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आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क: O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road, राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक / Date
	V2/137/BVR/2016 & V2/20/EA2/BVR/2016	BHV-EXCUS-000-JC-33 to 34-2016-17	27.09.2016

ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-074-TO-075-2017-18

आदेश का दिनांक / Date of Order: 26.12.2017 जारी करने की तारीख / Date of issue: 27.12.2017

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित / Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अथवा आयुक्त/संयुक्त आयुक्त/उपआयुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गान्धीधाम। द्वारा उपरलिखित जारी मूल आदेश से शक्ति।

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellant & Respondent :- M/s Investment & Precision Castings Limited, Nari Road,, Bhavnagar 364 006, ..

इस आदेश(अपील) से व्यक्त कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है/ Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) बर्गोकरण मन्त्रालय से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सेस्टाट) की पश्चिम क्षेत्रीय पीठिब, द्वितीय तल, बहमली भवन असावी अहमदाबाद- 380016 को की जानी चाहिए।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा अवाज 'ये सीमा और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति लगाने करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉन्सिल बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/

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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा अवाज 'ये सीमा और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति लगाने करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉन्सिल बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/

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 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. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-

- (i) विल अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित पत्र S.T.-7 में की जा सकती एवं उसके साथ आवृत्त, केन्द्रीय उत्पाद शुल्क अध्याय आवृत्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उन्में से एक प्रति प्रस्तावित होती चाहिए) और आवृत्त द्वारा सहायक आवृत्त अथवा उपारवृत्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलार्थि न्यायाधिकरण को आदेश दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थि न्यायाधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35एक के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलार्थि न्यायाधिकरण में अपील करने समय उत्पाद शुल्कावेका कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मान किए गए शुल्क' में निम्न शामिल है:
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेल्वेट जमा की गयी गयी राशि
(iii) सेल्वेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के पारित वित्तीय (सं. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपीलार्थि न्यायाधिकरण के समक्ष विचारार्थीन उद्योग नहीं एवं अपील को लागू नहीं होगी।
For an appeal to be filed before the CESTAT, 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, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 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.
- (C) भारत सरकार को पुनरीक्षण आदेशन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण न्यायाधिकरण निर्माणाधिकृत मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परतुक के अंतर्गत अर्ज शक्ति, भारत सरकार, पुनरीक्षण आदेशन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, सरद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B (ii):
- (i) यदि मांग के किसी नुकसान के मामले में, जहां नुकसान किसी मांग को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में मांग के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में मांग के नुकसान के संदेहों में। / In case of any loss of goods, where the loss occurs 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
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे मांग के विनिर्माण में प्रयुक्त कच्चे मांग या गरी गये केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / 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.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को मांग निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सन्निहित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इप्टी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मांग की गई है और ऐसे आदेश जो आवृत्त (अपील) के द्वारा विल अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई तारीख अथवा समावृत्ति पर या बाद में पारित किए गए हैं। / 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आदेशन की दो प्रतियां पत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के बंधन के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आदेशन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.
- (vi) पुनरीक्षण आदेशन के साथ निम्नांकित निर्धारित शुल्क की अदायगी की जानी चाहिए।
यदि संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में बड़े मात्र आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त इन में किया जाना चाहिए। इस लघु के होने हुए भी की निम्न पट्टी कार्य से बचने के लिए क्या स्थिति अपीलार्थि न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आदेशन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) न्यायाधिकरण न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं उद्योग आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थि न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले विधियों की और भी ध्यान आकर्षित किया जाता है। / 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.
- (G) उच्च अपीलार्थि न्यायाधिकरण को अपील दर्जित करने में संबंधित व्यापक, विस्तृत और संबंधित प्रावधानों के लिए, अपीलार्थि विभागीय वेबसाइट www.cbec.gov.in की देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER IN APPEAL ::

M/s. Investment & Precision Castings Ltd., Nari Road, Bhavnagar, Gujarat – 364 006 (*hereinafter referred to as "the appellant"*) has filed Appeal No. V2/137/BVR/2016 against the Orders-In-Original No. BHV-EXCUS-005-JC-33 to 34-2016-17 dated 27.09.2016 (*hereinafter referred to as 'the impugned order'*) passed by the Joint Commissioner, Central Excise, Bhavnagar (*hereinafter referred to as 'the lower adjudicating authority'*). The Joint Commissioner, Central Excise, Bhavnagar (*hereinafter referred to as "Department"*) also filed Appeal No. V2/20/EA2/BVR/2016 against the impugned order.

2. The brief facts of the case are that audit conducted by the Department pointed out that the activity of expenses incurred on Foreign Tour by the Director of the Appellant would come under purview of Business Auxiliary Service, as expenses had been were incurred in official capacity and was in relation to business promotion. It was also pointed out that expenses incurred on Foreign Exhibition would come under the purview of Business Exhibition Service and the appellant is liable to pay Service Tax on such expenses. Show Cause Notices dated 16.10.2014 and dated 15.10.2015 issued to the appellant were adjudicated. Some portion of demand has been dropped and some portion of demand confirmed, details of which are as tabulated below :-

Show Cause Notice No. and date	Period involved in Show Cause Notice	Service category	Service Tax involved – Service category - wise Rs.	Demand Confirmed by the adj. authority Rs.	Demand Dropped by the adj. authority Rs.
1	2	3	4	5	6
No. V/15-55/Dem-Service Tax/HQ/2014-15 dated 16.10.2014	2009-10 to 2013-14 (upto 21.02.2014)	*BAS	5,54,358/-	1,88,605/- For the period 01.07.2012 to 31.03.2013 and 2013-14(upto 21.02.2014) under BAS	3,65,753/- For the period 01.04.2009 to 30.06.2012 under BAS
	2012-13 to 2013-14 (upto 21.02.2014)	**BES	3,50,849/-	--	3,50,849/- For the period 2012-13 to 2013-14 (upto 21.02.2014) under BES
No. V/Adj-96/STAX/DIV/2015-16 dated 15.10.2015	22.02.2014 to 31.03.2014 and 2014-15	**BES	3,42,860/-	--	3,42,860/- For the period 22.02.2014 to 31.03.2015 under BES

(*) Business Auxiliary Service = BAS

(**) Business Exhibition Service = BES

2.1 The lower adjudicating authority adjudicated both the Show Cause Notices vide the impugned order confirming demand of Rs. 1,88,605/- and dropping demand of Rs. 3,65,753/- demanded under category of Business Auxiliary Service, whereas dropped demand of Rs. 3,50,849/- and Rs. 3,42,860/- demanded under Business Exhibition Service.

3. Being aggrieved with the impugned order, the appellant preferred appeal contending that the adjudicating authority has erred in confirming demand without evidence and without legal backing.

3.1. The department also preferred appeal against dropping demand on the ground as described below :-

3.2 Regarding Show Cause Notice No. V/15-55/Dem-Service Tax/HQ/2014-15 dated 16.10.2014, the Department contended that Service Tax of Rs. 3,65,753/- is liable to be paid by the appellant for expenditure incurred by them on foreign tour of their Director which fell under Business Auxiliary Service during the period from 01.04.2009 to 30.06.2012.

3.2.1 The Department also contended that dropping of demand of Rs. 3,50,849/- under Business Exhibition Service on the basis of Notification No. 25/2012-ST *supra*, which became effective only with effect from 01.07.2012 was not correct as such services were not eligible for exemption prior to the date of Notification No. 25/2012-ST becoming operational and hence demand for the partial period from 01.04.2012 to 30.06.2012 under Business Exhibition Service was required to have been confirmed.

3.3 Regarding Show Cause Notice No. V/Adj-96/STAX/DIV/2015-16 dated 15.10.2015, the Department contended that the lower adjudicating authority has wrongly / erroneously dropped demand of Rs. 3,42,860/- for the period from 22.02.2014 to 31.03.2014 and during 2014-15 as the expenditure made on Foreign Tour by the Director was taxable under the category of Business Auxiliary Service, which was taxable with effect from 01.07.2012 vide Notification No. 30/2012-ST dated 20.06.2012, *as amended* vide Notification No. 45/2012 dated 07.08.2012 under Business Auxiliary Service; therefore all expenses incurred by the appellant on Directors visit to foreign country with effect from 01.07.2012 was actually liable for Service Tax, and therefore, the lower adjudicating authority was required to confirm the demand, along with interest.

4. Personal hearing in the matter was attended by Shri Gaurang Sanghavi, Chartered Accountant who reiterated grounds of appeal and contended that travelling expenses have not been paid to the Director; that Service Tax on travel has been borne by the Company by paying to Travel Agent the cost of foreign visit of the Director and they have

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paid Service Tax on that, as per law; that no penalty is imposable; that demand is time-barred, as there is no suppression of facts on their part; that penalty under Section 77 of the Act is also not imposable, as they have filed statutory returns in time. Personal hearing notices were also sent to the Department, however, none appeared from the Department despite various PH notices issued to them.

4.1 In written PH submission, the appellant has submitted that definition of the taxable service is given at Section 65(105)(zzb) of the Act which states that same means any service provided or to be provided to a client, by any person, in relation to the business of auxiliary service; that the issue under consideration is not any services rendered by Directors, but foreign visits made by directors for the business purposes of their company and expenses for the same were directly borne by the Appellant; that the invoices were raised by Travel Agency to the Appellant which had paid to them; that this cannot be equated with Director's remuneration and cannot be considered as payment to Director for the services rendered by the Director to the appellant; that bills were directly raised on the appellant by the concerned travel agencies, and the payment of the same was also made directly by the appellant company to the said travel agent; that the services were rendered by the travel agent to the company on which the appellant company had already paid Service Tax; that when expenses in question were expenses of the appellant company, it cannot be considered as fee paid to the Directors for his services.

Findings :-

5. I have carefully gone through the facts of the case on record, the impugned order, the grounds of appeal raised by the appellant in Appeal memorandum, grounds of appeal raised by the Department in EA-2, as well as written and oral submissions made during personal hearing.

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5.1 The issues to be decided in these two appeals arising out the two Show Cause Notices are :-

- (i) whether Service Tax is liable to be paid on the expenses incurred by the Directors of the company during foreign tour under Business Auxiliary Service or not; and
- (ii) whether Service Tax is liable to be paid on expenses incurred by the appellant on exhibition held in foreign country under Business Exhibition Service or not.

6. Let me first decide the impugned order for **Show Cause Notice dated 16.10.2014**. I find that the lower adjudicating authority has dropped the demand raised under Business Auxiliary Service of Rs. 3,65,753/- for the period prior to 01.07.2012 and confirmed the demand of Rs. 1,88,605/- for the period post 01.07.2012.

6.1 Appeal filed by the Department for period prior to 01.07.2012 :- The Department in its appeal has contested dropping of demand of Rs. 3,65,753 quoting CBEC Circular No. 115/9/2009-ST dated 31.07.2009, and saying that these expenses were not towards Directors remuneration covered under Business Auxiliary Service, as observed in the impugned order, but it were actually expenses incurred on Foreign tour by Directors towards promotion, marketing and sale of goods and hence were liable for service tax under reverse charge mechanism under Business Auxiliary Service. The reliance placed upon Circular dated 21.07.2009 supra applicable to Directors remuneration, is, therefore, misplaced, as activities of promotion, marketing or sale of goods or services are covered under the category of Business Auxiliary Service and liable to Service Tax since 01.07.2003.

6.1.1 I find that reliance placed on CBEC Circular dated 31.07.2009 pertaining to Directors remuneration by the lower adjudicating authority for dropping demand is actually misplaced, inasmuch as demand has been raised for promotional activities carried out by the Director/Managing Director during foreign tours. However, when the facts are examined it is found that the expenses have been incurred for promotional activity while Director/Managing Director are on foreign tours, which cannot be said to fall under Director's remuneration, as Director/Managing Director was not paid any amount for visit but only expenses were incurred on foreign visit and the payments were made to Travel Agency, which had arranged Tickets, Hotel Stay etc. On going through various copies of relevant Invoices No. 4901257, 11/4002437, 4901370, 11/4002491, 11/4800323, 11/4002437, 4904115, 11/4800877 and 4904356 of M/s. Tamboli Travels and Tours, Bhavnagar submitted by the appellant, I find that invoices were directly raised in the name of the appellant company by them and the invoices also indicate that Service Tax has been charged and paid on such invoices. I, thus, find that the plea of the department that these should be treated as Director's remuneration to be again service taxed on the ground that services were provided by Director / Managing Director towards promotion, marketing and sale of goods of the appellant on the reverse charge basis cannot be accepted and cannot be held as legal and proper.

6.2 Appeal filed by the Appellant for period from 01.07.2012 to 21.02.2014 in respect of Business Auxiliary Service :- The lower adjudicating authority has confirmed demand of Service Tax of Rs. 1,88,605/- under Business Auxiliary Service for period post 01.07.2012 on the ground that Circular dated 31.07.2009 pertaining to the period prior to Negative list regime would not be applicable with effect from 01.07.2012. He also held that all amounts paid to directors, except salary as remuneration would be liable to Service Tax whether for attending board meeting or committee meetings or for any other services rendered by the Director in his capacity as Director. The lower adjudicating authority observed that since, Director of the appellant had visited foreign countries for promotion of its business, all expenses incurred by the company would attract Service

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Tax and therefore Service Tax was payable for the services received from the Director under reverse charge mechanism in terms of Notification No. 30/2012-ST dated 20.06.2012, as amended vide Notification No. 45/2012-ST dated 07.08.2012 and therefore, all expenses incurred by the Director of the appellant on foreign tour with effect from 01.07.2012 would be liable to Service Tax.

6.2.1 The appellant opposed the findings of the lower adjudicating authority on the ground that expenses incurred during negative list regime on the foreign tours of Directors were expenses incurred by the company, and such expenses were directly paid to the travel agent by the company and no amount was paid to the Director, and therefore the impugned order confirming demand of Service Tax on the expenses incurred in respect of the foreign tour by the Director on the plank of promotion of the business of the company, is not sustainable.

6.2.2 I would like to examine relevant portion of Notification No. 30/2012-Service Tax, as amended, on the basis of which the demand of Service Tax has been confirmed for period post 01.07.2012, which is reproduced below :-

Table

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
5A	in respect of services provided or agreed to be provided by a director of a company to the said company <i>(inserted vide Notification No. 45/2012-ST dated 07.08.2012)</i>	Nil	100 %

6.2.3 The above notification had brought Service Tax on Director's remuneration under reverse charge mechanism i.e. Service Tax is payable by service recipient and not by the service provider. However, it has to be established that Director has been paid for his services to the Company. The copies of Invoices No. 4901257, 11/4002437, 4901370, 11/4002491, 11/4800323, 11/4002437, 4904115, 11/4800877 and 4904356 of M/s. Tamboli Travels and Tours, Bhavnagar submitted by the appellant, establish that invoices were raised by the Travel Agency directly in the name of the appellant and the amount is payable by Travel Agency and thus, it cannot be said Director's remuneration at all. The invoices also indicate that Service Tax has been charged on such invoices. I, thus, find that the lower adjudicating authority has not analyzed the issue properly, as expenses on foreign tour borne by the company cannot be considered as Director's remuneration, especially when the transactions have occurred between the Travel Agency and the appellant. I find ample force in the contention of the appellant, that the amount has not

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been paid to the director but to the Travel Agency and hence not Director's remuneration. I find that the lower adjudicating authority has unduly stretched provisions of the aforesaid Notification to thrust liability of Service Tax on the appellant as he has not provided services related to Exhibitions held in Foreign countries but only arranged Air Tickets, Hotel Reservations, Visa and visa renewal and Service Tax has already been paid on all their charges. I, therefore, set aside the impugned order confirming demand of Service Tax on the expenses incurred by the appellant for foreign visit of the Director under the category of Director's remuneration under Business Auxiliary Service. Since Service Tax is not payable, under Director's remuneration payment of interest and imposition of penalty on the appellant in this regard are also set aside and appeal of the appellant is allowed.

6.3 Appeal filed by Department for period from 01.04.2012 to 30.06.2012 in respect of Business Exhibition Service :- Appeal was also filed by the Department for dropping of demand under Business Exhibition Service raised vide Show Cause Notice dated 16.10.2014. The lower adjudicating authority has dropped demand of Service Tax of Rs. 3,50,849/- under Business Exhibition Service referring to Entry No. 31 of mega exemption Notification No. 25/2012-ST dated 20.06.2012, which exempted "Services by an organizer to any person in respect of a business exhibition held outside India".

6.3.1 The Department, in Appeal Memorandum, has contended that the lower adjudicating authority has wrongly dropped the demand for the period from 01.04.2012 to 30.06.2012 under Business Exhibition Service on the basis of Notification No. 25/2012-ST dated 20.06.2012, which became effective with effect from 01.07.2012 only and therefore such services were not eligible for exemption prior to 01.07.2012. Hence, it was contended that demand under Business Exhibition Service for period from 01.04.2012 to 30.06.2012 ought to have been confirmed by the lower adjudicating authority, instead of dropping demand for the entire period from 01.04.2012 to 21.02.2014.

6.3.2 The contention of Department is not correct in view of Para 3.10 of the impugned order wherein the lower adjudicating authority has clearly held that "On going through the ledger provided by the appellant it has come to notice that all expenses have been incurred from 14.02.2013 to 31.03.2013 and 2012-13." Therefore, Service Tax liability for 2012-13 (upto 30.06.2012) will be otherwise also NIL. The Department did not contest this fact.

6.3.3 I find that facts of this case indicate that place of provision of service is located outside territory of India, i.e. beyond territorial jurisdiction of the Finance Act, 1994 and therefore, no Service Tax can be demanded / is required to be paid even prior to 01.07.2012, as the business exhibitions were held in foreign country. No payment of Service Tax in such cases derives support from the decisions of the Hon'ble CESTAT as under :-

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(i) Vaishali Metals (P) Ltd. reported as 2013 (31) S.T.R. 246 -Tri. - Del.

*"5. We have carefully considered the submissions from both the sides and perused the records. Prima facie, we find that for the services of **Business Exhibition** covered by Section 65(105)(zzo), in accordance with Rule 3(ii) of Taxation of Services (Provided From Outside India and Received in India) Rules, 2006, to have been received in India, the services must be performed in India. But since this service has been performed abroad and not in India, we are of the prima facie view that the same cannot be considered as having been received in India. We are supported in this view by the Tribunal's decision in case of Marino Industries Ltd. reported in 2011 (24) S.T.R. 424 (Tri.-Delhi). The requirement of pre-deposit of service tax demand, interest and penalty is, therefore, waived for hearing of the appeal and recovery thereof is stayed till the disposal of the appeal. Stay application is allowed."*

[Emphasis supplied]

(ii) Merino Industries Ltd. reported as 2011 (24) S.T.R. 424 -Tri. - Del.

"4. The applicant relied upon the provisions of Taxation of Service (Provided from Outside India and Received in India) Rules, 2006 where it has been specifically provided that in case of business exhibition services which are covered under Rule 3(ii) provided that such taxable service partly performed in India it is taxable. In the present case, we find that there is no evidence on record that the service has been partly performed in India. In view of this, prima facie the applicant has a strong case in their favour. The pre-deposit of amount of service tax, interest and penalty are waived and recovery is stayed during pendency of the appeal."

[Emphasis supplied]

6.3.4 I, therefore, find that demand under the category of Business Exhibition Service has been correctly set aside for the period from 01.04.2012 to 30.06.2012 also by the lower adjudicating authority and hence, the department appeal is required to be rejected for the period from 01.04.2012 to 30.06.2012 also.

7. Let me now decide the impugned order for **Show Cause Notice dated 15.10.2015** wherein demand of Service Tax of Rs. 3,42,860/- under Business Exhibition Service for the period from 22.02.2014 to 31.03.2015 has been dropped on the ground that Entry No. 31 of mega exemption Notification No. 25/2012-ST dated 20.06.2012 exempted, "Services by an organizer to any person in respect of a business exhibition held outside India".

7.1 The Department has contested dropping of demand on the ground that the

services provided were actually Business Auxiliary Service and not Business Exhibition Service. I find that the exhibition held in Foreign Country with the help of service providers located in foreign country cannot be said to be in nature of Business Auxiliary Service, but Business Exhibition Service only. Even if the contention of the department is accepted, the facts remain that the expenses have been incurred on foreign tour taken by the Director/Managing Director and borne by the appellant company and paid to the Travel agent cannot be termed as Director's remuneration attracting Service Tax under Business Auxiliary Service, as already held above from Para 6.1 to Para 6.2.3 of this order while giving findings for Show Cause Notice dated 16.10.2014. The facts also remain that Show Cause Notice has demanded Service Tax under Business Exhibition Service and hence, the Department can not come in Appeal requesting to set aside the impugned order to confirm demand under Business Auxiliary Service as this would amount to going beyond the scope of Show Cause Notice, which is not permitted in law. The Show Cause Notice has demanded Service Tax under Business Exhibition Service, which has been correctly held not correct, legal and proper in the impugned order. The appeal of the department to confirm the demand under Business Auxiliary Service has to be rejected when Show Cause Notice has not been issued demanding Service Tax under Business Auxiliary Service.

8. In view of above findings, the appeal filed by the appellant is allowed and the appeals filed by the Department is rejected.

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

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

(कुमार संतोष)
26/11/2017

आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Investment & Precision Castings Ltd., Nari Road, Bhavnagar, Gujarat - 364 006	मेस्सेर्स इन्वेस्टमेंट अंड प्रीसिशन कास्टिंग्स लिमिटेड, नारी रोड, भावनगर, गुजरात - 364 006.
The Joint Commissioner, C. Excise and GST, Bhavnagar.	जाइंट कमिश्नर, सेंट्रल एक्साइज अंड जीएसटी, भावनगर.

Copy for information and necessary action to :-

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Bhavnagar.
- 3) The Assistant Commissioner, GST & Central Excise, Rural Division, Bhavnagar.
- 4) Guard File.