

(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 भेजी 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 34 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो कि वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निर्धारित की गई पूर्व-राशि जमा करना 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 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 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.

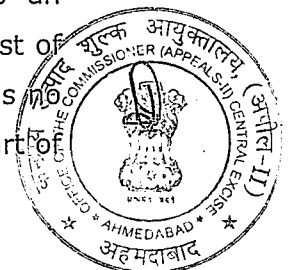


ORDER-IN-APPEAL

M/s. N. J. Devani Builders Pvt. Ltd., B/h Ishwar Bhuvan, Navrangpura, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against the Order-in-Original number SD-02/33/AC/2015-16 dated 29.02.2016 (*hereinafter referred to as 'the impugned order'*) passed by the Assistant Commissioner, Service Tax, Div-II, Ahmedabad (*hereinafter referred to as 'the adjudicating authority'*).

2. The facts of the case are that the appellants are engaged in providing services under the categories of "Work Contract service and transport of Goods" and were registered with Service Tax Department having Service Tax Registration number AAACN4952DST001. During the course of audit for the period from 2010-11 to 2012-13, it was noticed that the appellants had provided taxable service in relation to work contract to M/s. Gujarat JHM Hotel, Surat. It was further noticed that the appellants had received ₹10,43,486/- during 2010-11 and ₹10,23,248/- during 2011-12 from M/s. Gujarat JHM Hotel, Surat through issued RA bills towards supply and consumption of diesel while providing the work contract service but they have not paid Service Tax on such amount. Therefore, a show cause notice dated 29.09.2015 was issued to them which was decided against the appellants vide the impugned order issued by the adjudicating authority. The adjudicating authority confirmed the demand of Service Tax amounting to ₹85,149/- short paid by the appellants under Section 73 of the Finance Act, 1994 read with Section 68 of the Act *ibid*. The adjudicating authority also ordered for recovery of interest under Section 75 of the Finance Act and imposed penalty under Sections 77 and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that they had issued 19 bills for the works contract of civil construction. The said bills showed the value of the work contract was ₹10,70,04,075/- involving Service Tax liability of ₹44,08,568/-. Those 19 bills had been in accordance with the Articles of Agreement dated 17.11.2009 and appropriate Service Tax was discharged accordingly. However, for diesel, a separate set of 9 bills was issued by the appellants which indicated that supply of diesel was not a part of the works contract but was an independent activity that the appellants indulged in because of request of M/s. Gujarat JHM Hotel, Surat. They further contended that there was evidence on record of the case showing that supply of diesel was a part of

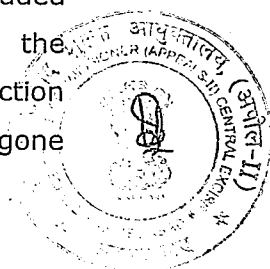


the works order. In support of their claim, they have submitted before me a certificate received from B. H. Mangarolia & Co., Chartered Accountants stating that the appellants had supplied diesel to M/s. Gujarat JHM Hotel, Surat which was not part of the works contract. The appellants also submitted, before me, a letter (certificate) received from M/s. Gujarat JHM Hotel, Surat declaring that the diesel supplied by the appellants had no connection with the bills and payments for works contract service undertaken by the appellants.

4. Personal hearing in the matter was granted and held on 06.12.2016. Smt. Shilpa P. Dave, Advocate, appeared on behalf of the appellants for hearing and reiterated the contents of appeal memorandum.

5. I have carefully gone through the impugned order, appeal memorandum as well as oral submission made at the time of personal hearing. Now I will examine the issue on the basis of available documents and contention of the appellants submitted before me.

6. I find that the adjudicating authority has confirmed the demand on the basis of the conjecture that the transaction of diesel between the appellants and M/s. Gujarat JHM Hotel, Surat was part of the works contract. In this regard, the appellants have submitted copies of the ledgers of M/s. Gujarat JHM Hotel, Surat for the periods of 2010-11 and 2011-12. The said ledgers very clearly show two separate entries of contract receipts and power and fuel expenses. Regarding the allegation tendered by the adjudicating authority that the D. G. set diesel bills produced by the appellants refer the details of the contract undergone by the appellants, I am of the view that this is not enough evidence to conclude that the said diesel transaction was part of the works contract. In fact, the appellants have submitted certificate received from B. H. Mangarolia & Co., Chartered Accountants, stating that the appellants had supplied diesel to M/s. Gujarat JHM Hotel, Surat which was not part of the works contract. Moreover, the appellants also submitted a letter (certificate) received from M/s. Gujarat JHM Hotel, Surat declaring that the diesel supplied by the appellants had no connection with the bills and payments for works contract service undertaken by the appellants. There is no reference of these two certificates in the impugned order. In paragraph 11.10 of the impugned order, the adjudicating authority has commented that the appellants had failed to prove that it was only traded goods. But after looking at the two certificates, I do not think the appellants need any other proof to substantiate that the said transaction was mere trading and had no connection to the works contract undergone

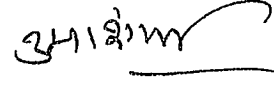


by them.

7. In view of my foregoing conclusions, I set aside the impugned order and allow the appeal in above terms.

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

8. The appeal filed by the appellants stands disposed off in above terms.


(उमा शंकर)

आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(S. DUTTA) 220989

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD

To,

M/s. N. J. Devani Builders Pvt. Ltd.,
B/h Ishwar Bhuvan, Navrangpura,
Ahmedabad-380 009

Copy to:

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



