

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

क फाइल संख्या : File No : V2(ST)043/A-II/2016-17 & V2(ST)166/A-II/2016-17 139 to 144

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-203-204-16-17

दिनांक Date : 23.01.2017 जारी करने की तारीख Date of Issue 13/02/17

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

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं

\_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No SD-02/30/AC/2015-16 Dated 28.01.2016 & SD-02/14/AC/2016-17

Dated 28.09.2016 Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. Hazira Port Pvt 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 :-

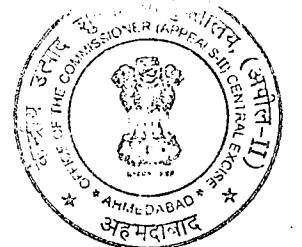
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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 accompany ed 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 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.

*copy*



(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 शर्तों 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय (संख्या-2) अधिनियम 2014 (2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमाकरना अनिवार्य है, बशर्त 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 बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

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 Cenvat 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.

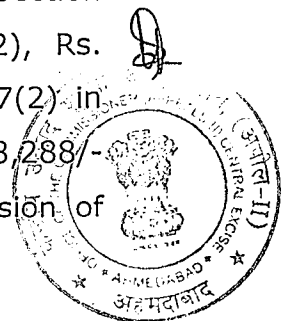


**ORDER IN APPEAL**

M/s. Hazira Port Private Ltd., 101-103, Abhijeet- II, Mithakhali Circle, Elisbridge, Ahmedabad- 380 006 (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number SD-02/30/AC/2015-16 dated 28.01.2016 and SD-02/14/AC/2016-17 dated 20.09.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Asst.Commissioner, Service Tax Div-II, APM Mall, Satellite, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, appellant has incurred expenditure of Rs. 12,80,643/- and Rs. 10,54,392/- in foreign currency in FY 2013-14 and 2014-15 respectively vide M/s Shell Inti. Exploration & Production BV, Netherlad`s Invoice No. 6566039548 dated 24.07.2013 and No. 6566047328 dated 31.07.2014 respectively for alleged brokerage service in purchase of securities (Performance Share Plan). Appellant contended that said foreign remittance is not for brokerage service but it is for purchase of securities which is goods under section 65B(25) read with section 65B(43) of the FA, 1994, therefore they are not liable for service tax. It further contended that said expense is accounted under head salaries in their books of A/c. Further it is argued by appellant that even if payment is considered as brokerage ,as alleged in SCN, then also tax is not payable as transaction is in nature of "intermediary service" which is covered under rule 9(c) of 3 of Place of Provision of Service Rule 2012 (POPSR- 2012 in short). Resorting to rule 9(c) of 3 of POPSR- 2012, appellant argued that place of provision of service is in non taxable territory hence appellant is not liable for tax. Adjudicating authority concluding said service as Business auxiliary service which is not covered under intermediary service and resorting to rule 3 of POPSR- 2012, ordered that appellant are liable for tax under section 68(2) of CEA, 1994 read with rule 2(1)(d) of Service Tax Rules, 1944.

3. Purchase of securities of not taxable but appellant failed to provide any evidence to establish it, therefore Adjudicating Authority considering said expense as "service expense", vide impugned OIO`s dated 28.01.2016 and 20.09.2016 confirmed demand of Rs. 1,58,288/- and Rs.1,30,323/- respectively, under section 73(1) of FA 94 along with interest under Section 75 and also imposed penalty of Rs. 10,000/-under Section 77(2), Rs. 10,000/- under 77(1) and penalty of Rs. 10,000/- under section 77(2) in each OIO for both FY 2013-14 and 2014-15. Equal penalty of Rs. 1,58,288/- and Rs.1,30,323/- in respective OIO under section 78 for suppression of



facts was imposed on appellant for both FY 2013-14 and 2014-15. Penalty of Rs. NIL and Rs. 1,303/- was imposed under section 76 in OIO's dated 28.01.2016 and 20.09.2016 respectively.

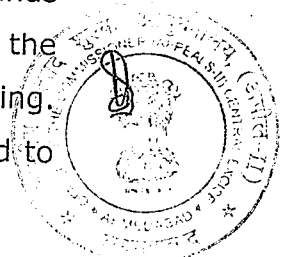
4. Being aggrieved with the impugned order, the appellants preferred an appeal on 29.04.2016 for OIO dated 28.01.2016 and on 27.10.2016 for OIO dated 20.09.2016 before the Commissioner (Appeals-II) wherein it is contended that-

- I. Royal Dutch Shell (RDS) coordinates the performance share plan (PSP), wherein employee are awarded conditional share base on their performance and value. PSP cost are then recharged to the respective companies through the Business Service Companies/Group service Companies i.e shell International Exploration & Production B.V. (SIEP BV). SIEP BV has raised invoices (supra) to appellant. Charges paid by appellant are under cost environment and neither RDS nor SIEP BV charged any mark up over and above their cost.
- II. As per section 65B(25) of FA , 1994 securities are goods.
- III. Even if the transaction is treated as "service" then also the services are provided by the intermediary and such intermediary is situated outside India. The services are not imported to India in any case. The place of provision of service (i.e rendering of service) is out side taxable territory in terms of rule 9 of Place of Provision of Service Rule 2012 (POPSR- 2012 in short). Therefore it is not import of service hence appellant are liable for tax under section 68(2) of CEA, 1994 read with rule 2(1)(d) of Service Tax Rules, 1944.

5. Personal hearing in the both appeal case was granted on 21.12.2016. Shri Jigar Shah, Advocate and Shri Jagrut Shah, Executive Taxation appeared before me and reiterated the grounds of appeal. They submitted ITR to show that the concern amount is taken as income for the employees.

#### DISUSSION AND FINDINGS

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants ITR (FORM No. 3CEB) submitted at the time of personal hearing. Sort question to be decided is as to whether or not transaction is related to service or securities.

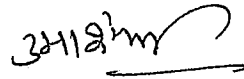


7. I find that expenditure made towards purchase of securities are not liable service tax as securities are goods as per section 65B(25) of FA , 1994. Adjudicating authority has stated in impugned OIO that appellant has not produced any evidence that said expense is towards securities. I have perused FORM No. 3CEB submitted which is Report from for an accountant to be furnished under section 92E relating to international transaction(s) and specified domestic transaction(s). Part B of form running from sr. No. 10 to 25, requires the taxpayer to provide the details of the international transactions entered into during the Financial Year. At sr.No. 19, expenditure transaction made to M/s Shell Inti. Exploration & Production BV, Netherlad of Rs. 12,80,643/- and Rs. 10,54,392/- in foreign currency in FY 2013-14 and 2014-15 respectively is recorded under head "reimbursement of salary expenses". Securities are gifted to their employee as their performance; therefore it is part of salaries. In view of above I hold that expense incurred is for purchase of securities and securities being goods, said expense is not liable for payment of service tax on it. Consequently all penalties imposed are not sustainable and imposable.

8. In view of above, I set aside impugned OIO`s dated 28.01.2016 and 29.01.2016. Consequently appeal filed by the appellants is allowed.

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

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



(उमा शंकर)

आयुक्त (अपील्स - II)

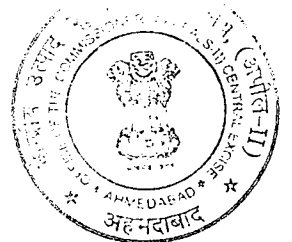
ATTESTED

  
(R.R. PATEL)

SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.

To,

M/s. Hazira Port Private Ltd.,  
101-103, Abhijeet- II, Mithakhali Circle,  
Elisbridge, Ahmedabad- 380 006



**Copy to:**

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax ,Ahmedabad-.
- 3) The Additional Commissioner, Service Tax, Ahmedabad
- 4) The Asst. Commr, Service Tax Div-II, APM mall, Satellite, Ahmedabad.
- 5) The Asst. Commissioner(System), C.Ex. Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.

