



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, रस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/81/BVR/2017	80/AC/STAX/DIV/2016-2017	08.02.2017

6632 To 6636

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

BHV-EXCUS-000-APP-084-2017-18

आदेश का दिनांक / Date of Order:	09.01.2018	जारी करने की तारीख / Date of issue:	11.01.2018
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग) अथ आयुक्त/संयुक्त आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, राजकोट / जामनगर / गण्डीधम। द्वारा उपरोक्तित ज्ञात मूल आदेश से सूचित।

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 Appellants & Respondent :-**
M/s Madhu Silica P. Ltd. (DU-II), Plot No. 53,54,55-B, GIDC Chitra, Bhavnagar

इस आदेश(अपील) से व्यक्ति 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 अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 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) वर्गीकरण, मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय 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 बतलाए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asawa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की रॉज, भ्रूज की रॉज और लगाव का जर्माना, 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। उपयोग 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) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की रॉज, भ्रूज की रॉज और लगाव का जर्माना, 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। उपयोग 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 अर्पितियम, 1994 की धारा 86 की उप-धारा (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकेगी एवं उसके साथ अनुसूक्त, केन्द्रीय उत्पाद शुल्क अध्याय अनुसूक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (अर्थात् से एक प्रति प्रामाणित होनी चाहिए) और अनुसूक्त द्वारा संलग्न अनुसूक्त अध्याय अनुसूक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील न्यायाधिकरण को अपील 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 अपील न्यायाधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35एन के अंतर्गत, जो की विलीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील न्यायाधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मात्र के 10 प्रतिशत (10%), जब मात्र एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जहां कि जाने वाली अधिसूचित देय राशि इस कस्टोडियन से अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
 - (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेनवेट जमा की गयी राशि
 - (iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के अंतर्गत विलीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपील न्यायाधिकरण के समक्ष विचारणीय स्थिति 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 आवेदन :

Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पारंतुक के अंतर्गत अपील लिये, भारत सरकार, पुनरीक्षण आवेदन ईकाई, विलीय संसद भवन, राजस्व विभाग, चौथी मंजिल, जीवाणु दीप भवन, संसद भवन, 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-35E ibid.

(i) यदि मात्र के किसी नुकसान के मामले में, जहां नुकसान किसी मात्र 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 मात्र के परसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में मात्र के नुकसान के मामले 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 मात्र के विनिर्माण में प्रयुक्त कच्चे मात्र पर भरी गई केन्द्रीय उत्पाद शुल्क के क्रेडिट (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 an 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 मात्र निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) निर्दिष्ट उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इट्टरी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अनुसूक्त (अपील) के द्वारा विलीय अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अध्याय समायाचिका पर वा बट 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 आवेदन की ही प्रतियां फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की ही 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 O.O 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 आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहाँ 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 कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त धन से किया जाना चाहिए। इस तथ्य के होते हुए भी की निम्न यही कार्य हो करने के लिए परामर्शित अपील न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन 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 scrippsoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंश्लेषित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुभाग मूल आदेश एवं स्थगन 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 अपील न्यायाधिकरण (बाई विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को अभिज्ञित 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 अपील न्यायाधिकरण को अपील दर्जित करने में संबंधित व्यक्त, विस्तृत और अधिकतर प्रावधानों के लिए, अपील न्यायालय वेबसाइट www.cbec.gov.in को 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. Madhu Silica Pvt. Ltd., No. 147, Vartej, Bhavnagar (*hereinafter referred to as "Appellant"*) filed appeal against the Order-In-Original No. 80/AC/STAX/DIV/2016-17 dated 08.02.2017 (*hereinafter referred to as 'the impugned order'*) passed by the Assistant Commissioner, Service Tax Division, Bhavnagar (*hereinafter referred to as 'the lower adjudicating authority'*).

2. The brief facts of the case are that audit of records of Appellant for the period from April, 2011 to March, 2013 revealed payment by Appellant to M/s. Venus Chemicals, Egypt for participating in overseas business exhibition but no payment of Service Tax whereas Rs. 33,656/- was payable as per audit under the category of Business Exhibition Service in terms of Section 66A and 66C of the Finance Act, 1994 (*hereinafter referred to as "the Act"*). It was also pointed out that Service Tax of Rs. 24,250/- for availing transportation service of goods by road was also payable by the appellant, which they paid vide e-challan No. 00143 dated 22.05.2014. Show Cause Notice dated 12.01.2016 was issued to Appellant proposing recovery of Service Tax of Rs. 33,656/- under Business Exhibition Service and appropriation of Rs. 24,250/- paid under Goods Transport Agency Service along with interest under Section 75 of the Act and penalty under Section 77, 76 and 78 of the Act.

2.1 Vide the impugned order, the lower adjudicating authority confirmed demand along with interest and imposed penalty of Rs. 57,906/- [Rs. 33,656/- (+) Rs. 24,250/-] under Section 78 of the Act. The lower adjudicating authority also imposed penalty of Rs. 10,000/- on the appellant under Section 77(2) of the Act and appropriated Rs. 24,250/- voluntarily paid by them towards Goods Transport Agency service whereas proposal for penalty under Section 76 of the Act was dropped.

3. Being aggrieved with the impugned order, the appellant preferred appeal, *inter alia*, contending that Section 66A of the Act is not applicable in this case for the period from April, 2011 to March, 2013 and referred to Notification No. 18/2012-Service Tax dated 01.06.2012 and Notification No. 23/2012-Service Tax dated 05.06.2012; that the lower adjudicating authority discussed Rule 2(1)(G) of the Service Tax Rules, 1994 but did not discuss the Place of Provisions of Service Rules, 2012 which is vital for determination of service tax liabilities for the person i.e. Service Provider or Service Receiver; that payment of Rs. 2,72,300/- was made by Appellant to M/s. Venus Chemicals, Egypt in foreign

currency for getting exhibition stall in "Middle East Coating Show" in Egypt and therefore, as per Rule 6 of Place of Provision of Service it was not taxable activity and thus demand of Rs. 33,656/- under Business Exhibition Service is required to be set aside.

3.1 Regarding Service Tax under the category of Goods Transport Agency, the appellant contended that Notification No. 08/2006-Central Excise(NT) dated 19.04.2006 allowed benefit to consignors or consignees of availing credit and paying Service Tax from Cenvat credit account has been omitted and therefore, consignor or consignee was required to discharge Service tax liability under Goods Transport Agency by paying Service Tax through challan in cash only; that the appellant had agreed to the audit objection and accordingly paid Service Tax of Rs. 24,250/- vide e-challan No. 00142 dated 22.05.2014 in cash; that the appellant had paid Service Tax twice, once at the time of receiving of Goods Transport Agency service by way of debiting of Rs. 24,250/- from Cenvat credit register, and second time, by way of paying through Challan No. 00142 dated 22.05.2014 and therefore, the question of interest and penalty does not arise.

4. Personal hearing in the matter was attended by Shri R. R. Dave, Consultant wherein he, *inter alia*, reiterated the grounds of appeal and submitted that the event was organized in Egypt i.e. outside India and Service Provider was also from Egypt i.e. outside India, and therefore, no Service Tax is payable by them and hence demand of Rs. 33,656/- should be set aside; that Rs. 24,250/- had already been debited by them before issue of Show Cause Notice and hence no penalty is imposable on them. No one appeared from Commissionerate despite personal hearing notice sent to the Commissionerate.

Findings :-

5. I have carefully gone through the facts of the case, the impugned order, the grounds of appeals, written and oral submissions made by the appellant. The issues to be decided in the instant appeal are

- (i) whether the impugned order confirming demand of Service Tax of Rs. 33,656/- under category of Business Exhibition Service is proper or not;
- (ii) whether interest and penalty is imposable when Rs. 24,250/- under category of Goods Transport Agency has been voluntarily paid by the appellant before issue of Show Cause Notice.

6. Regarding demand of Rs. 33,656/- under category of Business Exhibition Service, I find that the service has been provided outside India by a company from outside India and payment has also been made in foreign currency. I also find that the place of provision of service is located outside territory of India, i.e. beyond territorial jurisdiction of the Finance Act, 1994 and hence no Service Tax can be demanded, as the business exhibitions were held in foreign country i.e. Egypt. Non payment of Service Tax in such cases derives support from the decisions of the Hon'ble CESTAT as under :-

(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)(zz), 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]

6.1 I, therefore, find that demand of Rs. 33,656/- under the category of Business Exhibition Service has been wrongly confirmed by the lower adjudicating authority and hence, I set aside the impugned order confirming demand. Once the demand is set aside, the question of payment of interest and imposition of penalty does not arise and hence appeal in respect of Rs. 33,656/-

is allowed.

7. Regarding demand of Rs. 24,250/- under the category of Goods Transport Agency, I find that the appellant had voluntarily paid this amount vide e-challan dated 22.05.2014 much before issue of Show Cause Notice dated 12.01.2016, and vide this appeal they are contesting recovery of interest and imposition of penalty and not demand of Rs. 24,250/-.

7.1 While confirming interest and penalty the lower adjudicating authority has held as under at para 6.1 of the impugned order :-

"... In find that Noticee has submitted that no interest is payable as the balance of credit was more than Rs. 24,250/- in RG 23-A part II and the penalty is not imposable as the amount of Rs. 24,250, is debited prior to issuance of Show Cause Notice. However, I do not find weight in the arguments made by the Noticee. As the claim of the Noticee is not substantiated by documentary evidence in this regard. Merely stating a fact does not itself allows one to claim benefit rater the fact should be decipherable and verifiable from the supporting documents. Hence, the absence of substantiating documents. I find that the Noticee is required to pay the interest under Section 75 of Finance Act, at appropriate rates. Further, I find that the observations raised by the audit would not have come to the notice of the Department. If the Audit had not been conducted, therefore, the Noticee is also liable for penalty under Section 78 of Finance Act, 1994 as also observed by the Audit in the said Final Audit Report."

7.2 To examine imposition of penalty under Section 78 of the Act, the relevant portion of Section 78 is reproduced :-

"SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —
(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the

notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax : Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

Provided further that where service tax and interest is paid within a period of thirty days of — the date of service of notice under the proviso to (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded; (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined .

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the [Central Excise Officer] of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid.”

[Emphasis supplied]

7.3 Section 78 of the Act is applicable only in case of fraud, willful mis-statement, suppression of facts, etc. with intent to evade payment of tax as is evident from Section 78(1) of the Act. In this case, there is no such ingredient available. Neither Show Cause Notice nor impugned order has produced any evidence suggesting such ingredients. In fact, facts of the case suggest that the appellant paid Rs. 24,250/- twice, first time on their own through Cenvat credit and again through e-challan, when audit pointed out payment by Cenvat credit.

7.4 The appellant rightly submitted that the findings of the lower adjudicating authority are contradicting the facts of Show Cause Notice, which pointed out that the appellant had paid Service Tax through Cenvat credit whereas it was payable in cash only, whereas the impugned order speaks about appropriation of Rs. 24,250/- paid on 22.05.2014 against wrong utilization of Cenvat credit !! The contention of appellant is correct that they paid service tax twice - first at the time of receipt of Goods Transport Agency service by debiting amount of Rs. 24,250/- from their Cenvat credit account and second time vide e-challan No. 00142 dated 22.05.2014 when pointed out by the audit. Therefore, no penalty is imposable on the appellant under Section 78 of the Act

7.5 It is not a case that the appellant has not paid Service Tax on Goods Transport Agency. They have paid Service Tax in time on Goods Transport Agency, through Cenvat credit and again by paying in cash. In such facts of the case, interest is not payable at all. I set aside the impugned order for recovery of interest under Section 75 of the Act as it is not at all applicable in this case.

8. I find that the lower adjudicating authority has imposed penalty of Rs. 10,000/- under Section 77(2) of the Act. Section 77(2) ibid provides for penalty on person who contravenes any of the provisions of the Act or any rules made thereunder for which no penalty is separately provided. In this case the lower adjudicating authority has imposed penalty under Section 78 of the Act and therefore, separate penalty of Rs. 10,000/- was not imposable under Section 77(2) of the Act.

9. In view of the above discussion and findings, I set aside the impugned order and allow appeal of the appellant.

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

9.1 The appeal filed by the appellant is disposed off in above terms.

(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To

M/s. Madhu Silica Pvt. Ltd., DU-IV, Plot No. 147, Vartej, Bhavnagar -- 364 060.	मेस्सेस मधु सिलिका प्राइवेट लिमिटेड, DU-IV, प्लॉट नो. 147, वरतेज, भावनगर - 364 060.
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Copy for information and necessary action to :-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
2. The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar
3. The Joint Commissioner, GST & Central Excise Division, Bhavnagar.
4. The Assistant Commissioner, GST & Central Excise, Bhavnagar
5. Guard File.