



आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलिफैक्स 07926305136



DIN : 20221264SW00001101DD

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2656/2022 / 396H-68

ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-096/2022-23
दिनांक Date : 13-12-2022 जारी करने की तारीख Date of Issue 14.12.2022

आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of OIO No. 02/Supdt./AR-II/Div-I/2021-22 दिनांक: 16.08.2021 passed by The
Superintendent, CGST, AR-II, Division I, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. M/s Prakash Printers & Coaters Pvt Ltd
4/A/2, Jay Ambey Estate,
Near Navneet Prakashan, Sukhramnagar,
Gomtipur, Ahmedabad – 380023
2. M/s Prakash Printers & Coaters Pvt Ltd
Block No. 1027/2, Plot No. 5, Hariom Industrial Park,
Inside Piranha Gate, S.P. Ring Road, Village Palid,
Kankaj

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:

(i) 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 हानिकार खाने 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

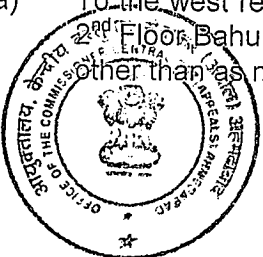
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

- (64) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर 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.

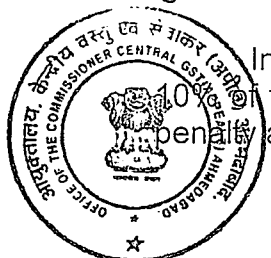
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cxiii) amount determined under Section 11 D;
- (cxiv) amount of erroneous Cenvat Credit taken;
- (cxv) 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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Prakash Printers & Coaters Pvt. Ltd., 4/A/2, Jay Ambey Estate, Near Navneet Prakashan, Sukhramnagar, Gomtipur, Ahmedabad – 380 023 (hereinafter referred to as the appellant) against Order in Original No. 02/Supdt./AR-II/Div-I/2021-22 dated 16.08.2021 [hereinafter referred to as “*impugned order*”] passed by the Superintendent, AR-II, Division – I, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case is that the appellant were holding Central Excise Registration No. AAFCP6814REM001 and engaged in manufacture of goods falling under Chapter 48 of the First Schedule to the Central Excise Tariff Act, 1985. During the course of Audit of the records of the appellant, it was observed that they had paid rent amounting to Rs.33,00,000/- during F.Y. 2013-14 to F.Y.2016-17 to their Directors, which was shown under the Expenditure Head ‘Rent Expenses’. Accordingly, the appellant were issued SCN bearing No. VI/1(b)175/Cir.I/AP-VII/Audit/Ahmd/2017-18 dated 09.10.2018. The said SCN was confirmed vide OIO No. 09/DC/Div-I/MK/2019-20 dated 20.02.2020.

2.1 Renting of immovable property is a ‘declared service’ as per Section 66E(a) of the Finance Act, 1994. In the instant case, the Directors had rented out their building to the appellant, which is for a commercial purpose. Thus, it appeared that the activity of renting of immovable property in the instant case is covered under the ambit of service provided by a Director of the company to the said company and liable to service tax. Further, the appellant i.e. service recipient, is a Private Limited Company registered with the Registrar of Companies under the category of ‘body corporate’, while the service providers are the Directors of the appellant. Thus, in terms of Section 68 of the Finance Act, 1994 read with Rule 2 (d) of the Service Tax Rules, 1994 and Notification No.30/2012-ST dated 20.06.2012, the appellant was liable to pay service tax under reverse charge in respect of Renting of Immovable Property.



2.2 It appeared that the Directors of the appellant have provided service to the appellant and in terms of Rule 2 (d) and 2(d) (EE) of the Service Tax Rules, 1994, in respect of the services provided by the Directors to the appellant, the appellant are liable to pay service tax under reverse charge. The appellant had paid rent totally amounting to Rs.6,00,000/- during the period from April, 2017 to June, 2017. However, the appellant failed to pay the service tax amounting to Rs.90,000/- for the period from April, 2017 to June, 2017.

3. The appellant was, therefore, issued a Show Cause Notice bearing No. AR-II/Div-I/Prakash Printers/2018-19 dated 05.04.2019 wherein it was proposed to :

- a) Recover service tax amounting to Rs.90,000/- under the proviso to Section 73 (1) of the Finance Act, 1994.
- b) Recover Interest under Section 75 of the Finance Act, 1994.
- c) Impose penalty under Section 76 of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order wherein the demand for service tax was confirmed along with interest. Penalty amounting to Rs.9,000/- was imposed under Section 76 of the Finance Act, 1994.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal on the grounds that they are making payment of rent to the Directors for the properties owned by the concerned Directors. These services are in the nature of renting of immovable property and the said service cannot be considered to be provided by the concerned Director in his or her professional capacity. Hence, no service tax liability arises under reverse charge. As per the Classification Rules, the service which gives the most specific description of taxable service should be preferred over service providing a general description. Only the services of the Directors in their professional capacity should be considered under reverse charge.

6. Personal Hearing in the case was held on 18.11.2022. Shri Arpan Shah, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He further argued the case stating that the more specific description of services are under



renting of immovable property and is not subject to reverse charge mechanism. He further stated that he would make a written submission in respect of arguments made during hearing.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and the material available on records. The issue before me for decision is as 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 terms 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. The demand pertains to the period April, 2017 to June, 2017.

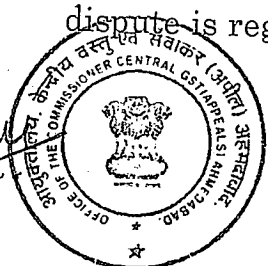
8. It is observed that the appellant has paid an amount of Rs.6,00,000/- during the relevant period as rent to the Directors of their company for renting to company the property owned by the Directors. The department has sought to charge these expenditures as services under Section 65B(44) of the Finance Act, 1994 by contending that the Directors, being owners of property, have become service provider and the appellant has become service recipient. It is also the contention of the department that 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 .

9. The provisions of Rule 2(1)(d)(EE) of the Service Tax Rules, 1994 is 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;*

10. I find that there is no dispute regarding the taxability of the service provided or received in the case viz. the renting of immovable property. The dispute is regarding whether the said service, in the facts of the present case,

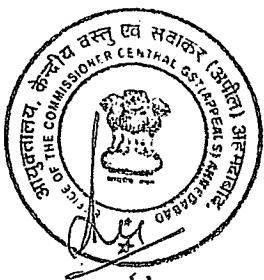


is taxable in the hands of the service recipient or otherwise. It is observed that the said service has been provided by the Directors of the appellant, who are owners of the property, and the service has been provided by them in their capacity as owners of the property and not in the capacity of Directors of the Company. I find that 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 the capacity of landlord, the tax liability would be of the Director as an individual service provider and it would be not be correct to consider the same as a service provided in the capacity of a Director of the company to said company.

10.1 The said notification covers the services provided by a Director of the company to the said company in the capacity of the director. It is an undeniable fact that the Directors in their capacity as owners of the property have given their property on rent to the appellant and are being paid rent by the appellant for being the owners of the property and not for being the Directors of the appellant. It is not the case of the department that the Directors have rented their immovable property 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 suggests that the renting services received by the appellant from their Directors was provided to them in the capacity as Directors of the company. The rent being paid by the appellant was to the owners of the property and not to the Directors of the company. Such a case, in my view, is not covered under the reverse charge mechanism in terms of Notification No.30/2012-ST but rather the Directors, in their individual capacity as a service providers, would be liable to discharge the applicable service tax liability, if any.

11. The issue involved in the present appeal is identical to that decided by this authority in the case of Sheth Insulations Pvt Ltd vide OIA No. AHM-EXCUS-001-APP-61/2020-21 dated 24.12.2020, wherein it was held that :

"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 on the service provider. Hence, the order of adjudicating authority to charge service tax under reverse charge mechanism under Rule 2(1)(d)(EE) of the Service Tax Rules, 1994 and Notification No.30/2012-ST as amended is not legally correct and fails to sustain on merits and requires to be set aside.”

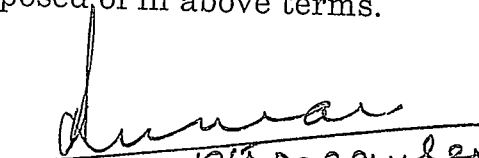
12. I further find that a similar view has been taken by the Commissioner (Appeals), Ahmedabad earlier also in 1) Order-in-Appeal No.AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 in the case of M/s. Jay Pumps Pvt. Ltd.; 2) Order-In-Appeal No. AHM-CXCUS-003-APP-003-18-18 dated 27.04.2018 in the case of M/s Advance Addmine Pvt Ltd.; and 3) Order-in-Appeal No. AHM-EXCUS-002-APP-004-2020-21 dated 22.04.2020 in the case of M/s Emtelle India Ltd.

13. In view of the facts discussed herein above, I hold that appellant are not liable to pay service tax under reverse charge on the rent amount paid to their Directors in respect of immovable property given on rent to the company. When the demand fails to survive, there does not arise any question of interest or penalty in the matter.


14. Accordingly, the impugned order is set aside for not being legal and proper and the appeal filed by the appellant is allowed.

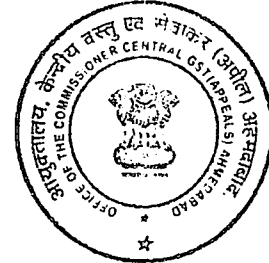
15. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 13.12.2022.

Attested:


 (N.Suryanarayanan. Iyer)
 Superintendent(Appeals),
 CGST, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Prakash Printers & Coaters Pvt. Ltd.,
 4/A/2, Jay Ambey Estate,
 Near Navneet Prakashan,
 Sukhramnagar, Gomtipur,

Appellant

Ahmedabad – 380 023

The Superintendent,
AR-II, Division- I, CGST,
Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
4. Guard File.
5. P.A. File.

