



S सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

कर भवन,

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015

GST Building, 7th Floor,
Near Polytechnic,
Ambavadi, Ahmedabad-
380015



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क फाइल संख्या : File No : **V2(SAS)11/AHD-III/2017-18 /10787**
ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0158-17-18**
दिनांक Date : **30.11.2017** जारी करने की तारीख Date of Issue: **15-12-17**

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
GNR-STX-DEM-DC-14/2017 दिनांक : **21.03.2017** से सृजित

Arising out of Order-in-Original: **GNR-STX-DEM-DC-14/2017**, Date: **21.03.2017** Issued
by: Assistant Commissioner, Service Tax, Div:Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Kiristsinh Setansinh Chauhan

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 :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

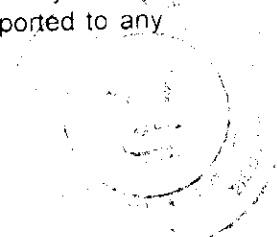
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid .

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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.

(ख) 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।

(b) 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.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध 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।

(d) 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 भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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 हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- ण0बी/35-इ के अंतर्गत:-

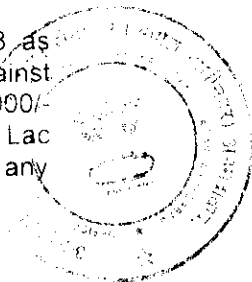
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में सबध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 उपयुक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी 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 Appellant 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय 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 bear 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.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या-29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 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 रूपए 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 बशर्ते 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।

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.

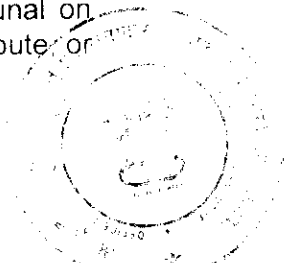
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

(6)(i) 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।

(6)(i) 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."

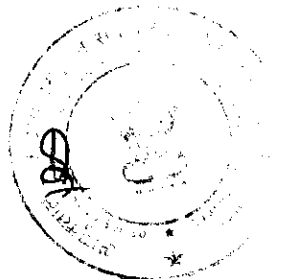


ORDER-IN-APPEAL

M/s. Kiritsinh Setansinh Chauhan, 50, Janakpuri Society, Nr. Gokulnagar Crossing, Himmatnagar, Sabarkantha (*hereinafter referred to as 'appellant'*) has filed the present appeal against Order-in-Original number GNR-STX-DEM-DC-14/2017 dated 21.03.2017 (*hereinafter referred to as 'impugned order'*) passed by the then Assistant Commissioner, Service Tax, Gandhinagar Division, Ahmedabad-III (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant is engaged in providing the service of 'Manpower Recruitment & Supply Agency' and is holding Service Tax Registration number AEOPC2606LSD001 from 07.03.2011. On the basis of inquiry, it was noticed that the appellant supplied unskilled labourer/ worker to M/s. Sabarkantha District Co-op Milk producers Union Ltd. (*hereinafter referred to as 'M/s. Sabar Dairy'*). During the course of further inquiry, it was noticed that the appellant had started providing services to M/s. Sabar Dairy from the year 2010-11 however, it was verified that he failed to pay Service Tax on the income received in exchange of the services provided. It was further noticed that the appellants had provided services to some body corporate for the period 2011-12 to 2014-15. It was seen that the appellants failed to pay Service Tax in those fields too. Accordingly, a show cause notice dated 19.10.2015, was issued to the appellant which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed Service Tax of ₹12,29,337/- under Section 73 of the Finance Act, 1994. He also ordered for the recovery of interest under Section 75 of the Finance Act, 1994 and imposed penalty of ₹10,000/- each under Sections 77(1)(a) and 77(2) of the Finance Act, 1994 and ordered to recover late fee specified under Rule 7C of Service Tax Rule, 1994. He also imposed penalty of ₹12,29,337/- under Section 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant filed the present appeal. The appellant stated that he denies all allegations imposed vide the impugned order. The appellant further argued that he was supplying labours for the execution of specific work of cleaning cans at the Dhansura Sheet Kendra and the said service was not covered under Service Tax liability under the provision of Finance Act. Further, the appellant stated that the adjudicating authority has erred by demanding Service Tax on the services provided by him to M/s. Gujarat State Seeds Corporation Ltd., Gujarat Water Supply & Sewerage Board, District Training Centre and District Employment Education Centre. He further stated that the show cause notice has invoked extended period of limitation alleging that the appellant has suppressed the information from the department. But there is no suppression or willful wrong statement on the part of the appellant. He has further urged that penalties



under Section 77(1)(a), 77(2) and 78 of the Finance Act, 1994 cannot be imposed in the present case.

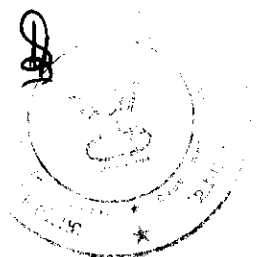
4. Personal hearing in the case was granted on 16.11.2017 wherein Shri Ajit P Sandesara, Chartered Accountant, on behalf of the appellant appeared before me and reiterated the contents of appeal memorandum. He sought 2 days time to submit the copy of contract which he submitted on due course.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellant and oral and written submission made at the time of personal hearing.

6. Now, I take the contention of the appellant pertaining to whether the appellant was actually engaged in the service of manpower supply or carrying job work. In this regard I agree with the adjudicating authority that the appellant was involved in a contractual work with M/s. Sabar Dairy. The appellant's contention that they were having a relation under principal to principal basis with M/s. Sabar Dairy is not supported by any documentary evidence. Simply stating that they were not a labour supplier but doing specific work at site does not suffice the purpose of the appellants and it seems to be a mere afterthought on their part. The various conditions, mentioned in the contract, are very clear to emphasize the fact they are liable for payment of Service Tax. From condition number 4 to 21, it is very clear that all the liabilities regarding salary, bonus, uniform etc. were to be borne by the appellants (being the labour contractor). In condition number 47, M/s. Sabar Dairy directs the appellants to collect Service Tax from the former and pay the same. The appellants were bound by the contract to produce the challans as proof of payment. This is enough to conclude that the appellants were liable to pay Service Tax which they failed to do. In this regard, I proclaim that the adjudicating authority has rightly confirmed the demand of Service Tax pertaining to the services provided to M/s. Sabar Dairy.

7. Regarding their second argument that the adjudicating authority has erred by demanding Service Tax on the services provided by him to M/s. Gujarat State Seeds Corporation Ltd., Gujarat Water Supply & Sewerage Board, District Training Centre and District Employment Education Centre, I find that the activities performed by the appellant, are 100% exempted vide Mega Exemption Notification number 25/2012-ST dated 20.06.2012. I have produced a table below quoting concerned services as mentioned in the above said notification;

S. No.	Service	Service Provider	Service Receiver
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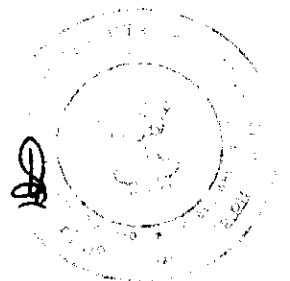


8	Training or coaching in recreation activities related to Arts/Culture/Sports.	Any person	Any person
9	1.Transportation of students/faculty/staff. 2.Catering including mid-day meals scheme sponsored by the government. 3.Security/Cleaning/House-keeping in educational institution. 4.Related to admission to educational institution or conduct of examination by educational institution.	Any person	Educational institution means any institution providing – 1. Pre-education and education up to higher secondary school. 2. Education as a part of a curriculum for obtaining a qualification recognized by Indian law. 3. Education as a part of an approved vocational education course.
25	Water supply/Public health/Sanitation conservancy/solid waste management/slum improvement & up-gradation.	Any person	Govt./Local authority/governmental authority.
30	Carrying out an intermediate production process as job-work in relation to- 1. Agriculture, printing, textile processing.	Any person	Any person

As per the above, I find that the services offered by the appellant to M/s. Gujarat State Seeds Corporation Ltd., Gujarat Water Supply & Sewerage Board, District Training Centre and District Employment Education Centre, are exempted vide the Mega Exemption Notification. Therefore, I set aside the impugned order upto this extent only.

8. Further, regarding his argument that no suppression can be invoked, I would like to quote the judgement of Hon'ble CESTAT, Mumbai in the case of M/s. Daichi Karkaria Ltd. vs. CCE, Pune-I where the Hon'ble CESTAT, Mumbai proclaimed that;

"...if some information is available in various reports and returns which are to be formulated in compliance to other statutes, it does not lead to a conclusion that the utilization of credit for the activity of renting is known to the Department. The Department is not supposed to know each



and every declaration made outside the Central Excise and Service Tax law. Even if the Financial Report is available to the audit, the same is meaningless in the sense that it does not indicate that input Service Tax credit utilized to pay the tax liability on such renting of property. The appellant's argument on limitation is rejected."

9. In view of the above, I uphold the levy of Service Tax as confirmed by the adjudicating authority vide the impugned order as discussed in paragraph 6 only. Regarding the interest under Section 75 of the Finance Act, 1994, I uphold the same as the appellant has failed to pay up the Service Tax (pertaining to paragraph 6 above) and is rightly invoked under the impugned order. Regarding imposition of penalty under various Sections of the Finance Act, 1994 and Service Tax Rules, 1994, I uphold the same as per the discussion held in paragraph 6 only.

9. Accordingly, the appeal is disposed off as per the above discussion.

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

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - II)

CENTRAL TAX, AHMEDABAD.

ATTESTED

S. Dutta
(S. DUTTA)

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



BY R.P.A.D.

To,
M/s. Kiritsinh Setansinh Chauhan,
50, Janakpuri Society, Nr. Gokulnagar Crossing,
Himmatnagar,
Dst: Sabarkantha

Copy To:-

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

