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

क अपील फाइल मख्या

Appeal File No.

V2/272/RAJ/2016

मूल आदेश स / OLO No.

GLIAT NO.

दिनाक /

Date

24/ADC/RKC/2016-17

11.11.2016

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

RAJ-EXCUS-000-APP-080-2017-18

आदेश का दिनांक / Date of Order:

27.09.2017

जारी करने की तारीख / Date of issue:

29.09.2017

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

भपर आयुक्ता संयुक्त आयुक्ता उपायुक्ता सहायक आयुक्त, केन्द्रीय उत्पाद शुल्का सेवाकर, राजकोट । जामसगर । गांधीधाम। दवारा उपरित्यक्ति जारी मूल आदेश से सुजित: ।

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. Balaji Multiflex P. Ltd., Plot No. G-1612, GIDC, Metoda,,Kalawad Road,Rajkot

इस आदेश(अपील) से व्यथित 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 ,1944 की धारा 358 के अतर्गत 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:-

 वर्गीकरण मृत्याकन से सम्बन्धित सभी मामले सीमा शुलक, केन्द्रीय उत्पादन शुलक एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वैस्ट 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 अपीलों के अलावा शेष सभी अपीलें सीमा शुन्क, केंद्रीय उत्पाद शुन्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , दवितीय तल, बहुमाली भवन असावी अहमदाबाद- ३८००१६ को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, $2^{\sim t}$ Floor, Bhaumali Bhawan, Asarwa 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 शुरूक (अपील) नियमावली. 2001, के नियम 6 के अतर्गत निर्धारित किए गये प्रपत्न EA-3 को धार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहा उत्पाद शुरूक की माँग व्याज की माँग और लगाया गया जुमीना, रुपए 5 लाख या उससे कम. 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो कमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुरूक की प्रति संतरन करें। निर्धारित शुरूक का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के साथ में होना चाहिए। संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑडर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुरूक 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) अपौलीय न्यायाधिकरण के समक्ष अपौल, वित्त अपिनियम, 1994 की धार 86(1) के अतर्गत सेवाकर नियमवाली, 1994 के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपौल की गयी हो, उसकी प्रति साथ में सलगन करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ज्याज की माँग और लगाया गया जुमीना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अपिक है तो क्रमश 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संत्रगन करें। निर्धारित शुल्क का मुगतान, संबंधित अपौलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के लाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखाकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित अपौलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑडर) 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 filled 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) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज़ की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेशी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुरूक अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुरूक दुवारा पारित आदेश की प्रतियाँ सलग्न करें (उनमें से एक प्रति प्रमाणित होती चाहिए) और आयुक्त दुवारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में सलग्न करनी होगी । / 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, 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 of Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेंसकर को भी लागू की गई है, इस आदेश के प्रति अधीक्षीय पाधिकरण में अधील करते समय उत्पाद शुल्क/सेवा 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 'माग किए गए शुल्क' में तिम्ल शामिल है

- धारा 11 डी के अंतर्गत रकस
- सेनवेट जमा की ली गई गलत राशि सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकश (iii)
- बशर्ते यह कि इस धारा के प्रावधान विल्लीय (स. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अधीलीय प्राधिकारी के समझ विचाराधीन स्थगन अजी एवं अपील को लागू नहीं होगे।/

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

- 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.

भारत सरकार को पूनरीक्षण आवेदन : (C)

Revision application to Government of India: इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अतर्गत अवर मचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद 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 ibid:

- यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंडार गृह से दूसरे भंडार गृह पारगमन के दौरान. या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल 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
- भारत के बाहर किसी राष्ट्र या क्षेत्र को नियात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को नियात 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 (ii) the manufacture of the goods which are exported to any country or territory outside India
- यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल नियांत किया गया है। / (iii) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- सुनिश्चित उत्पाद के उत्पादन शुरूक के भुगतान के लिए जो इसूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अधील) के दवारा वित्त अधिनियम (स. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं!/ (iv)

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.

उपरोक्त आवेदन की दो प्रतिया प्रपय संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावर्ती. 2001, के नियम 9 के अंतर्गत विनिर्देष्ट है. इस आदेश के सपेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतिया 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 (v) सलस्म 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.

- पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुरूक की अदायगी की जानी चाहिए। जहाँ सलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि सलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 (vi)
- यदि इस आदेश में कई मूल आदेशों का समावेश हैं तो पत्येक मूल आदेश के लिए शुल्क का भूगतान, उपयुक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केहीय 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each. (D)
- यथासंशोधित न्यायालय शुरूक अधिनियम, 1975. के अनुसूधी-। के अनुसार मूल आदेश एवं स्थान आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुरूक टिकिट 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. (E)
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामली को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / (F) 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.
- उच्च अपीलीय पाधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम पावधानों के लिए, अपीलार्थी विभागीय वेबसाइट (G) www.cbec.gov.in को ਵੇਲ ਸ਼ਕਰੀ है। / 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. Balaji Multi-Flex P. Ltd., Plot No. G-1612, GIDC, Metoda, Kalawad Road, Rajkot (hereinafter referred to as 'the appellant') has filed the present appeal against the Order-In-Original No. 24/ADC/RKC/2016-17 dated 11.11.2016 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Central Excise, Rajkot (hereinafter referred to as "the lower adjudicating authority").

- The facts of the case are that during the course of Audit it was found that the appellant had imported machinery viz. Laminator vide Bill of Entry No. 6485430 dated 09.4.2012 from M/s. Nordmeccanica s.p.a, Italy valued at 2,19,144 Euro. The appellant entered into an agreement (Order Confirmation N. 2011-175 Super Simplex SL Mod.1300) wherein as per Para 5 & Para 6.9 of the said agreement, the charges for installation and commissioning provided by the supplier's technician at the place of the appellant was included in the value of import Rs. 1,51,18,866/-.
- 2.1. The SCN alleged that the services provided by the overseas supplier for erection and commissioning of the machineries supplied by them, fall under the Section 65(105)(zzd) of the Finance Act, 1994 and classifiable in the category of 'Erection, Commissioning or Installation Service', which was a taxable service.
- 2.2. It was alleged that the appellant was holding Service Tax Registration prior to importation and commissioning of the machinery, and therefore was aware of the provisions of the Finance Act, 1994 and Service Tax Rules. However, while filing ST-3 returns, they mis-represented the facts by not declaring the taxable value of the taxable service received from the overseas service provider and at no point of time disclosed this point to the department. This material fact was revealed during the course of audit.
- 2.2. The SCN also alleged that the appellant, being the service recipient and located in the taxable territory, was liable to pay Service Tax as determined under SI. No.5 of Notification No. 01/2006-ST dated 01-03-2006 @ 33% of the total value of imports. The total value of machinery imported by the Noticee was Rs. 1,51,18,866/- and hence the taxable value @ 33% of the total value arrived at Rs. 49,89,226/- and hence the appellant being service recipient, was liable to pay Service tax liability @ 12.36% of Rs.6,16,668/- The appellant was issued Show Cause Notice No. V.ST/AR-I//RJT/ADC(PV) /170/2015-16 dated 29.01.2016, demanding Service Tax of Rs. 6,16,668/- and Interest under Section 75 and for



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imposition of Penalty u/s 77(1),(2), 76 and 78 of the Finance Act, 1944 (hereinafter referred to as "the Act"). The lower adjudicating authority adjudicated the show cause notice vide impugned order and confirmed demand of Service Tax Rs. 6,16,668/- with Interest under Section 75 and also imposed Penalty u/s 77(1),(2), 76 and 78 of the Act.

- 3. Being aggrieved with the impugned order, the appellant preferred the present appeal, inter-alia, on the following grounds:
- (i) The appellant imported machinery and got it installed in their factory on payment of Customs Duty including the cost of installation as per their contract with foreign supplier.
- (ii) The Service was provided by the overseas supplier and they are not service provider but service recipient.
- (iii) As per Sr. No. 5 of Notification No. 1/2006-ST dated 01.03.2006 is optional. They had imported machine (Laminator) valued Rs. 1,51,18,866/- vide B/E No. 6485430 dated 09.4.2012 and paid appropriate Customs Duty, CVD and SAD on the full value of machinery as per agreement. The cost of installation and commissioning was included in the said assessable value on which Customs duty, CVD and SAD were discharged. Therefore, payment of Service Tax on installation charges does not arise.
- (iv) The installation of machinery was done by the local technician and no technician came from overseas supplier. No overseas service was under taken for installation of machinery under reference and no additional consideration was paid to the overseas supplier for installation.
- (v) In absence of any evidence, value of installation Rs.49,89,226/- is also not appropriate and the same is arbitrarily concluded. The provisions of Notification No. 01/2006-ST dated 01-03-2006 are not related as Customs Duty, CVD and SAD already paid on full invoice value which include the cost of installation. Therefore, no double duty can be charged.
- (vi) This is a revenue neutral case. If the appellant pays Service Tax, they are entitled for Cenvat Credit and refund of Customs Duty paid. Thus, no revenue is involved, therefore, no interest / penalty can be imposed when Customs duty already paid at the time of import on value inclusive of installation charge.



4. Personal hearing in the matter was attended by Shri Pragnesh B. Hirapara, Advocate, on behalf of the appellant who reiterated the grounds of appeal. He submitted that appellant is service receiver and not service provider, Notification No. 1/2006/ST dated 01.03.2006 is not applicable to this case, installation, errection and commissioning of machinery have been done by M/s. Ashling Impex LLP, Mumbai on complimentary basis without collecting any charge separately and utilizing local technician, hence, the impugned order is not correct.

FINDINGS

- 5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and records of the personal hearing. The limited issue to be decided in this appeal is, whether the appellant is liable to pay Service Tax on installation of machinery user Notification No. 01/2006-ST dated 01-03-2006 on service of 'Erection, Commissioning or Installation Service' or otherwise even if when Customs duty, CVD and SAD has been paid on full value of machinery.
- I find that the appellant had imported machinery vide Bill of Entry No. 6485430 dated 09.4.2012 from M/s. Nordmeccanica s.p.a, Italy under an agreement (Order Confirmation N. 2011-175 Super Simplex SL Mod.1300) wherein as per Para 5 & Para 6.9 of the said agreement, the charges for installation and commissioning provided by the supplier's technician at the place of the appellant was already included in the total value of imports Rs. 1,51,18,866/-. It is a fact that the appellant has paid applicable Customs duty, CVD and SAD on full invoice value which also included cost of Installation of machinery.
- I find that M/s. Nordmeccanica, Italy residing in a non-taxable territory and provided installation and commissioning of machinery sold by them to the appellant through their authorized representative M/s. Ashling Impex LLP, Mumbai, who reside in India. Thus, even if they are in India, the service have been provided on behalf of M/s. Nordmeccanica, Italy from whom these machinery have been installed. Thus, the appellant is a service receiver and is required to pay Service Tax as per Section 66 on the installation charges, which is 33% of the value at which the machinery was imported.
- 6.2 It is a fact that the installation was done by the local technician of behalf of the exporter from Italy and even though no technician came from overseas supplier the service done is to treated as service done by the overseas supplier.

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- I do not find any force in the argument that the appellant paid Customs duty, CVD and SAD on full invoice value and hence again charging Service Tax will be double taxation as Customs duty is payable on the importation of the goods, whenever Service Tax is payable on the importation of the machinery in the premises of the appellant.
- Notification No. 1/2006-ST dated 01.03.2006 read with Para 6.9 of the agreement dated 22.06.2011, as detailed in Para 28 of the impugned order is very clear that Service Tax is payable. I don't find any infirmity with the order and uphold the demand confirmed and recovery of interest.
- 6.5 Since the appellant did not declare details of importation of these machinery in their ST-3 returns penalty u/s 77 as well as under Section 78 of the Act is also upheld.
- In view of the above facts, I uphold the impugned order and reject the appeal.
- 7.1 अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 7.1 The appeal filed by the appellant is disposed off in above terms.

(कुमार संतोष) आयुक्त (अपील्स)

By R.P.A.D.

То

M/s. Balaji Multi-Flex P. Ltd., Plot No. G-1612, GIDC - Metoda, Kalawad Road, Rajkot मेसर्स बालाजी मल्टी फ्लेक्स प्रा. लिमिटेड, प्लॉट नं. G-१६१२, जीआईडीसी- मेटोडा, कालावड़ रोड, राजकोट

Copy to:-

- 1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2. The Commissioner, GST & Central Excise Commissionerate, Rajkot.
- 3. The Additional Commissioner, GST & Central Excise, Rajkot
- Guard File.

- I do not find any force in the argument that the appellant paid 6.3 Customs duty, CVD and SAD on full invoice value and hence again charging Service Tax will be double taxation as Customs duty is payable on the importation of the goods, whenever Service Tax is payable on the importation of the machinery in the premises of the appellant.
- Notification No. 1/2006-ST dated 01.03.2006 read with Para 6.9 of the agreement dated 22.06.2011, as detailed in Para 28 of the impugned order is very clear that Service Tax is payable. I don't find any infirmity with the order and uphold the demand confirmed and recovery of interest.
- Since the appellant did not declare details of importation of these 6.5 machinery in their ST-3 returns penalty u/s 77 as well as under Section 78 of the Act is also upheld.
- 7. In view of the above facts, I uphold the impugned order and reject the appeal.
- अपीलकर्ता दवारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है। 7.1
- 7.1 The appeal filed by the appellant is disposed off in above terms.

सत्यापित.

प्रवीण पोपट.

अधीक्षक (अपील)

आयुक्त (अपील्स)

By R.P.A.D.

To

M/s. Balaji Multi-Flex P. Ltd., Plot No. G-1612, GIDC - Metoda, Kalawad Road, Rajkot

मेसर्स बालाजी मल्टी फ्लेक्स प्रा. लिमिटेड, प्लॉट नं. G-१६१२, जीआईडीसी- मेटोडा, कालावड़ रोड, राजकोट

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