. The order of the Hon'ble Tribunal has to be followed as judicial discipline.

12. In view of the discussions made, I uphold the order passed by the Adjudicating Authority and appeal filed by the department is rejected.

13. The appeals filed by the appellant stand disposed off in above terms.


(Akhilesh Kumar) 28/5 September, 2020.

Commissioner (Appeals)



Attested

Zeein D.

(M. P. Sisodiya)

Superintendent (Appeals)

Central Excise, Ahmedabad

By Regd. Post A. D

M/s. Thousand Island Hotels and Resorts Private Limited,

Shapath-IV, 5-8TH Floor, Prahalad Nagar,

S.G.Highway, Satellite, Ahmedabad.

Copy to:-

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner CGST and Central Excise, Ahmedabad-South.
3. The Deputy /Asstt. Commissioner, Central Excise, Division-VI, Ahmedabad-South.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
5. Guard file
6. PA File

