

रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील / फाइलसंख्या/
Appeal / File No.
V2/143/BVR/2018-19

मूल आदेश सं /
O.I.O. No.
01/S.Tax/Demand/18-19

दिनांक/
Date:
26/4/2018

ख अपीलआदेशसंख्या(Order-In-Appeal No.):

BHV-EXCUS-000-APP-119-2019

आदेश का दिनांक /
Date of Order:

15.05.2019

जारी करने की तारीख /
Date of issue:

16.05.2019

श्री कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवंसेवाकर,
राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,
Rajkot/Jamnagar/Gandhidham :

घ अपीलकर्ता&प्रतिवादी का नाम एवं पता /Name&Address of theAppellants&Respondent :-

M/s Assistant Conservator of Forest, Kaliyar National Park- Velavadar, Annexe Building, S/10, Bahumali
Bhavan, Bhavnagar-3640001.

इस आदेश(अपील) से व्याधित कोई व्यक्ति निम्नलिखित तरीके म 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 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) वर्गीकरणमूल्यंकनसम्बन्धितसभीमामलेसीमाशुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को जाननी 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 बताया 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 असारवा अहमदाबाद- 380016 को जाननी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan,
Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) 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 माँग, ब्याज की माँग 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 संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक
रजिस्ट्रार 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। 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) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित
प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जमा 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 माँग, ब्याज की माँग 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 संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार 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। 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/

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियां संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा 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 संलग्न 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 or 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 (मेस्टेट) 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 सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये 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 ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।
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 पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, 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:
(i) 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 भंडार 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 warehouse
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल 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 on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो झूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत त्रिनिर्दिष्ट है, इस आदेश के संप्रेषण 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 साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहां 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, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय 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, notwithstanding 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.
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार 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 अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर 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 अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय 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 ::

Asst. Conservator of Forest, Kaliyar National Park, Velavadar (*hereinafter referred to as "Appellant"*) filed Appeal No. V2/143/BVR/2018-19 against Order-in-Original No. 1/S.Tax/Demand/2018-19 dated 26.4.2018 (*hereinafter referred to as 'impugned order'*) passed by the Asst. Commissioner, Central Goods & Service Tax Division, Bhavnagar-I, Bhavnagar Commissionerate (*hereinafter referred to as 'lower adjudicating authority'*).

2. The brief facts of the case are that the Appellant was heading Kaliyar National Park, Velavadar, part of Forest Department of Gujarat Government. During inquiry initiated, it was found that the Appellant was issuing permits and collecting Entry Fee, Camera Charges, Videography Charges from the visitors of Kaliyar National Park, Velavadar, which were allegedly taxable under the category of 'Tour Operator Service' in terms of Section 65(105)(n) of the Finance Act, 1994 (*hereinafter referred to as "Act"*); that the Appellant was also providing Guest House Service, which allegedly was also taxable under the category of 'Accommodation in Hotel Service' in terms of Section 65(105)(zzzzw) of the Act and hence, the Appellant was liable to pay Service Tax of Rs. 12,98,028/- on the consideration received from providing above services but, the Appellant had neither obtained Service Tax registration nor paid any Service Tax.

2.1 Show Cause Notice No. V/15-28/Dem-ST/Hq/2016-17 dated 26.9.2016 was issued to the Appellant calling them to show cause as to why Service Tax should not be demanded and recovered from them on charges collected during the period from 2011-12 to 2015-16 under Section 73(1) of the Finance Act, 1994 along with interest under Section 75 and proposing imposition of penalty under Sections 70,77, 77(1)(a) and 78 of the Act.

2.2 The Show Cause Notice was adjudicated vide the impugned order, which confirmed demand of Service Tax of Rs. 12,98,028/- under Section 73(1) and ordered for its recovery along with interest under Section 75 of the Act and also imposed penalty of Rs. 12,98,028/- under Section 78 of the Act, Rs. 10,000/- each under Sections 77 and 77(1)(a) of the Act and imposed late fee under Section 70 of the Act read with Rule 7C of the Service Tax Rules, 1994.

3. Being aggrieved with the impugned order, the Appellant has preferred appeal, *inter-alia*, on the following grounds:-



- (i) The show cause notice was vague as it did not explain the nature of the services provided by the Appellant; that in order to levy the service tax on a particular service, it has to be first established that the the services provided by them fall under the ambit of the taxable service; that the Show cause notice failed to explain as to how statutory fees collected by them for permitting to enter into forest could be considered as consideration received for provision of service and how they were liable to pay service tax.
- (ii) The adjudicating authority overlooked their submissions and mechanically confirmed demand without giving any material finding.
- (iii) The show cause notice was issued to Asst Conservator of forest who is employee of the Government of Gujarat entrusted with the job of conservation of Kaliyar National park, Velavadar; that they collected charges in the nature of permit fee from tourists for entering into the national park. Thus, they have discharged their sovereign functions which cannot be brought in to service tax net and relied upon CBEC Circular No. 89/7/2006-ST dated 18.12.2006.
- (iv) That matter is settled now as the CESTAT, New Delhi in the case of Dy. Conservator of Forest, Ranthambhore- 2019(20) GSTL 355 has held that demand of service tax under the category of 'Tour Operator Service' is not sustainable.
- (v) That Kaliyar National Park, Velavadar is managed by Forest Department of the Government of Gujarat and fees collected by them to discharge sovereign functions were credited to consolidated fund of the State of Gujarat. As per Article 246(3) of the Constitution of India, only State has power to make laws in respect of any matters enumerated State List to levy such charges and Central Government cannot make any law to levy tax on statutory charges collected by State Government.
- (vi) They were not providing any motor vehicles to the tourists and hence, they cannot be categorized as 'Tour Operator' at all. As per CBEC Circular 334/1/2008-TRU dated 29.2.2008, the tour operator must provide services in permitted motor vehicles in order to get covered under the category of 'Tour Operator Service' however, the adjudicating authority has failed to give findings in the impugned order that they had provided vehicles to the visitors of Kaliyar National Park, Velavadar and relied upon case law of Cox & Kings India Ltd- 2014(35) STR 817.



(vii) The activities carried out by them like issuing permits to enter into National Park, Camera Fee, Videography Fee etc. did not come under any of the specified service tax categories upto 30.6.2012 and hence, demand of service tax under the category of 'Tour Operator Service' is not sustainable upto 30.6.2012. Even after introduction of negative list w.e.f. 1.7.2012, the Appellant is not liable to pay Service Tax as Kaliyar National Park is part of Forest Department and all activities carried out by them are to be considered as activities performed by the Gujarat Government in view of Section 66D(a) of the Act and hence, they are not liable to pay service tax.

(viii) The 'Accommodation in Hotel Service' is taxable only if rate per day is more than Rs. 1,000/-; that they charged less than Rs. 1,000/- per day in respect of non-AC room and charged Rs. 3000/- per day for AC rooms. However, their total annual collection from renting rooms is around 3,00,000/- only, which is way below threshold exemption limit of Rs. 10,00,000/- and hence, they are not liable to pay service tax on this.

(ix) The adjudicating authority has erred in invoking extended period of limitation; that the Appellant being a Government authority, there cannot be any malafide intention to evade payment of service tax and hence, entire demand is barred by limitation and the impugned order erroneously imposed penalty under Section 78 of the Act.

(x) Since they are not liable to pay service tax under 'Tour Operator Service' and 'Accommodation in Hotel Service', penalty imposed under Section 77 of the Act is not sustainable.

4. In Personal Hearing, Shri Jayesh Jobanputra, C.A. appeared on behalf of the Appellant and reiterated the grounds of appeal and submitted that the Appellant is functioning as Government and hence, service is not taxable; that they are undertaking fiduciary duty; that the Hon'ble CESTAT in case of Ranthambhore National Park has decided the matter and it has been held that no service tax is payable; that they are performing sovereign functions of the Government of Gujarat and hence, the appeal may be allowed.

Findings:-

5. I find that the Appellant has complied with the provisions of Section 35F of the Act by depositing Rs. 97,400/- @. 7.5 % of Rs. 12,98,028/- vide Challan No. 00034 dated 3.7.2018, as submitted by them in Appeal Memorandum



6. I have carefully gone through the facts of the case, the impugned order, the grounds of appeal memorandum and written as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is whether the impugned order holding that the Appellant is liable to pay Service Tax, in the facts of this case, under the categories of 'Tour Operator Service' and 'Accommodation in Hotel Service' and imposing penalty is correct, legal and proper or not.

7. I find that the lower adjudicating authority has confirmed service tax demand of Rs. 10,44,965/- on the charges collected during the period from 2011-12 to 2015-16 from the visitors of Kaliyar National Park, Velavadar on the ground that the Appellant was engaged in business of planning, scheduling, organizing/arranging tours by vehicles and hence, covered under the category of 'Tour Operator Service'. The Appellant has contested this reason on the ground that Kaliyar National Park, Velavadar is managed by the Forest Department of Government of Gujarat and charges collected by the Appellant from tourists for accessing National Park were credited to the consolidated fund of the State of Gujarat; that they discharged sovereign functions which cannot be brought in to service tax net; that they had not provided any motor vehicles to the tourists and hence, they cannot be called 'Tour Operator' and not liable to service tax and relied upon case law of Dy. Conservator of Forest, Ranthambhore- 2019(20) GSTL 355.

7.1 It is pertinent to examine definition of "Tour Operator Service" under Section 65(115) of the Act, as it existed upto 30.6.2012, as under:

"(115) "tour operator" means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder."

7.2 On going through the records, I find that Kaliyar National Park, Velavadar is under control of Forest Department of the Government of Gujarat; that the Appellant issued permits to visitors to enter National Park after collecting Entry Fees for persons/vehicles and also for still camera and video camera as Camera Charges, Videography Charges etc. at specified rates as notified by the Forest Department of Government of Gujarat; that they were not organizing tours but collecting Entry Fees in lieu of permission to enter in the National Park. The Adjudicating authority has erroneously arrived at a conclusion that the Appellant



was engaged in business of planning, scheduling, organizing/arranging tours by vehicles without bringing any evidence on record to that effect. I find that the Appellant, being part of Forest Department, has mandated duty to protect environment and to safeguard and regulate forests and wild life and not to organize tours. The entry fee of persons is to regulate movement inside forest and collection of miscellaneous charges like Camera charges, Videography Charges etc. are not for recreation of tourists but as per orders of the Government of Gujarat and hence, such amounts have to be considered as statutory fees. Under the circumstances, activities carried out by the Appellant are not covered under the category of 'Tour Operator service' upto 30.6.2012. My views are supported by the Order passed by the Hon'ble CESTAT, New Delhi in the case of Dy. Conservator of Forest & Dy. Field Director reported as 2019 (20) G.S.T.L. 355 (Tri. - Del.), wherein it has been held that,

"10. We perused the relevant Act and rules and note that the above Act empowers the State Government, for notification of National Park as well as to restrict the entry of visitors as well as vehicles into the National Park. It is evident that the primary objective of such restriction is to protect wild life and tourism is permitted only to the extent circumscribed by the above objectives.

11. The CBEC has issued master Circular No. 96/7/2007-S.T., dated 23-8-2007. One of the issues clarified is regarding whether the activities of sovereign/public authorities performed under the statute can be considered as provision of service, for purpose of levy of Service Tax in S. No. 999.01, circular has clarified that any fee collected as per the provisions of the relevant statute for performing mandatory and statutory functions under the provisions of any law are not to be treated as services provided for consideration.

12. In the present case, we note that the amount recovered from the tourists are credited to the account of the State Govt. after reimbursing the vehicle owners towards the rent payable for such vehicles. The above activities of the appellant, are to be seen in the context of Wilde Life Protection Act as well as Rules. We are of the view that Forest Department has the mandatory duty to protect the environment and to safeguard forests and wild life. Amounts recovered by them towards issue of entry permits as well as vehicles which have also been credited to the State Treasury are to be considered in the nature of fee or amount collected as per the provisions of relevant statute for performance of statutory functions. This cannot be considered as consideration for purposes of organizing tour.

13. In view of above discussions, the Department is not justified in demanding Service Tax on the amounts collected by the appellant. The impugned order is set-aside and appeals allowed."

(Emphasis supplied)

8. Regarding the demand pertaining to period from 1.7.2012 to 31.3.2016, the Appellant has contested that after introduction of negative list w.e.f. 1.7.2012, the Appellant is not liable to pay Service Tax as Kaliyar National Park is part of Forest Department of Gujarat Government and all the activities carried



out by them have to be considered as activities performed by the Gujarat Government and hence, they are exempted from Service Tax in terms of Section 66D(a) of the Act. I find that Section 66D of the Act reads as under:

“SECTION 66D. Negative list of services. — The negative list shall comprise of the following services, namely :—

- (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—
 - (i) (omitted)
 - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) transport of goods or passengers; or
 - (iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;”

8.1 The term "Government" has been defined under Section 65(26A) of the Act as under:

“ ‘Government’ means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder;”

8.2 I find that the Appellant, being part of Forest Department of Government of Gujarat, is covered within the definition of ‘Government’ *supra* and consequently services provided by them are covered under negative list w.e.f. 1.7.2012, in view of Section 66D(a) of the Act. Hence, the Appellant is not liable to pay service tax for the period from 1.7.2012 to 31.3.2016.

9. Regarding service tax demand of Rs. 2,53,063/- under the category of ‘Accommodation Service’, the Appellant has contested that they have non-AC rooms and collected less than Rs. 1,000/- per day/night and hence, exempted under Mega exemption Notification, however they have also submitted that they have AC rooms charging Rs. 3,000/- per day/night, which is not exempted from service tax. I find that these are not for performing any statutory functions but have commercial angle and hence, service tax is payable on the accommodation charges collected from AC rooms. They have submitted that their total collection from renting of rooms is around 3,00,000/- per annual, which is within threshold exemption limit of Rs. 10,00,000/- and hence, they are not liable to pay service tax. I find that the Appellant has collected Rs. 4,31,699/-, Rs. 4,60,050/-, Rs. 5,05,796/-, Rs. 3,00,919/- and Rs. 3,64,991/- during the years 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 respectively, as per Annexure-A of the impugned order. Since, the amounts received in each year is within SSI exemption limit of Rs. 10,00,000/- specified vide Notification No. 8/2008-ST



dated 1.3.2008, I hold that the Appellant is not liable to pay service tax on consideration received from renting of rooms. Accordingly, I set aside confirmation of service tax demand of Rs. 2,53,063/- under the category of 'Accommodation in Hotel Service' and consequent penalty imposed under Section 78 of the Act.

10. In view of above, I set aside the impugned order and allow the appeal.

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


11. The appeal filed by the Appellant is disposed off as above.

सत्यापित,



विपुल शाह

अधीक्षक (अपील्स)


(कुमार संतोष)

प्रधान आयुक्त (अपील्स)

By R.P.A.D.

To, The Asst. Conservator of Forest, Kaliyar National Park-Velavadar, Annexe Building, S/10, Bahumali Bhavan, Bhavnagar - 3640001.	सेवा में, सहायक वन संरक्षक, कालियार नेशनल पार्क, एनेकसी बिल्डिंग, एस/10, बहुमाली भवन, भावनगर।
---	---

प्रति:-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- ✓ 4) गार्ड फ़ाइल।

