



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
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 : टेलीफैक्स 26305136 - 079 :

DIN-20210164SW0000888B58

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST) 2/Ahd-South/2020-21
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-61/2020-21
दिनांक Date : 24.12.2020 जारी करने की तारीख Date of Issue : 13.01.2021
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. AC/10/Div-II/2019-20 dated 14.02.2020 passed by the Deputy Commissioner, Central GST, Division-II, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Sheth Insulation Pvt. Ltd.,
402/B, Phase-II, Vatva,
Ahmedabad – 382445.

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.



- (रू) 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 प्रतियाँ साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी क 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.

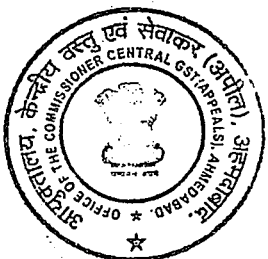
- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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 एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-
Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 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.



(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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 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 adjudicating authority shall bear 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 contained 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।

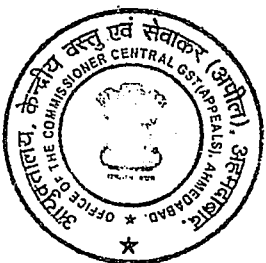
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



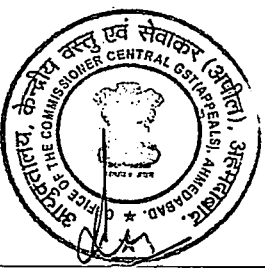
ORDER-IN-APPEAL

This appeal has been filed by M/s Sheth Insulation Pvt. Ltd., 402/B, Phase-II, Vatva, Ahmedabad - 382445 (hereinafter referred to as the '*appellant*'), against Order-In-Original No.AC/10/Div-II/2019-20 dated 14.02.2020 (hereinafter referred as "*impugned order*") passed by the Deputy Commissioner, Central GST, Division-II, Ahmedabad South Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant are engaged in providing taxable service and hold Service Tax Registration No.AABCD1495NST001 for the same. During the course of audit of records of the appellant, it was observed that they had paid rent amounting to Rs.85,44,000/- to their Directors viz. Shri Kaushik J. Sheth, Shri Zalak J. Sheth and Ms. Smita K. Sheth and the same was shown under the expenditure Head "Rent Expenses". The audit observed that the Directors of the company have rented out their immovable property to the company and the same is used for commercial purpose and thus it appeared that the activity of renting of immovable property in the case is covered within the ambit of "service" and liable to service tax. It was further observed that 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 reverse charge mechanism under Notification No. 30/2012-ST dated 20.06.2012, as amended, the company was liable to pay service tax on the said services received by them. Accordingly, a Show Cause Notice dated 28.03.2019 was issued to the appellant proposing demand of service tax amounting Rs.11,58,486/- on the amount of rent paid to their Directors under proviso to Section 73(1) along with 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) The services provided by the Director of the company alone is liable to service tax under reverse charge mechanism, and other services personal in nature or in the individual capacity i.e. renting of immovable property services rendered by him, beyond the capacity of Director for which he separately raised the invoice on the appellant, would not fall under the category of reverse charge. The renting of immovable property service provided by the Director in his individual capacity as a person would not render 100% liability of service tax on the appellant under reverse charge mechanism as per Serial No.5A of the Table to Notification No.30/2012-ST dated 20.06.2012 as amended;



- (b) The phrase 'services provided by a director' necessarily mean that the services are in relation to those which can be provided only in the capacity of a director and none else. The term 'services by director' is not defined in the service tax law and as such the common understanding of the said phrase has to be considered which would be that the services are in the nature of those activities which can be performed only by the director. In other words, the said phrase refers to 'directorial services' and not any other services rendered in individual capacity. Here, the service of renting of immovable property can be rendered by any person to the company irrespective of the fact that he is a director of the company or not. Thus, the services of renting immovable property are not covered under the phrase 'services provided by a director to the said company';
- (c) The Notification mentions "A director of a company or a body corporate" and does not mention "an individual" which means that the said Notification wanted to cover director post only. So services provided by individual in capacity as director shall be covered under this Notification and service provided by director not in a capacity of director shall not be covered under this Notification and RCM shall not be applicable. For providing renting services one need not be a director of the company;
- (d) As per clarification issued by the Board vide its Circular No.115/9/2009-ST dated 31.07.2009, if Director provide any advise or consultancy for which they are being compensated separately, such services are chargeable in the hands of Director in their personal capacity and not in the capacity of Director, as rendering of such services is beyond the function of Director. Since in this case the renting of immovable property has been rendered by directors as an individual capacity/ or in personal capacity and not as Director of the company, the appellant is not liable to pay service tax under RCM in terms of Notification No.30/2012-ST as amended by Notification No.45/2012-ST;
- (e) The Commissioner (Appeals) Order-in-Appeal No.AHM-EXCUS-003-APP-3-18-19 dated 06.06.2018 passed in the case of M/s Advance Addmine Pvt. Ltd. on identical issue is relied upon;
- (f) The adjudicating authority has not followed the principles of judicial discipline by ignoring the binding judgment of higher authority that too in identical case. They rely on the Hon'ble Gujarat High Court decision in the case of M/s Lubi Industries LLP [2017 (52) STR 95 (Guj.)] in support of their contention;
- (g) If the service tax would have been paid by the appellant under RCM, the same would have been available to them as Cenvat Credit. Hence, the payment of service tax would have been revenue neutral. It has been judicially held that if situation is revenue neutral, it cannot be alleged or held that appellant has intentionally evaded payment of service tax. In such a case, extended period is not invocable. They



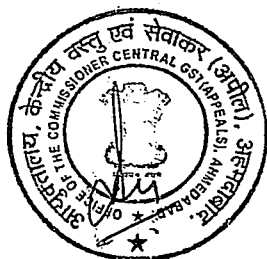
have relied on the case laws in the case of (i) M/s Nirlon Ltd. [2015 (320) ELT 22 (SC)], (ii) M/s Coco Cola India Pvt. Ltd. [2007 (213) ELT 490 (SC)], (iii) M/s Indeos ABS Ltd. [2010 (254) ELT 628 (Guj.)], (iv) M/s Mafatlal Industries Ltd. [2009 (241) ELT 153 (Tri.-Ahmd)], (v) M/s Mahindra and Mahindra Ltd. [2019 (368) ELT 105 (Tri.-Mum.) which is upheld by Hon'ble Supreme Court [2019 (368) ELT A41 (SC)], (vi) M/s Daman Ganga Board Mills Pvt. Ltd. [2012 (276) ELT 532 (Tri.-Ahmd) and (vii) M/s Reclamation Welding Ltd. [2014 (308) ELT 542 (Tri.-Ahmed)] in support of their contention;

(h) It is a totally settled legal position that extended period of limitation by invoking proviso to the main Section for demanding duty or tax beyond the normal period of limitation would be justified only when the assessee knew about the duty liability and still, however, he did not pay the tax and deliberately avoided such payment. Mere failure in giving correct information and failure to pay service tax on account of interpretation of law would not be a case where the Revenue can invoke extended period of limitation. They rely on the decision of Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture Vs. CCE, Chandigarh [2007 (216) ELT 177 (SC)] and in the case of Jaiprakash Industries Ltd. [2002 (146) ELT 481 (SC)] in this regard;

(i) Since the demand of duty is not sustainable either on merit or on limitation, there is no question of any interest and penalty ; and

(j) Penalty under Section 78 of the Finance Act, 1994 is not imposable as the present case is not the case of fraud, suppression, wilful misstatement of facts, etc. No *mens rea* can be attributed to the appellant for mere failure to pay service tax on account of interpretation of law. In this regard, they rely on the case laws in the cases of (i) M/s Uniworth Textile Ltd. [2013 (288) ELT 161 (SC)], (ii) M/s Rajasthan Spinning & Weaving Mills [2009 (238) ELT 3 (SC)], (iii) M/s Cosmic Dye Chemical [1995 (75) ELT 72 (SC)]; (iv) Hindustan Steel Ltd. Vs. State of Orissa [1978 (2) ELT J 159 (SC)]; (v) Gujarat Guarding Ltd. [2016 (46) STR 737 (Tri.-Ahmd)] and (vi) Fascel Ltd.[2017(52)STR434(Tri.-Ahmd)].

3.1 The appellant further vide their letters dated 21.08.2020 and 26.10.2020 made additional submissions in the matter wherein they basically re-iterated the submissions made in the appeal and additionally relied on the Commissioner (Appeals) Order-in-Appeal No.AHM-EXCUS-002-APP-004-2020-21 dated 22.04.2020 in the case of M/s Emtelle India Ltd. and Order-in-Appeal No.AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 in the case of M/s Jay Pumps Pvt. Ltd. and also the Circular No.140/10/2020-GST dated 10.06.2020 issued by the CBIC, in support of their contention.



4. Personal hearing in the matter was held on 11.11.2020. Ms. Kiran Tahelani, Chartered Accountant and Mr. Zalak Sheth, Director appeared on behalf of the appellant for hearing. The Chartered Accountant reiterated the submission made in the appeal memorandum and written submissions dated 21.08.2020 and dated 26.10.2020. They further vide their letter dated 12.11.2020, on the issue as to whether the service tax is paid by directors under forward charge or not, submitted that the total rent received by each director is less than basic exemption limit i.e. Rs.10 lakhs and therefore they are not liable to pay service tax under forward charge.

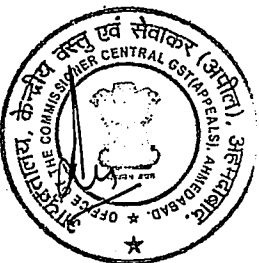
5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum, additional written submissions and oral submissions made at the time of personal hearing. The issue to be decided in the case is as to whether the appellant, as a service recipient, is liable to pay service tax under reverse charge mechanism on the rent amount paid to their Directors in respect of immovable property given on rent to the company in the light of provisions of Rule 2(1)(d)(EE) inserted w.e.f 07.08.2012 read with the provisions of Notification No. 30/2012-ST dated 20.06.2012 as amended, or not.

6. It is observed from case records that the appellant has paid an amount of Rs.85,44,000/- as rent to the Directors of their firm for renting to company the property owned by the Directors. The department has sought to charge these expenditures as services under Section 65B(44) of the Finance Act, 1994 by contending that the Directors, being owners of property, has become service provider and the appellant has become service recipient. As the appellant firm is a body corporate, they become liable to pay service tax in respect of such services under reverse charge mechanism under Rule 2(1)(d) (EE) of the Service Tax Rules, 1994 read with Notification No.30/2012-ST dated 20.06.2012 as amended by Notification No.45/2012-ST dated 07.08.2012 .

7. The legal provisions contained under Section 65B(44) of the Finance Act, 1994 are reproduced below:

"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,— (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or (ii) 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 Constitution; or (iii) a transaction in money or actionable claim;



(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

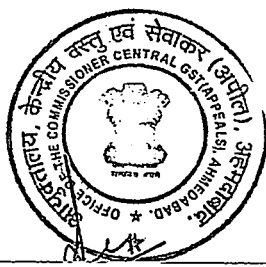
(c) fees taken in any Court or tribunal established under any law for the time being in force.

Further, the legal provisions contained under Rules 2(1)(d)(EE) of the Service Tax Rules, 1994 are reproduced below:

(d) "person liable for paying service tax", - (i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

.....
(EE) in relation to service provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate, the recipient of such service;

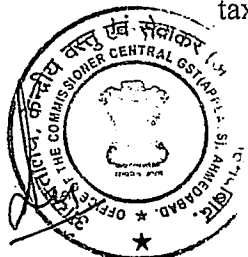
8. At the outset, it is observed that the taxability of the service provided or received in the case viz. the renting of immovable property is not in dispute. The dispute is regarding whether the said service, in the facts of the present case, is taxable at the hands of the service recipient or otherwise. The appellant has contended that the said service was provided by the owner of the property in his individual capacity and not in the capacity of Director of the Company and therefore service provided in personal capacity cannot be considered as service provided in the capacity of Director, to be taxable under RCM at their end. Whereas the adjudicating authority has countered this by viewing that the language used in Rule 2(d)(EE) of the Service Tax Rules, 1994 read with relevant Notification is very clear and it does not make any distinction between the services provided by the Directors in their personal and official capacity. It is observed that the said view of the adjudicating authority does not seem to a fair and correct interpretation as the words used in the Notification are 'by a director of a company to the said company' and not 'by a person who is director of a company'. Therefore, if the director of the company provides a service in some other capacity, the tax liability would be of the director as an individual service provider and it will not be correct to consider the same as a service provided in the capacity of a director of the company to said company. The notification intends to cover the services provided by a Director of the company to said company in the capacity of the director post held by him. Other services performed beyond the function of Director are not covered by the above Notification. The fact which cannot be ignored in the case on hand is that the owner of the property has given his property on rent to the appellant and getting the rent from the appellant being the owner of the property and not being the Director of the appellant. Appellant is also paying the rent to the owner being the owner of the property (who has provided service to the appellant) and not being the Director of the



appellant. It is not the case of the department that the Directors have rented their immovable properties to the company as they were obliged to do so for being appointed as directors of the company. Further, it is a fact that for providing renting services one need not be a director of the company. The department has not brought on record anything which suggest that the impugned renting services received by the appellant from their Directors were received by them in the capacity of Directors of the company. Whereas the appellant has contended that the said services were received by them from their directors as owner of the property and not as a director of the company. They are paying the rent to the person being the owner of the property and not being the Director of the appellant and the Directors is receiving the amount not as remuneration for his services as a director but in his individual capacity of an owner of the property. Such a case, in my view, is not intended to be covered under the reverse charge mechanism in terms of Notification No.30/2012-ST but rather the director, as a service provider, would be liable to discharge the applicable service tax liability, if any.

8.1 Further, it is observed that had the Director of the appellant given his property on rent to some other company, the Director of the appellant would have been held liable to pay the service tax being the owner of the property and being in his individual capacity as service provider. Similarly, if such a renting service is received by the appellant from an individual other than Director, then liability to pay tax, if any, on such service is not on the appellant but on the service provider. This logic 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. Further, I find that the CBEC, in their Circular No.115/9/2009-ST dated 31.07.2009 issued on the subject of Service tax on commission paid to Managing Director / Directors by the company has clarified that *"the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category 'Management Consultancy service'. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax"*. In other words, the service provided by the Director in the personal capacity to the Company, would be payable by the person who rendered such service and not by the company under Reverse Charge Mechanism.

8.2 Under the circumstances, the fair conclusion which can be drawn is that just because the owner of the property is Director of the appellant, the renting service received by the appellant does not become taxable at their end being the service recipient. The rent paid by the appellant company in the present matter, therefore, cannot be charged to service tax under Notification No.30/2012-ST. The liability to pay service tax in the case would lie



8.5 Since the demand of service tax is not sustainable on merits, I am not delving into the aspect of revenue neutrality and limitation raised by the appellant. When the demand fails to survive, there does not arise any question of interest or penalty in the matter.

9. Accordingly, in view of my foregoing discussions, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the appellant.

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

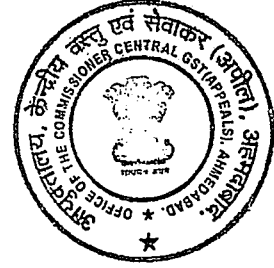
The appeal filed by the appellant stand disposed off in above terms.

(Signature)
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 24.12.2020.

Attested

(Signature)

(Anilkumar P.)
Superintendent (Appeals),
CGST, Ahmedabad.



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2. The Principal Commissioner, CGST & Central Excise, Ahmedabad-South.
3. The Deputy Commissioner, CGST & Central Excise, Division-II, Ahmedabad-South.
4. The Assistant Commissioner (System), CGST HQ, Ahmedabad South.
(for uploading the OIA)
5. Guard file
6. P.A. File

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