

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)0160/A-II/2016-17 ¹⁴³⁵/₁₄₄₀
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-268-16-17
दिनांक Date : 28.03.2017 जारी करने की तारीख Date of Issue 7/4/17

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 AHM-SVTAX-000-ADC-012-16-17 Dated 24.08.2016 Issued
by **ADC STC, Service Tax, Ahmedabad**

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants
M/s. Arvind 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 :-

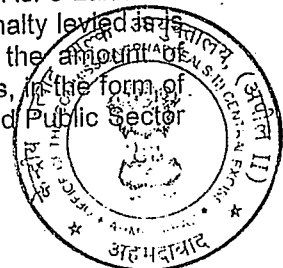
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेघाणी 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 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 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, 1994 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो कि 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, 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 है -

- (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 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 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 IN APPEAL

M/s. Arvind Ltd. , Naroda, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number SVTAX-000-ADC-12-2016-17 dated 24.08.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Additional Commissioner, Service Tax, HQ Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

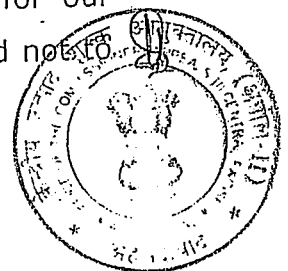
2. The facts of the case, in brief, are that the appellants holding Service Tax registration number AABC A2398D ST001 had executed works contracts service [section 65(105)(zzzza)] of laying, jointing, testing and commissioning of RCC sewage pipe line system of M/s Rajasthan Urban Infra and Development Corporation Limited, Jaipur for Rs. 7,02,16,422 (RA Bill 1 to 8) during financial year 2011-12 out of which appellant have not paid service tax on 1,99,26,726/- in respect RA Bill 7 and 8 raised for period 01.04.2012 to 08.06.2012 claiming exemption under Circular No. 116/20/2009-ST dated 15.09.2009. SCN dated 09.05.2014 for recovery of service tax of Rs. 19,97,950/- not paid on RA Bill 7 and 8 under said works contract.

3. Adjudicating Authority holding said contract to be used for commercial activity, vide impugned OIO confirmed the whole demand under Section 73(1) of CEA, 1944 and ordered to recover with interest under Section 75 of CEA, 1944. Also imposed Rs. 1,99,795/- penalty under section 76.

4. Being aggrieved with the impugned order the appellants preferred an appeal on 17.10.2016 before the Commissioner (Appeals-II) wherein it is contended that-

I. Impugned contract is covered under clause (b) of explanation (ii) provided under definition of "works contract" which reads that such contract is for carrying out ...*"construction of new building or a civil structure or a part thereof, or of a pipeline or conduits, primarily for the purpose of commerce or a part thereof."*

II. The definition of commerce or industrial purpose, relevant for our purpose has to be applied to the project of laying pipeline and not to



the service provider or service recipient. Para 6.7 to 6.10 of the impugned OIO, giving application term "commerce" is incorrect.

5. Personal hearing in the case was granted on 13.01.2017. Shri S. J. Vyas, advocate appeared before me and reiterated the ground of appeal. He stated that their work was not for commercial purpose and they are not covered under works contract definition.

DISCUSSION 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 at the time of personal hearing. Sort question to be decided is as to whether or not works contract executed in respect of RA Bill 7 and 8 is taxable.

7. The definition of works contract under Section 65(105)(zzzza) is as under-

"Taxable service" means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

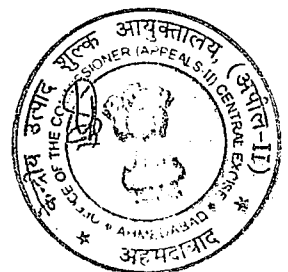
Explanation. — For the purposes of this sub-clause, "works contract" means a contract wherein, —

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out, —

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit,



primarily for the **purposes of commerce or industry**; or

(c) Construction of a new residential complex or a part thereof; or

(d) Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects".

8. I find that as per definition of works contract service tax is payable if works contract executed is for commerce. I find that adjudication authority has interpreted the word "commerce" in his own way which is not proper.

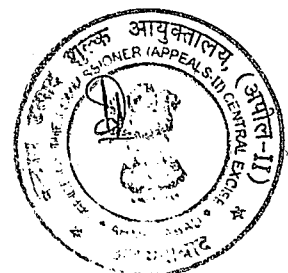
○ Adjudicating authority or any judicial authority can not read anything into statutory provisions or stipulated condition which is plain and unambiguous. It is well establish dictum that Courts can not add words to statute or read words into it which are not there. In a catena of judgments the Apex court has ruled that "Enlarging scope of legislation or legislative intention is not the duty of Court when language of provision is plain - Court cannot rewrite legislation as it has no power to legislate..."

DHARAMENDRA TEXTILE PROCESSORS 2008 (231) E.L.T. 3 (S.C.)

○ Interpretation of statutes - Principles therefore - Court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous - A statute is an edict of the legislature - Language employed in statute is determinative factor of legislative intent.

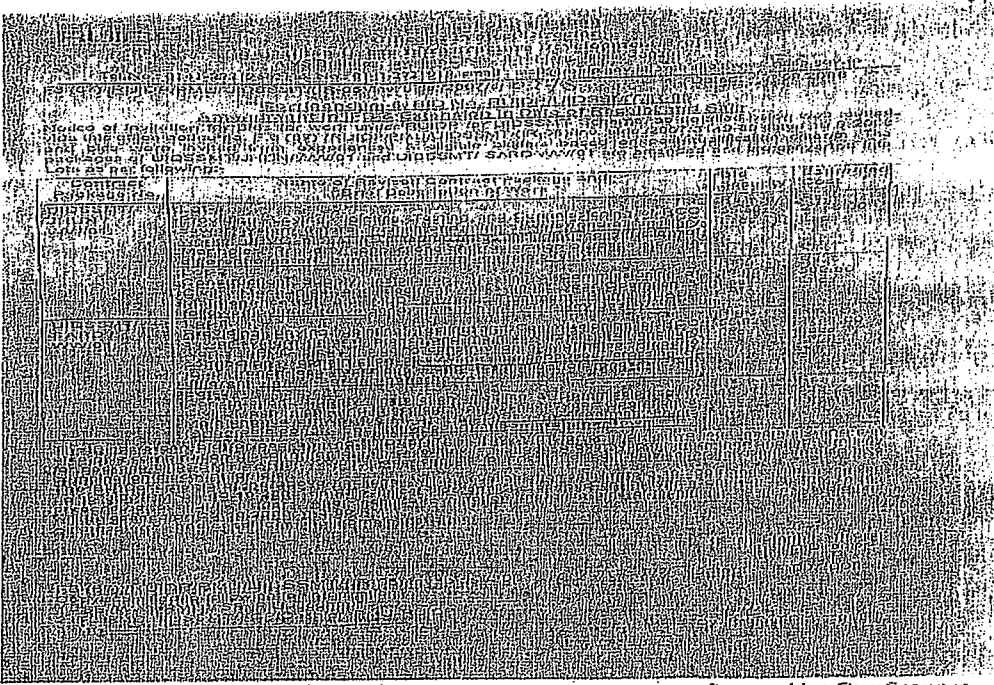
PARMESHWARAN SUBRAMANI 2009 (242) E.L.T. 162 (S.C.)

Interpretation of statutes - Legislative intention - No scope for court to undertake exercise to read something into provisions which the legislature in its wisdom consciously omitted - Intention of legislature to be gathered from language used where the language is clear - Enlarging scope of legislation or legislative intention not the duty of Court when language of provision is plain - Court cannot rewrite legislation as it has no power to legislate - Courts cannot add words to a statute or read words into it which are not there - Court cannot correct or make assumed deficiency when words are clear and unambiguous - Courts to decide what the law is and not what it should be -



Courts to adopt construction which will carry out obvious intention of legislature.

9. In this case, I find that work executed is of sewage line and effluent treatment plant of town Sardarshan of Rajasthan State and it is under Center sponsored project UIDSSMT scheme executed by Rajasthan Urban Development Department. A sewage line or sewage treatment plant is never a commercial concern and such facilities are no where used for commercial purpose. Therefore, the words used in the definition ibid "Civil structure.....primarily for the purpose of commerce....." does not get fulfilled in this case and takes it out of the definition under section 65(105)(zzzza) ibid. Project tender documents produced before me are sufficient enough to establish the said work is of Government and non Commercial. Tender reads as below



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10. In view of above, appeal filed by the appellants is allowed.
11. The appeals filed by the appellant stand disposed off in above terms.
11. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED

R.R. Patel
(R.R. PATEL)
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.



To,
M/s. Arvind Ltd.,
Naroda, Ahmedabad

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. Commissioner, Service Tax Div-VI, APM mall, Satellite, Ahmedabad.
- 5) The Asst. Commissioner(System), Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.



