



::आयुक्त (अपील-III) का कार्यालय,केंद्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS-III), CENTRAL EXCISE,
द्वितीय तल, केन्द्रीय उत्पाद शुल्क, भवन / 2nd Floor, Central Excise, Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot -- 360001



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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील काइल संख्या / Appeal / File No	मूल आदेश नं / O.I.O. No.	दिनांक / Date
	V2/52 /GDM/2016 <i>2865 to 2872</i>	33/JC/2015	29.03.2016

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

KCH-EXCUS-000-APP-004-2017-18

आदेश दिनांक / Date of Order:	29.05.2017	जारी करने की तारीख / Date of issue:	31.05.2017
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श्री उमा शंकर, आयुक्त (अपील-III) द्वारा पारित /
Passed by Shri Uma Shanker, Commissioner (Appeals-III)

ग अपर आयुक्त/संयुक्त आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जयनगर / गांधीधाम। द्वारा उपरोक्तित जारी 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 Appellant/ Respondent :-**
M/s. Shri Ashapura Loaders, Prop. Badubha Jalubha Jadeja Village : Ler, Kukma., Bhuj, Kutch.

इस आदेश(अपील) से व्यक्ति कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों 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 पैरा-1(a) में बतलाए गए अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (हिस्टेट) की पश्चिम क्षेत्रीय पीठिका, ओ-20, न्यू मेन्टल हॉस्पिटल कंपाउंड, मेघानी नगर, अहमदाबाद-380016, को की जानी चाहिए।/
 To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, 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 अन्तर्गत निर्धारित फीच एवं चार्ज EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की रॉय, व्याज की रॉय 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 सलग्न की। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉजिट 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। स्थगन 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 अन्तर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित चार्ज S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विषय अपील की गयी हो, उसकी प्रति साथ में सलग्न की (उन्में से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की रॉय, व्याज की रॉय 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 सलग्न की। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉजिट 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। स्थगन 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/-.

(ii) विस्तार अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत टारि की गयी अर्थात्, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती एवं उसके साथ आवृत्त, केन्द्रीय उत्पाद शुल्क अध्याय आधुनिक (अपील), केन्द्रीय उत्पाद शुल्क अध्याय परित आदेश की प्रतियाँ संलग्न करे (इसमें से एक प्रति प्रामाणिक होनी चाहिए) और आवृत्त द्वारा सहायक आवृत्त अथवा उपवृत्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील न्यायाधिकरण को आवेदन टारि 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.

(iii) सेवा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सेस्टाट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय 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-संबंधी कर जमा के 10 प्रतिशत (10%), जब मात्र एवं जुर्माना विकल्पित है, या जुर्माना, जब केवल जुर्माना विकल्पित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि टन करोड़ रूप में अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'शुद्ध किए गए शुल्क' में निम्न शामिल है
 - (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेनवैट जमा की गयी गई गलत राशि
 - (iii) सेनवैट जमा नियमवली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्राधान्य वित्तीय (सं. 2) अधिनियम 2014 के अंतर्गत नए किसी अपील न्यायाधिकरण के समक्ष विचारणीय स्थान नहीं एवं अपील को लागू नहीं होने।

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 अधिनियम परतक के अंतर्गत अर्ज लखिए, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौकी भवन, जीवन दीप भवन, भारत अर्ज, नई दिल्ली-110001, को किया जाता 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-35 ibid.

(i) यदि मात्र के किसी नुकसान के मामले में, जहां नुकसान किसी मात्र को किसी कारखाने से अर्थात् गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अर्थात् गृह से दूसरे अर्थात् गृह पारगमन के दौरान, या किसी अर्थात् गृह में या अर्थात् गृह में मात्र के प्रसंस्करण के दौरान, किसी कारखाने या किसी अर्थात् 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 विभिन्नता में प्रयुक्त कच्चे मात्र पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छा केवैट इस अधिनियम एवं इसके विभिन्न धाराओं के तहत मान्य की गई है और ऐसे आदेश जो आवृत्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लखिए अथवा भुगतान पर या बट में परित 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 दो प्रतियां फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत निर्दिष्ट है, इस आदेश के संकेतन के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन 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 लक्ष्य 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 आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहां संलग्न रकम एक लाख रुपये या उससे कम है 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 जो फॉर्म नंबर आदेश के लिए शुल्क का भुगतान, उपरोक्त इस से किया जाता चाहिए। इस लक्ष्य के होने हुए भी की निम्न यही कार्य से बचने के लिए अस्थिति 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 scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) अध्यादेशित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं समान आदेश की प्रति या 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) सेवा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (कार्य विधि) नियमवली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले विषयों 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 से संबंधित जानकारी, विस्तृत और नवीनतम प्राधान्यों के लिए, अपील न्यायाधिकरण 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. Shri Ashapura Loaders, (Prop. Badubha Jalubha Jadeja), Village : 220
Ler, Kukma, Bhuj, Dist.- Kutch (hereinafter referred to as 'the appellant') has filed the present appeal, against Order-In-Original No.33/JC/2015 dated 29.03.2016 (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, Central Excise & Service Tax, Gandhidham (hereinafter referred to as 'the lower adjudicating authority').

2. Briefly stated the facts of the case are that during the course of audit of records of M/s. Ashapura Volclay Ltd., Bhuj, it was noticed that various parties including the appellant had rendered services to M/s. Ashapura Volclay Ltd. but had not paid service tax. Accordingly, on the basis of balance sheet / form 26AS for the period 2009-10 to 2011-12 submitted by the appellant, a show cause notice No.V.ST/AR-GDM/ADC(PV)/147/2014-15 dated 10.10.2014 (in short – SCN) was issued to them for not paying service tax against services rendered under the category of Manpower Recruitment or Supply Agency to M/s. Ashapura Volclay Ltd. and not obtaining service tax registration in prescribed time limit. The SCN was adjudicated by the lower adjudicating authority vide this impugned order wherein he confirmed the demand of service tax of Rs.5,83,180/- under the category of Manpower Recruitment or Supply Agency service under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as the "Act"); ordered recovery of interest under Section 75 of the Act; and imposed penalties under Section 70, Section 77 and Section 78 of the Act.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

(a) In the impugned order, it is mentioned that in the interest of natural justice personal hearing in the case was fixed 4 times but no one from the appellant appeared. It is submitted that appellant was not served any notice for personal hearing as mentioned in the impugned order. Had the notice of hearing served, it could have managed anybody to explain the case. In the backdrop of no intimation of notice for personal hearing, it is a clear case of violation of natural justice and as such the impugned order has been issue in gross violation of natural justice. It had a case in its favour and if it was awarded an opportunity to explain its case, it could have satisfied that there cannot be any demand of service tax in its case.

(b) They are really surprised to go through the findings as their activity in no way can be termed as an activity of 'Manpower Supply'. Their prime activity is to arrange truck and JCB etc for use of loading and unloading work, shifting of materials and repairing work of pond, walls and roads. None of the activities mentioned above and carried out

by them is in any way connected to supply of manpower. As per Section 65(68) of the Act - "manpower recruitment or supply agency" means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person". From the definition, it may be seen that the services covered are recruitment or supply of manpower to any other person, whereas in the present case, they had never recruited or supplied any manpower to the service recipient. They had only undertaken the assigned work related to construction, loading, unloading, repairs and supply of tractors, loaders, JCB etc. In any of the activities, the manpower involved was not supplied or even under the control and direction of the service recipient. Further, in all the activities, payment was made by the recipient at a pre-fixed rate for the work done and vehicles supplied. In no case it can be a supply of manpower. 219

(c) In the show cause notice, there was no proposal to classify the service under any category of taxable service. It was outright conceived and alleged that the appellant had provided taxable services under category of "Manpower Recruitment or Supply Agency" and "Supply of Tangible Goods Service" to M/s AVL. The amount of taxable value was shown to be taken from Form 26AS/Profit & Loss Account, without bifurcating as to how much value of alleged service activity was received for "Manpower Recruitment or Supply Agency" and how much for "Supply of Tangible Goods Service". The lower adjudicating authority, in the impugned order, discarded the allegation of provision of 'supply of tangible goods' service and confirmed the entire demand of service tax under "Manpower Recruitment or Supply Agency" service and as such it should be proper to examine the activities in light of above observation only and relied upon various decisions of the higher judicial forum and Board's Circulars in support of their plea.

4. Personal hearing in the matter was held on 23.08.2016, which was attended by Shri R. C. Prasad, Consultant who reiterated the grounds of appeal. They are not falling under manpower supply and made further submissions wherein the contents of grounds of appeal were reiterated.

5. I have carefully gone through the facts of the case, impugned order, appeal memorandum and submissions made by the appellant at the time of personal hearing.

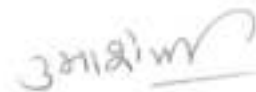
The limited issue to be decided in the present appeal is whether the services rendered by the appellant to M/s. Ashapura Volclay Ltd. would fall under the category of Manpower Recruitment or Supply Agency, or otherwise.

6. I observe that the crux of dispute is regarding classification of the service

provided by the appellant to M/s. Ashapura Volclay Ltd. The appellant has assailed the impugned order on the ground that their prime activity is to arrange truck and JCB etc. for use of loading and unloading work, shifting of materials and repairing work of pond, walls and roads, which are in no way connected to supply of manpower in terms of Section 65(68) of the Act. They have also pleaded that the impugned order was issued without following principle of natural justice as they were not served any notice for personal hearing. Hence, they could not defend their case before the lower adjudicating authority.

7. In view of above facts, I observe that since the principles of effective natural justice have been short-circuited in the present proceedings, in light of the decision of the CESTAT delivered by learned Justice Ajit Bharihoke, President in the case of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported 2012(284) ELT 97 (Tri-Del), I find it would not be proper to decide the instant case at this juncture. I also rely upon the decision of the Hon'ble Tribunal in the case of CCE, Meerut-II Vs. Honda Seil Power Products Ltd. reported in 2013 (287) ELT 353 (Tri-Del) wherein the similar views have been paraphrased as regard inherent power of the appellate office to remit the case back under the provisions of section 35A(3) of the CEA. Further, the Hon'ble High Court of Gujarat, in the case of Tax Appeal No. 276 of 2014 in respect of Associated Hotels Ltd. observed that even after the amendment in Section 35A(3) of the Central Excise Act, 1944 after 11.05.2011, the Commissioner of Central Excise would retain the powers of remand. Therefore, in fitment of case, I feel it appropriate to remand the case back to the lower authority with direction to the appellant to file all relevant documents in support of their claim to the effect that the services rendered by them to M/s. Ashapura Volclay Ltd. were not supply of manpower and were in fact non-taxable, within 20 days from the receipt of this order. I also find force in the appellant's plea that the lower adjudicating authority has confirmed the entire demand of service tax under "Manpower Recruitment or Supply Agency" service without examining their activities as the lower adjudicating authority has not given any findings to this effect. Therefore, on the basis of information furnished by the appellant, the lower authority shall decide the case keeping in mind the provisions of the Act and existing rules for the time being in force, after granting fair opportunity of hearing to the appellant, and shall pass a reasoned and speaking order.

8. अपीलकर्ता द्वारा दजे की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeal filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - III)

By R.P.A.D.

To,
M/s. Shri Ashapura Loaders,
(Prop. Badubha Jalubha Jadeja),
Village : Ler, Kukma,
Bhuj, Dist.- Kutch

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Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Central Excise & Service Tax, Gandhidham.
- 3) The Joint Commissioner, Central Excise & Service Tax, Gandhidham.
- 4) The A.C. (Sys.), C.Ex., H.Q., Gandhidham – for uploading on website.
- 5) The Assistant / Deputy Commissioner, Service Tax Division, Gandhidham.
- 6) The Superintendent, AR – V – Bhuj, Service Tax, Gandhidham.
- 7) PA to Commissioner (Appeals-III), Central Excise, Ahmedabad.
- 8) Guard File.