



S सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

वस्तु एवं सेवा

कर भवन,

सतर्वा मंजिल, पोलिटिकेनिक के पास,

आम्बावाडी, अहमदाबाद-380015

GST Building, 7th Floor,,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015



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क फाइल संख्या : File No : **V2(CS)21/AHD-III/2017-18** 943

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0186-17-18**

दिनांक Date : **25.01.2018** जारी करने की तारीख Date of Issue: 13-2-2018

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissicner (Appeals)Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **AHM-STX-003-ADC-AJS-063-16-17** दिनांक : **29.03.2017** से सृजित

Arising out of Order-in-Original: **AHM-STX-003-ADC-AJS-063-16-17**, Date: **29.03.2017**
Issued by: Additional Commissioner, Service Tax, Div:Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Shri. Rang Infrastructure Pvt.Ltd.

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।

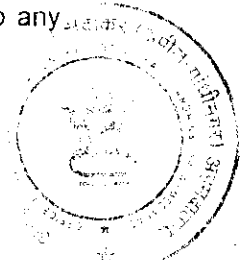
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 प्रक्रिया 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- षोबी/35-इ के अंतर्गत:-

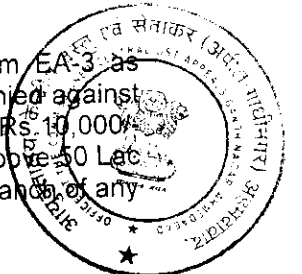
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 मेटल 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 और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और 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 और 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 संबंध 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 उपर्युक्त 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 Appellate 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 अनुसूचि-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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 13 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 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 अर्ज़ों 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,

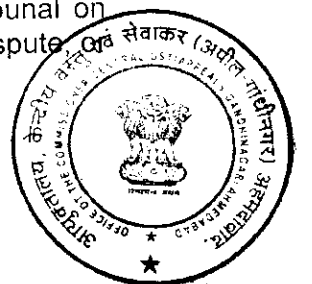
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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, and penalty, where penalty alone is in dispute."

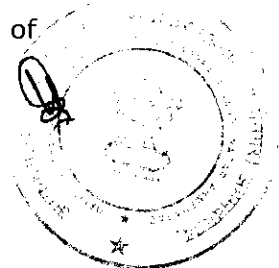


ORDER-IN-APPEAL

M/s. Shri Rang Infrastructure Pvt. Ltd., 'Shyamvan', Behind Vrundavan Hotel, Koba Circle, Koba, Gandhinagar (*hereinafter referred to as 'the appellants'*) have filed the present appeal against the Order-in-Original number AHM-STX-003-ADC-AJS-063-16-17 dated 29.03.2017 (*hereinafter referred to as 'the impugned order'*) passed by the then Additional Commissioner, Service Tax, 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 category of "Construction of Residential Complex Service" and were registered with Service Tax Department having Service Tax Registration number AAICS9126JSD002. On the basis of information that the appellants are collecting the considerations from the prospective buyers but not discharging Service Tax liabilities, a search was conducted at their office and site. During scrutiny of their documents, it was revealed that the appellants had not paid Service Tax under the categories of both Construction of Residential Complex Service and GTA. On being informed about this, the appellants paid the Service Tax along with interest at appropriate rate. Thus, a show cause notice, dated 13.04.2016 was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority confirmed the amount of ₹ 1,26,07,621/- (₹ 1,25,30,295/- under Construction of Residential Complex Service + ₹ 77,326/- under GTA) under Section 73 of the Finance Act, 1994 and ordered to appropriate the amount of ₹ 1,25,24,685/- (₹ 1,24,47,359/- under Construction of Residential Complex Service + ₹ 77,326/- under GTA) already paid by the appellants. He further ordered to recover interest at appropriate rate under Section 75 of the Finance Act, 1994 and ordered to appropriate the amount of ₹ 6,60,187/- already paid by the them. He further imposed penalty under Sections 77(1)(a), 77(1)(d), 77(2) and 78 of the Finance Act, 1994 amounting to ₹ 10,000/-, ₹ 10,000/-, ₹ 10,000/- and ₹ 1,26,07,621/- respectively.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that the allegation of suppression is entirely misconceived as the appellants had filed their returns regularly and had disclosed all material particulars in such returns. The appellants further argued that they were under the impression that the liability of Service Tax would be on the shoulders of



M/s. Apcons. The appellants also stressed that the adjudicating authority has failed to bring on record any positive evidence of intent to evade payment of Service Tax. They again argued that the value of taxable services, as quantified by the department, is incorrect and they had deposited Service Tax for the period from 08.02.2013 to 31.03.2013 and they had submitted copies of returns and challans which has been overlooked by the adjudicating authority. They pleaded before me that the adjudicating authority did not grant them the benefit of cum duty.

4. Personal hearing in the matter was granted and held on 09.01.2018. Shri Hardik Modh, Advocate, Smt. Mayuri Joshi, Chartered Accountant and Shri Jayantibhai Patel, Director, appeared on behalf of the appellants for hearing and reiterated the contents of appeal memorandum. Shri Modh pointed out that the duty was not paid under the genuine belief that their subcontractor is discharging the same and it was immediately paid along with interest when the department pointed out about the non-payment. This is enough evidence to prove their bonafide. Shri Modh further pointed out four issues for consideration viz;

(i) The credit of M/s. Apcon not allowed and no findings given in the impugned order.

(ii) As per the contract, the selling price was cum duty which has not been allowed to them. They have submitted CA certificate, before me, in support of their claim.

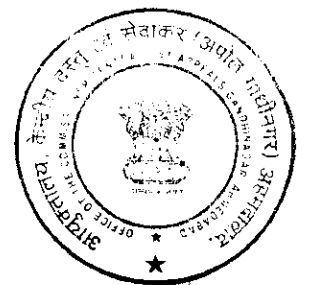
(iii) The duty needs to be re-quantified which has not been considered by the adjudicating authority.

(iv) Once the duty is re-quantified, the penalty too needs to be revised.

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. To start with, I find that the appellants have time and again pleaded before me that they had a belief that their subcontractor M/s. Apcon were discharging the duty liability. This is not an acceptable excuse as tax liability cannot be shifted to someone else's shoulders. The appellants had provided the service to their prospective buyers and collected the amounts and therefore, they were liable to pay the Service Tax due to them. M/s. Apcon were simply working as the subcontractor and hence the burden to

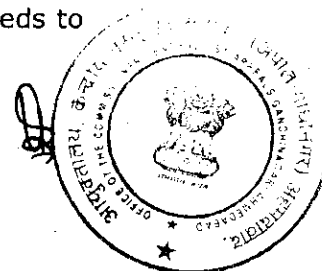




pay tax was not on them. It is sheer ignorance (or lame excuse) on the part of the appellants to think that their tax liability would be borne by some other individual and ignorance can never be considered as an excuse to escape penalty. Further, in paragraph 23 of the impugned order, I find that, the adjudicating authority has clarified the fact that the contract between the appellant and M/s. Apcon was discontinued in April 2012 and the issue of non-payment of tax came to light on 08.03.2013 after the departmental officers pointed it out. The appellants had almost one year to pay the tax but preferred to do so only after department had found it out. If for a moment, it is believed that the appellants were right to consider that M/s. Apcon were paying Service Tax on their behalf, were the appellants still expecting M/s. Apcon to carry out paying tax on behalf of the appellants even after the contract was discontinued? So, the excuse that M/s. Apcon might have paid their share of tax is sheer hogwash and a very lame afterthought.

7. Now the next issue is the grievance of the appellants that the credit of M/s. Apcon was not allowed to them and no finding has been given in the impugned order. In this regard, my view is that the current issue does not pertain to the matter whether the appellants are entitled to avail the credit of M/s. Apcon or otherwise. They could have easily applied for the same under a separate application before the concerned divisional Assistant Commissioner. Therefore, I desist from discussing the complaint being a non issue.

8. Regarding the issue of cum duty value, in paragraph 25 of the impugned order, the adjudicating authority has based his views on pure assumption instead of looking into material evidences. I hereby quote, verbatim, the last line of page 21 of the impugned order; "*Therefore, it is highly possible that M/s. Shri Rang might have collected Service Tax from their prospective buyers*". Also, the adjudicating authority has claimed that the appellants had not provided any document to show that they had not collected Service Tax from their prospective buyers. The adjudicating authority failed to reflect, in the impugned order, which documents were needed to enable him to verify about the collection of Service Tax. In case, the appellants did not submit any specific document, he should have called for the same as the appellants are not supposed to know the kind of documents they were supposed to submit before the adjudicating authority. In view of the above, for the sake of justice, the issue needs to be remanded back to be looked afresh.

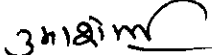


9. Regarding the issue that duty needs to be re-quantified, I find that the adjudicating authority, in paragraph 24 of the impugned order, asserted that to verify the claim of the appellants, he had called for the report of the jurisdictional Assistant Commissioner who in turn reported that the appellants did not file any return for the period from October 2012 to March 2013. However, the appellants have countered the view of the adjudicating authority stating that they had submitted the copies of returns and challans to the department revealing the fact that Service Tax was deposited for the period from 08.02.2013 to 31.03.2013 which has not been considered in the show cause notice. The claim of the appellants also needs to be looked once again very thoroughly. Therefore, this issue too needs to be remanded back to enable the adjudicating authority to check and verify the genuineness of the claim of the appellants and if found correct, the duty along with penalty to be re-calculated and re-quantified.

10. In view of my foregoing conclusions, I remand back the case to the adjudicating authority to re-check the claim of the appellants as per the discussion held in paragraphs 8, 9 and 4 (i) to (iv) above and issue a fresh speaking order after giving proper opportunity to the appellants to represent their claim along with documentary evidences. While deciding the case afresh, the adjudicating authority should keep in mind my observations and views mentioned in paragraph 6 above.

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

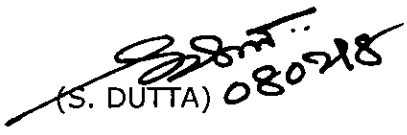
11. The appeal filed by the appellants stands disposed off in above terms.


(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED


(S. DUTTA) 080218

SUPERINTENDENT, CENTRAL TAX (APPEALS),

AHMEDABAD.



To,

M/s. Shri Rang Infrastructure Pvt. Ltd.,
'Shyamvan', Behind Vrundavan Hotel,
Koba Circle, Koba,
Gandhinagar

Copy to:

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