

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज भवन, सातवीं मंजिल, पोलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद— 380015.

क फाइल संख्या : File No : V2(ST)039/A-II/2016-17 / 4566-70
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-186-16-17
दिनांक Date : 22.12.2016 जारी करने की तारीख Date of Issue 23/01/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

On file

ग _____ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं _____

_____ दिनांक : _____ से सृजित

Arising out of Order-in-Original No SD-05/20/DKJ/AC/2015-6 Dated 26.02.2016

Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Poggen-Amp Nagarsheth Powertronics Ltd Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

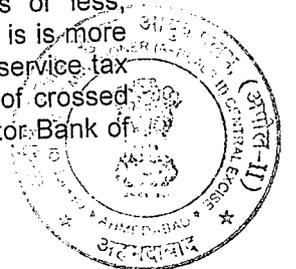
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की धारा 1 पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34 के अंतर्गत वित्तीय (संख्या-2) अधिनियम 2014 (2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Central Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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

M/s. Poggen Amp Nagarsheth Powertronics Ltd., C-1/B-4402, Phase- IV, GIDC, Vatva, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original No. SD-05/20/DKJ/AC/2015-16 dated 26.02.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Div-V, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case are that the appellants are engaged in providing service under the category of "Business & Exhibition Service, Advertising Agency Service, Business Auxiliary Services and Banking & Financial Services". However, the appellants failed to obtain required Service Tax registration. During the course of audit and on verification of ledger following points were taken;

(i) The overseas banks had deducted certain charges in foreign currency related to the remittances received in the cases of export. An amount of ₹ 30,944/- was demanded from them as Service Tax under Reverse Charge Mechanism.

(ii) It was noticed that the appellants had received taxable service under the category of Business & Exhibition Service from overseas agents. An amount of ₹ 2,86,977/- was demanded from them as Service Tax under Reverse Charge Mechanism.

(iii) It was further noticed that the appellants had received taxable service under the category of Advertising Agency Service from overseas agents. An amount of ₹ 14,624/- was demanded from them as Service Tax under Reverse Charge Mechanism.

(iv) On verification of their ledger, it was seen that they had entered into contract with an overseas company and paid sales commission to overseas sales commission agent in foreign currency. An amount of ₹ 18,129/- was demanded from them as Service Tax under Reverse Charge Mechanism.

(v) During the course of audit, it was further seen that they had taken Cenvat credit of ₹ 5,912/- and ₹ 9,197/- on bills/invoices pertaining to other units. On being pointed out, they agreed and reversed the above said amounts but did not pay interest of ₹ 849/- and ₹ 1,012/- on the above said amounts.



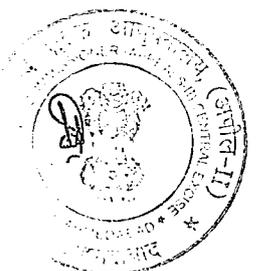
Accordingly a show cause notice was issued to the appellants demanding Service tax amount of ₹ 30,944/-, ₹ 2,86,977/-, ₹ 14,624/- and ₹ 18,129/- along with appropriate interest and penalty and the then Deputy Commissioner, Service Tax, Div-I, Ahmedabad, vide OIO number SD-01/30/DC/Poggen AMP/12-13 dated 13.03.2013, confirmed the demand of Service Tax of the above amounts under Section 73 of the Finance Act, 1994 and ordered the recovery of interest under Section 75 of the Act. He also imposed penalties under Sections 76, 77 and 78 of the Act. He also confirmed the interest of ₹ 849/- and ₹ 1,012/- on wrongly availed Cenvat credit under the provision of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 75 of the Finance Act, 1994.

3. Being aggrieved with the said order, the appellants preferred an appeal before the then Commissioner (Appeals-IV) who, vide Order-In-Appeal number AHM-SVTAX-000-APP-342-13-14 dated 03.02.2014, confirmed the amount of ₹ 30,944/- and dropped the demand of interest of ₹ 849/- and ₹ 1,012/-. For rest of the issues, he remanded back the case to the Deputy Commissioner, Service Tax, Div-I, Ahmedabad to decide afresh.

4. Being aggrieved with the said OIA, the appellants filed an appeal before the Hon'ble CESTAT, West Zonal Bench, Ahmedabad. The Hon'ble CESTAT, vide order number A/11109/2014 dated 18.06.2014, remanded the matter to the original adjudicating authority with direction to decide the case in the light of the trade notice issued by the Bombay Commissionerate dated 10.02.2013.

5. The case went back to the adjudicating authority who, vide the impugned order dropped the amounts of ₹ 30,944/- (in light of the Trade Notice number 20/2013-14-ST-I dated 10.02.2013) and ₹ 18,129/-. However, he confirmed the amounts of ₹ 2,86,977/- and ₹ 14,624/- under Section 73(1) of the Finance Act, 1994 along with appropriate interest under Section 75 of the Finance Act, 1994 and penalty under Sections 76 (up to 10.05.2008), 77 and 78 of the Finance Act, 1994.

6. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that the impugned order is incorrect and not tenable. The Business exhibition category is covered under Section 65(105)(zoo). Under the Import of



Service Rules, the category is covered on performance base and since the performance is out of India, no tax can be demanded. Regarding the issue of demand under Advertising category, they stated that tax would have been payable if the advertisement was published in India. In this case, as the advertisement was published out of India, the service was performed outside India and hence, no tax is payable in India. Regarding the issue of wrong availment of Cenvat credit, the appellants stated that the appellants are registered manufacturer and therefore, when the credit is availed as manufacturer, the authority to verify and raise demand is vested with the jurisdictional Central Excise officer. Since the adjudicating authority is not the jurisdictional officer, he has no authority to raise any demand and once the demand cannot be confirmed, the interest thereon also cannot be confirmed.

7. Personal hearing in the matter was granted and held on 17.11.2016. Shri S. J. Vyas, Advocate, appeared on behalf of the appellants for hearing and reiterated the contents of appeal memorandum. He stated that two demands are revenue neutral and credit cannot be denied at their end.

8. I have carefully gone through the impugned order, appeal memorandum and oral submission made at the time of personal hearing. I find that the present case revolves around the issue of non-payment of Service Tax under Reverse Charge Mechanism.

9. Now, I find the issue is of non-payment of Service Tax under Reverse Charge Mechanism amounting to ₹ 2,86,977/- and ₹ 14,624/- under the categories of 'Business & Exhibition Service' and 'Advertising agency Services' respectively. This is basically a case where the said services have been provided by the overseas agents and availed by the appellants who is based in India. Section 66A of the Finance Act, 1994 read with the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (hereinafter referred as Import of Services Rules) provide criteria for taxation of services imported in India. Accordingly, a service shall be taxable under the provisions of Section 66A, if:

- (a) Provider of service is based outside India
- (b) Recipient of service is based in India
- (c) Service qualifies as import under Import Rules



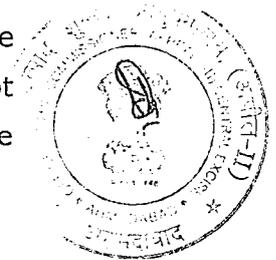
(a) Provider of service is based outside India: Such service is provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India; and

(b) Recipient of service is based in India: Such service is received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India.

Thus, for the purpose of determining import scenario, the location of service provider and service recipient is the key factor and not where the service has been provided.

Further, place of provision of service is the place where business establishment directly concerned with the provision of service is located. In case the provider of the service has his business establishment both in the country from where service is provided and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided. If a service provider has business establishments in many countries, say in Japan, Australia and India, the place of provision of such service would be the place from where the service is provided. For example, if service is provided from the business establishment in Japan, the place of provision of service is Japan; if service is provided from the business establishment in Australia, the place of provision of service is Australia; if service is provided from the business establishment in India, the place of provision of service is India.

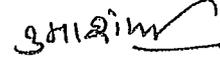
A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country. Thus, according to the above, Service Tax under complete Reverse Charge Mechanism is applicable where services provided by any person located in a non-taxable territory and received by any person located in the taxable territory. In the present case, the appellants are based in the taxable territory of India and have availed the services of the agents located in the overseas and in this type of scenario, the location of service provider and service recipient is the key factor. In view of the above, I do not accept the argument of the appellants that they are not liable for any tax as the service was provided abroad outside the taxable territory of India.



10. As per the above discussion, I do not find any reason to interfere in the impugned orders and reject the appeals filed by the appellants.

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

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

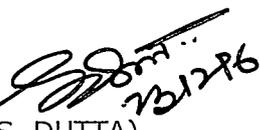


(उमा शंकर)

आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED


13/12/16
(S. DUTTA)

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD

To,
M/s. Poggen-Amp Nagarsheth Powertronics Ltd.,
C-1/B-4402, Phase- IV, GIDC, Vatva,
Ahmedabad- 382 445.

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad.
- 3) The Dy./Asst. Commissioner, Service Tax, Division-V, Ahmedabad.
- 4) The Asst. Commissioner (System), Service Tax Hq, Ahmedabad.
- 5) Guard File.
- 6) P. A. File.



