



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

दवितीय तल, जी एस टी अवन / 2st Floor, GST Bhavan.

रेस कोर्स रिंग रोड, Race Course Ring Road.

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए. डी. द्वारा :-

भपीत कारत ग्रहण 巫

Appeal | File No V2/11/EA2/RAJ/2016 मान आहेक या ह 0.10. No.

Date: /

Date

29/ADC/BKS/2015-16

26.02.2016

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

RAJ-EXCUS-000-APP-035 -2017-18

आदेश का दिलांक

28.08.2017

जारी करने की तारीख

28.08.2017

Date of Order:

Date of issue:

कुमार सतोष, आयुक्त (अपील), राजकोट द्वारा पारित /

Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

म अपर आयुक्ता अयुक्ता अगयुक्ता अगयुक्ता अग्रयका अग्रयका अग्रयका, कैन्द्रीय उत्पाद शुरूका सेकावर, राजकोट / जामानवर / गांधीपाधा दुवारा उपराविधिक आरी मूल आदेश से सुजित /

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

U अपीलकरों & प्रतिवादी का नाम एवं पता /Name&Address of the Appellant & Respondent :-M/s, Dwarkesh Enterprises, Bazar Line, Okha Port, OKHA.

इस आदेश(अपीत) में व्यक्ति कोई व्यक्ति जिस्तीनेद्धित तरीके में उपयुक्त पाणिकरी / प्राणिकरण के समझ अपीत द्वापा कर सकता है।/ Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way

सीमा कृतक मेन्द्रीय उत्पाद गुरूक एवं सेवाका अपीनीय न्यायाधिकारण के पति अपील, केन्द्रीय उत्पाद शुरूक अधिपियम ,1944 की घारा 358 के अंतर्गत एवं किस्त अधिमियम, 1994 की घारा 56 के अंतर्गत निम्नतिश्वित जनत की जा सकती है ।/ (A)

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 358 of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:

वर्गीकाण मुख्यांका में मम्बन्धित ममी मामते सीमा कुल्क, केन्द्रीय उत्पादन कुल्क एवं ग्रीवाका अपीतीय स्वावाधिकाण की विशेष पीठ, वेस्ट बर्जक स 2. आर. के. पुरम, मई दिल्ली, को की जानी वाहिए ॥ 00

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

उपरोक्त परिपदेट 1(a) में बताए गए अपीजी के अलावा शेष सभी अपीजे तीमा शुल्क केंद्रीय उत्पाद शुल्क एवं शेवाकर अपीजीय ज्यायाधिकरण (मिन्न्टेट) की पश्चिम क्षेत्रीय पीटिका, . इचितीय तक बहुमाली शक्त असावी अवस्टाबार उटकरंड को की जानी पाहिए U To the West regional bench of Customs. Excise & Service Tax Appellate Tribunal (CESTAT) at. 2st Floor, Bhaumal Bhawan 60 Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

अभीनीय न्यामाधिकाम के तमक अभीन प्रस्तृत करने के लिए केन्द्रीय उत्पाद शुरूक (अभीन) नियमाधारी, 2001, के नियम 6 के अतर्गत विधीरित किए तमें प्रपद EA-3 को यह पहिलों में इन्हें किया जाना पहिए। इनमें से कम में कम पत्र पत्रि के लाग, जार उत्पाद शुरूक की लीव ज्यान की मीन और लगाया स्था जुमीना, रूपए 5 लाख या उपने कम, 5 लाख रूपए या 50 लाख रूपए तक अध्या 50 लाख रूपए में अधिक है तो क्रमण 1,000/- व्यय अध्या 10,000/- व्यय का निर्धारित जार शुरूक की पति शतरा करें। निर्धारित शुरूक का मुगतान, संबंधित अपीरीय न्यायाधिकरण की शाख्य के सहायक रिजेटर के लाम से कियों भी नायिजितक क्षेत्र के बीव द्वारा जारी देखाँकित के शुरूक देखा की संबंधित आहें। के संबंधित अपीरीय न्यायाधिकरण की शाखा दिखत है। रूपका आदेश (प्रदे ऑडेर) के लिए जायेदन पत्र के साथ 500/- रूपए का निर्धारित शुरूक तमा करना होगा।/ (10)

The appeal to the Appellate Tribunal shall be filed in quadruplicate in from EA-3 I 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. 1,000r- Rs.5000r-, Rs.10,000r- Rs.5000r-, Rs.10,000r-, Rs.10 is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

सपीलीय न्यायाधिकाण के समक्ष अपील, जिल अधिनियम, 1994 की धारा 86(1) के अनर्गन मंगाका विश्वमवानी, 1994 के नियम 9(1) के तहन स्थितित प्रथम 5.1-5 में घार पनियों से की जा सकेगी एवं उसके नाम जिस आदेश के तिरद्ध अपील की नाम है। उसकी पति सम्म से लगान करें (उनमें से एक पति प्रमाणित होनी धाहिए) और इनमें से कम से कम एक पति के लाम जाता में दिल्ला की साम धार माँग और नगामा का नुमील, व्यए 5 शाख था उसने कम, 5 साथ रुए। था 50 ताख रूप। तक अध्या 50 जाय रुए से अपिल है तो कमका 1,000- रुपये, 5,000-रुपये अथ्या 10,000- रुपये का निर्धादित जमा शुक्क की पति संतरन को निर्धादित शुक्क का मुमालन सर्वधित अपीलीय स्थायाधिकाण की शाख्य के स्थायक रिवेस्टर के नाम से किसी भी सार्थितनक होन के बैंक दुलाए जारी रेखाकित वैक द्वारट दुवारा किया जाना चाहिए। संबंधित शुक्ट का मुमालन कैंक की उस शाख्य में होना धाहिए जहां मंबाधित अपीलीय स्थायाधिकाण की शाख्य विकार है। स्थायन आदेश (स्टे आईर) के लिए सार्थदन-यह के साथ 500/- व्याप का निर्धादित शुक्क जास काना होता // (B)

The appeal under sub-section (1) of Section 88 of the Finance Act, 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form 5.T.5 as prescribed under Frain 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 Lakts or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied in more than five lakts but not exceeding Rs. Fifty Lakts, Rs.10.000/- where the amount of service tax & interest demanded & country levied is more than fifty Lakts 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/-

- किरन अधिक्रिया, 1994 की कार R6 की 191-107(A) के अन्तर्गत दर्ज की अपी अभिन्न संकार विवासकारी, 1994, के निवास 9(2) एस (0) 9(2A) के तहत लिसीरत प्रपर 5.7-7 में की जा सकेशी एवं उसके साथ आयुक्त केपदीय उत्पाद बुक्क अधवा आयुक्त (ज़पील), केपदीय उत्पाद शुक्क दवारा भारित आदेश की प्रतिसी संस्कृत को (उससे से एक प्रति उमाणित होती सहिए) और आयुक्त दक्षार सहस्यक आयुक्त अभवा उपायुक्त केरदीय उत्पाद शुनका संवाभर, को अमीलीय न्यायाधिकरण को आवेदन दर्ज करने का जिटेश देने ताले आदेश की पति की साथ में संतरन करनी हाँगी । / The appeal under sub-section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed. under Rule 9 (2) & 9(2A) of the Service Tax Rules. 1594 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which width be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excisel Service Tax to file the appeal before the Appeliace Tribunal
- सीमा शुक्त, केन्द्रीय उत्पाद शुक्त एवं ग्रेगांकर अगोगीय पाधिकरण (संस्टेट) के प्रति अमोगी के सामाने में केन्द्रीय उत्पाद शुक्त अधिनियम 1944 की धारा 35लाथ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अतर्गत शेवाबर को भी लागू की गई है, इस आदेश के पति अगीगीय पाधिकरण में अपील करते समय उत्पाद शुक्तरंगवा कर मांग के 10 पतिशत (10%), जब मांग एवं जुमीना विवादित है, या जुमीना, जब केवल जुमीना विवादित है, का भूगतान किया जाए, बचारों कि इस धारा के अलगान जमा कि बामें वाली अधिवित देय शरित दम करोड़ रुपए से अधिक न ही।

कंप्युचित प्रस्ताद काल एवं संस्ताबार के असलेश 'बांग किए गए शुरूबा' में जिस्स शासित है

ten is it is some man

मोरलेट अपन की भी नहें नावत राशि 60

नेज़ीर अभा जिनामानी के लिएस 6 के अंगरेन देव एकन (10)

कार्त यह कि इस प्रता के प्रतापक कि.तीब इसे 25 अधिकिएम 2014 के आयम से पूर्व किसी अधीतीम फरिकारी के समझ विधाराधीन स्थानक अपने एक अपील को लागू नहीं होगेश

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Senice Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall be 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-disposit payable would be subject to a ceiling of Rs. 10 Crores.

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

emount determined under Section 11 D:

amount of erroneous Cervat Credit taken (9)

amount payable under Rule 6 of the Cervat Credit Rules 190

- 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.

भारत सरकार को पत्नरीक्षण आवेदन

Revision application to Government of India: इस आदेश की पुजरीक्षण व्यक्तिक जिस्तानिवित स्टामको से केदीय उत्पाद गुल्क अधिनियम 1994 की घारा 35EE के व्यक्त पत्तक के जेतरीत अवर विकास अगरत करकार पुनरीक्षण आगोदन वैकले जिल्ल जावारण राजस्य विकास ग्रीमी सीजिय जीवन दीय अवस्त संसद सामें लई दिस्सी-110001, को (C) किया जाना पाहिए।

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 Gosp Building, Parliament Steet, New Dethi-110001, under Section 35EE of the CEA 1944 in respect of the following case governed by 6st provisu to sub-section (1) of Section-35B bild.

- पदि मान के किसी नुकसान के लाभाने में जहां नुकरान किसी भाग को किसी कारकार्य से मंडाप कुछ के पार्यमन के दौरान या किसी अन्य कारकार्य था किस किसी एक संडार गृह में दूसरे भंडाप गृह पार्यमन के दौरान को किसी कारकार्य में लाग के प्रस्करण के दौरान किसी कारकार्य या किसी कारण गृह में या अंकरण में लाग के प्रस्करण के दौरान किसी कारकार्य या किसी कारण गृह में माने के नुकरान के मानेश में। In case of any loss of goods, where the loss occurs in transit from a factory to a wavefouse or to another factory or from one wavefouse to another during the course of processing of the goods in a wavefouse or in storage whether in a factory or in a ON
- भारत के बाहर किसी राष्ट्र या क्षेत्र को तियांत कर रहें साथ के विजिन्नीय में प्रमुक्त करये साम पर भरी गई केन्द्रीय उत्पाद सुरुक के छूट (निकेट) के सामने से, जो आपत के बाहर किसी राष्ट्र या क्षेत्र को निर्मात की गयी है। / (0) in case of rebate of duty of excise on goods exported to any country or tunitory outside India of an excisable material used in the manufacture of the goods which are exported to any country or sentory outside india.
- यदि उत्पाद गुरुक का भूगलात किए जिला शारत के बाहर, तेपात या भूशन को आप कियोत किया गया है। (iii) in case of goods exported autside links export to Ninpal or Shuran, without payment of duty
- सुनिविधन उत्पाद के उत्पादन शृंतक के कुमलान के लिए जो इयुटी केवीट इस अधिनियम एवं इसके विभिन्न प्रावधानी के तसन मान्य की गई है और ऐसे भादेश मी आपक्त (अपीत) के दवारा शित्न अगिनिवास (स. 2), 1998 की धारा 109 के दवारा जिवल की नई तरीख अथवा समाधाविधि पर या बाद 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.
- उपरांबत आवेदन की दी प्रतिया प्रपण शहरा EA-8 ते, जो की कन्द्रीय उत्पादन शुल्ल (अपीत) नियमायजी, 2001, के जियम 9 के अतर्गत विनिर्दिष्ट है. इस आदेश के स्परेषण के 3 शहर के अंतर्गन की जाती व्यक्तिए । उपरोक्त आवेदन के साथ मूल अदेश व अपीत आदेश की दो प्रतिया संसरन की जानी पाहिए। साथ ही केन्द्रीय उत्पाद शुल्ल अधिनियाल, 1944 की पास 35-EE के तहन विधिपित शुल्ल की अद्यायनी के साथया के तीर पर 118-6 की प्रति (v) संस्थात की जानी प्राहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 8 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 much of the OiO and Order-in-Appeal 8 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.
- पुर्विक्षण अवेदन के साथ विक्रमीनिक्षण निर्माणन सुन्त की भूदावानी की जानी पाहिए। जेले सामाज रक्षण एक जान करने या उसने कम ही भी क्यार्थ 2006 का मुनानान किया। जाए और यदि सत्तवन रक्षण कान्न क्यार्थ से ज्यादा हो जो करने 1000 / का मुनानान किया जाए। The revision application shall be accompanied by a fee of Rs. 2007- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the around involved is more than Rupees One Lac. (vi)
- पदि इस आदेश में बड़े मूल आदेशों का शमानण है तो पार्चक मूल आदेश के जिए शहक का अग्रताल, उपयोगत देश से किया जाना पाड़िये। इस तथ्य के होते हुए औं के लिखा पढ़ी कार्य से क्षणते के जिए दशाहियांने अगीनीय लगीनियांने क्षणीय का करीय सामार के एक आदेदन किया जान 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptions work if excising Rs. 1 tash fee of Rs. 100% for each (D)
- वयासक्षोपित त्यासालय कुल्क अधिकितन, १३७५ के उनुसूती । के अतुसार सूच आदेश एवं तथान आदेश की वरिते पर विधितित 6.50 वर्ष्य का (E) Che 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
- सीमा शुरूक केन्द्रीय उत्पाद शुरूक एवं संधाभन अधीनीय त्याचारिकाण (कार्य विधि) जिस्सासती, 1982 में शंजित एवं अन्य संबन्धित मामाने की सम्भितिक करने बाते जिसमी की और भी ध्याप आमर्थित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service (F) Appellate Tribunal (Procedure) Flues, 1982
- you अपीजीय प्राधिकारी को अपीज शाविज कार्स से श्रवित गागक. विश्तृत और जाविजाम प्राथमाने के लिए, अपीजारी विभागीय विकासहट (G) www.cbec.gov.in all its mach \$ 1.7
 For the elaborate, detailed and lotest provisions relating to tring of appeal to the higher appellate authority, the appellant may refer to the Departmental website eyes controlled.



:: ORDER-IN-APPEAL ::

The Principal Commissioner, Central Excise & Service Tax, Rajkot (hereinafter referred to as "the appellant department") has filed the present appeal against the Order-in-Original No. 29/ADC/BKS/2015-16 dated 26.02.2016 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Central Excise & Service Tax, Rajkot (hereinafter referred to as "the adjudicating authority") in the case of M/s. Dwarkesh Enterprise, Bazar Line, Okha Port, Okha (hereinafter referred to as "the respondent").

- 2 The facts of the case are that SCN No. V.ST/AR-JMN/JC/52/2013 dated 01.04.2013 was issued to the respondent demanding recovery of not paid/short paid amount of service tax to the tune of Rs. 46,69,199/- under proviso to Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act") alongwith interest under Section 75 of the Act and imposition of penalty under Rule 7C of the Service Tax Rules, 1994 and under Section 76, 77 & 78 of the Act. The proposals made in the SCN were confirmed by the lower authority vide Order-In-Original No. 128/ADC/MG/2014-15 dated 05.03.2014 and also imposed penalty under Section 76. 77 & 78 of the Act and ordered recovery of late fee under Section 70 of the Act . The appellant filed the appeal before the then Commissioner (Appeals), Central Excise & Service Tax, Rajkot who vide Order-In-Appeal No. RJT-EXCUS-000-APP-234-14-15 dated 19.12.2014 has upheld the demand of service tax alongwith interest and consequential penalties for the period from Oct-2007 to March-2009, however remanded the case back to the lower authority for ascertaining the correct liability of service tax for the FY 2009-10 to 2010-11. The adjudicating authority in denovo proceedings vide impugned order, dropped the demand of service tax of Rs. 3,92,565/- and Rs. 3,22,997/- for the FY 2009-10 and 2010-11 respectively, and consequential interest and penalty.
- Aggrieved to the impugned order, the appellant department preferred the present appeal on the ground that the adjudicating authority has wrongly dropped the amount of service tax to the extent of Rs. 2,81,321/- on receipt of payments during the financial year 2011-12, for the services provided during the FY 2009-10 & 2010-11. The Commissioner (Appeals) in his order dated 19/23.12.2014, vide para-8 had remanded the matter back to the lower authority for verification. The respondent while submitting their plea had stated before Commissioner (Appeals) that the demanded amount of service tax of Rs. 46,69,199/- should have been restricted to Rs. 42,34,958/- only, since the payment towards the services provided involving service tax of Rs. 4,34,241/- [Rs. 3,92,565/- + Rs. 3,22,997/ (demand in the SCN) Rs. 2,81,321/- was required to be adjusted for the payments received during FY



2011-12 but related to the services provided in FY 2009-10 & 2010-11] do not become payable in absence of receipt of payments and were in accordance with the provisions of Rule 6 of the Service Tax Rules, 1994. However, the appeal has been filed seeking confirmation of demand of Service Tax of Rs. 42,34,958/- under section 73(2) of the Act for the years from 2007-08 to 2011-12 along with payment of interest under Section 75 of the Act and imposition of penalty under Section 76, 77 & 78 of the Act and to confirm the late fees under Section 70 of the Act, which were not the subject matter of remand proceeding.

- 4. Personal hearing in the matter was held on 25.04.2017 which was attended by Shri Dinesh Kumar Jain, Chartered Accountant, on behalf of the respondent and submitted that they have not applied for refund and will not file refund of excess payment of Rs. 2,81,321/- made in FY 2011-12. Due to change of appellate authority, the personal hearing was again held on 28.07.2017 which was also attended by Shri Dinesh Kumar Jain, Chartered Accountant, who reiterated the Grounds of Appeal and contentions made by them during personal hearing attended on 25.04.2017.
- He made written submission stating that the demand of Rs. 46,69,199/was proposed by taking into consideration the excess payment of Rs. 2,81,321/during the year 2011-12; that Commissioner(Appeals), Rajkot vide his order dated
 19.12.2014 has already upheld the demand of service tax of Rs. 42,34,958/alongwith interest and consequential penalties for FY 2007-08 and 2008-09 and
 remanded the case back to the lower authority for ascertaining the correct liability of
 service tax for FY 2009-10 and 2010-11 only keeping in mind the provisions of then
 Rule 6 of Service Tax Rules, 1994 which required that service tax was payable on
 'receipt of payment' and not on the basis of 'invoicing'; that the present departmental
 appeal is devoid of merits and therefore, is required to be dismissed.

FINDINGS:-

I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submissions of the appellant. The limited issue to be decided by me is whether the impugned order whereby the proceedings for recovery of differential service tax of Rs. 4,34,241/- during the period from 2009-10 & 2010-11 has been dropped in view of then Rule 6 of the Service Tax Rules, 1994, applicable during the material time, is proper or otherwise.





- 6. It is pertinent to mention that the department did not go in appeal against the earlier Order-In-Appeal No. RJT-EXCUS-000-APP-234-14-15 dated 19.12.2014, which remanded verification of Service Tax liability of the Respondent for 2009-10 & 2010-11 only and decided other issues. The relevant Para 8 of Order-In-Appeal dated 19.12.2014, is reproduced as under:
 - As regards to demand of differential service tax of Rs. 4,34,241/- during the period from 2009-10 to 2011-12, I find that the appellant has questioned the duty calculation for the period from 2009-10 to 2010-11, which according to them, they had correctly discharged based on payments received by them whereas the department had calculated the same based on their billing. I find force in the plea of the appellant as prior to 01.04.2011, Rule 6 of the Service Tax Rules, 1994 clearly specifies that service tax was to be paid to the credit of the Central Government by the 5th day or 6th day in case of electronic transfer through internet banking, of the month following the calendar month in which payment towards the value of the taxable service was received. On going through Annexure-A to the SCN showing duty calculation for the FY 2009-10 to 2011-12, I observe that differential service tax for the FY 2009-10 to 2010-11 has been ascertained as Rs. 3,92,565/- and Rs. 3,22,997/- respectively and for the FY 2011-12 i.e. it is shown as (-) Rs. 2,81,321/-Thus, prima facie it appears that the excess payment of service tax amounting to Rs. 2,81,321/- is likely to be payment of service tax on the amount received by the appellant towards taxable services provided by them prior to framing of Point of Taxation Rules, 2011 (effective from 01.04.2011). Since the details of taxable services provided and payment received for rendering such services by the appellant during the FY 2009-10 to 2010-11 are not available on records with this office, therefore, I feel it appropriate to remand the case back to the lower authority for ascertaining the correct liability of service tax keeping in mind the above aspects."
- 6.1 It is on record that the Department did not go in appeal against the issues framed by Commissioner (Appeals) as well as the issues decided vide Order-In-Appeal dated 19.12.2014, whereas the respondent has gone in appeal on other issues decided, which is pending in the Hon'ble CESTAT, Ahmadabad. However, neither Department nor respondent filed appeal on remanded part of Order-In-Appeal i.e. service tax liability during 2009-10 & 2010-11 to be quantified as remanded by the then Commissioner (Appeals). Having not gone in appeal to CESTAT against remand order, the Department can't come in appeal to Commissioner (Appeals) on the issues which have not been remanded Commissioner (Appeals). It is a fact that no issue, other than which has been remanded, could have been decided by the Additional Commissioner in the de-novo proceedings. Hence, the demands pertaining to years 2007-08 & 2008-09 being raised by the department in the present appeal could not have been decided by the lower adjudicating authority in de-novo proceedings and Para 3.3 & 3.4 of the impugned order have recorded correct findings, which are reproduced as under:





- It is observed that as per Section 68(1) of the Finance Act, 1994, every person providing taxable service to any person shall pay Service Tax at the prescribed rate, in such manner and within such period as may be prescribed. Further, Rule 6 of the Service Tax Rules, 1994 prescribed the manner and time limit for this purpose. During the relevant period, Rule 6 provides that the Service Tax shall be paid to the credit of the Central Government by the 5th/6th day of the month/quarter, immediately following the month/quarter in which the payment are received, towards the value of taxable services. The CBEC vide Para 301 of its Circular No. 97/8/2007-ST dated 23.08 2007 has also clarified that Service Tax liability for a particular month of quarter is required to be discharged on the payment towards the value of taxable service received during that month or quarter, as the case may be. It is evident from the show cause notice that the demand is raised on the basis of billing/invoicing instead of receipt of payment. Therefore, I find force in the plea of the Noticee in this regard, as also observed by the appellate authority and accordingly, during the relevant period, the Naticee is required to pay Service Tax of payment received towards the value of the taxable service. Further, in the present context, with regard to correct liability of the Noticee for the period under consideration. I find that the Noticee by providing copies of respective ST-3 returns and ledgers submitted that they have received the payment of Rs. 1,40,56,145/- and Rs. 1,76,39,693/- during the Financial Year 2009-10 and 2010-11 respectively and already paid Service Tax of Rs. 14,47,783/- and Rs. 18,16,886/- for the respective financial year. The said contention of the Noticee got verified from the Jurisdictional Range Officer and found to be correct.....
- 3.4 In view of foregoing findings, the correct liability of the Noticee towards service tax for the Financial Year 2009-10 and 2010-11 comes to Rs. 14.47,783/- and Rs. 18.16,686/- which the Noticee have already discharged. The said payments of Service Tax have already been considered while proposing the demand. Hence, no further amount of Service Tax for the said period is required to be recovered from the Noticee. Therefore, I find that no differential amount of Service Tax is demandable from the Noticee."

(Emphasis supplied)

- Rule 6(1) of Service Tax Rules, 1994, as was prevailing prior to 01.04.2011, reads as under:-
 - (1) The service tax shall be paid to the credit of the Central Government.
 - by the 6th day of the month, if the duty is deposited electronically through internet banking; and
 - (ii) by the 5th day of the month, in any other case, immediately following the calendar month in which the payments are received, towards the value of taxable services:

(Emphasis supplied)



- 7.1 Hence, for the period prior to 01.04.2011, the service provider was required to pay service tax by 5th/6th day of the month, following the calendar month in which the payments had been received, towards the value of taxable services and not the month in which invoice had been raised/issued. The adjudicating authority, in denovo proceedings vide impugned order, after verification of ST-3 returns and ledgers submitted by the respondent, held that they had discharged the service tax liability correctly during the year 2009-10 and 2010-11 based upon the amount of payments received by them towards provision of services and observed that no further amount of service tax for the said period was required to be paid by them. The appellant department has not produced any documentary evidences contrary to the above findings. Accordingly, I have no option but to uphold the impugned order and reject the appeal.
- In view of above facts and legal position, I reject the appeal filed by the department.
- The appeal filed by the appellant is disposed off in above terms.
- अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया
 जाता है।

(कुमार संतोष) आयुक्त (अपील्स)

By Speed Post

To.

1	M/s. Dwarkesh Enterprise, Bazar Line, Okha Port, Okha	मै. द्वारकेश एंटरप्राइज, बाज़ार लाइन, ओखा पोर्ट,	
		ओखा	

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
- The Assistant Commissioner, GST & Central Excise, Jamnagar Division, Jamnagar.
- Guard file.