

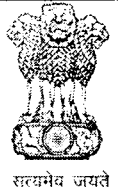


::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

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



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

| | | | |
|---|---|--|---------------------------------------|
| क | अपील / फाइल संख्या / Appeal / File No. V2/236/GDM/2017 | मूल आदेश सं / O.I.O. No. 11/DC/Anjar- Bhachau/2017-18 | दिनांक / Date 29-11-2017 |
| ख | अपील आदेश संख्या (Order-In-Appeal No.): | | |

KCH-EXCUS-000-APP-218-2018-19

आदेश का दिनांक /
Date of Order: **11.12.2018** जारी करने की तारीख /
Date of issue: **14.12.2018**

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, 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 / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-**
M/ s Ramesh Meghji Sorathiya, Plot No. 60, Shrimali Colony,, New Anjar, Kutch (Kutch).

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 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं. 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, 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) निगमावली, 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 मांग, व्याज की मांग 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 रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। 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 जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, व्याज की मांग 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 रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
Application made for grant of stay shall be accompanied by a fee of Rs 500/-.

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 is 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 दंडों की गयी अपील, सेवाकर नियमावली, 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 प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रामाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण का आवेदन दर्ज करने का निर्देश देने जाल 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 (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 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 जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, वशत कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रूप से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत लागू 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
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के अरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, वंशी 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 का निर्यात 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 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 इच्छा केंद्रित 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 समायावधि 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 उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदनों 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।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढी 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, 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.
(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 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.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कायें 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 उपाय, 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 ::

M/s. Ramesh Meghji Sorathiya, Plot No. 60, Shrimali Colony, New Anjar, Kutch (hereinafter referred to as 'appellant') filed present appeal against Order-in-Original No. 11/DC/Anjar-Bhachau/2017-18 dated 29.11.2017 (hereinafter referred to as "impugned order") passed by the Deputy Commissioner, Central GST Division, Anjar-Bhachau (hereinafter referred to as "the adjudicating authority"): -

2. The brief facts of the case are that the officers of the Service Tax department visited the premises of the appellant on 26.8.2014 and on scrutiny of Balance Sheet, 26AS statements and ST-3 returns for the years 2012-13 & 2013-14 it revealed that the appellant earned income under the head "NBCC Shed No. 12 KASEZ GIM Income" but not paid service tax at the appropriate rate. Inquiry made with the appellant revealed that the appellant provided Works Contract Service in relation to dismantling and reconstruction of 12 Nos. of CIB (Special Type) Shed at Kandla SEZ against Letter of Agreement No. SGM(West)/KASEZ/LOA/2012/1005 dated 7.5.2012 issued by National Building Construction Corporation Limited but the appellant had not followed procedure/manner as provided under the Notification No. 40/2012-ST dated 20.6.2012 and Notification No. 12/2013-ST dated 1.7.2013. Show Cause Notice No. IV/6-10/STIIR/2014-15 dated 22.8.2017 was issued to the appellant demanding Service Tax of Rs. 26,12,302/- under proviso to Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act") along with interest under Section 75 of the Act and for imposition of penalty under Section 77 and under Section 78 of the Act. The lower adjudicating authority vide impugned order confirmed Service Tax of Rs. 26,12,302/- along with interest and imposed penalty of Rs. 10,000/- under Section 77 of the Act and imposed penalty of Rs. 26,12,302/- under Section 78 of the Act.

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

(i) The impugned order is untenable in law being a non-speaking and non-reasoned order and against the principles of natural justice. The lower

adjudicating authority has not dealt with any submissions made by the appellant, both on merits and on limitation and acted mechanically and has passed the impugned order in a summary and cavalier manner. The lower adjudicating authority has not even cared to give any findings on their submissions that the proposed tax demand is against the provisions of SEZ Act, 2005 and Rules made thereunder; that the proposed tax demand is against the clarification of KASEZ authority, which is functioning under the Ministry of Commerce & Industry, Government of India; that the tax demand was challenged on the basis of applicable judicial pronouncements; that the findings of the lower adjudicating authority are nothing but reproduction of the allegations made in the SCN.

(ii) The appellant referred and reproduced Section 26(1)(e) of the SEZ Act, 2005 and Rule 31 of SEZ Rules, 2006 and submitted that the said provisions provides that no service tax is leviable under the Act on services provided/wholly consumed by any SEZ unit or SEZ developer for their authorized operations; that the provisions of SEZ Act have overriding effect in case of any inconsistent provision in any other Act in view of Section 51 of the SEZ Act, 2005. The appellant relied on decisions in the case of Reliance Ports and Terminals Ltd. reported as 2015 (40) STR 200 (Tri. – Ahmd.), Intas Pharma Ltd. reported as 2013 (32) STR 543 (Tri. – Ahmd.) and Zydus Technologies Ltd. reported as 2015 (39) STR 657 (Tri. – Ahmd.) in support of their contention.

(iii) The appellant referred Entry No. 12(a) of Notification No. 25/2012/ST dated 20.6.2012 and definition of Government authority as provided under clause (s) of Para 2 of the said Notification and submitted that services by way of construction or any other original works for non-commercial/non-industrial use provided to Government, Government authority or local authority is exempted from payment of service tax. In the present case, they have provided services of construction of buildings for KASEZ authority through M/s. National Bidding Construction Corporation Limited (a Govt. of India Enterprise) wherein more than 90% of equity is being held by the Central/State Government and therefore the same is covered within the definition of 'Government authority'. The subject civil structure is



predominantly used other than for commerce, industry or any other business or profession and therefore covered under Entry No. 12(a) of the said Notification. The appellant relied on decision in the case of Shapoorji Paloonji & Company Pvt. Ltd. reported as 2016 (42) STR 681 (Pat.) in support of their contention and submitted that the impugned order confirming service tax on construction services provided to a Government authority is untenable in law being specifically exempted.

(iv) The allegation that the appellant was not eligible for exemption of Service Tax under Notification No. 40/2012-ST dated 20.6.2012 and Notification No. 12/2013-ST dated 1.7.2013 for the reason that the appellant was not able to produce relevant declaration in Form A-1 is untenable in law since the SEZ developer KASEZ authority which is functioning under the Ministry of Commerce & Industry, Government of India vide their letter dated 10.6.2015 has clarified that NBCC and its agencies doing construction as well as maintenance work in KASEZ don't attract payment of service tax. It is submitted that the said letter of KASEZ authority is akin to declaration in Form A-1 as required under the said Notifications.

(v) The impugned order is against the provisions of Section 67(2) of the Act inasmuch as the amount received towards services provided has not been treated as cum-tax value.

(vi) The impugned order has been issued invoking proviso to Section 73(1) of the Act, however, the necessary ingredients to invoke the said provision like fraud or collusion or willful mis-statement or suppression of facts or contravention of any provisions of the Act with intent to evade payment of service tax is absent in the present case; that the appellant was under bonafide belief that the construction services provided to a Government authority was exempted from service tax since the same was wholly consumed within SEZ and therefore, the allegation of intent to evade payment of service tax is nothing but self-serving in nature and untenable in law; that it is settled legal position that something positive than mere inaction on part of the person concerned shall be established which is absent in the present case; that mere withholding of information is not

sufficient but it should be established that the concerned person had deliberately suppressed some fact with intent to evade payment of service tax which he knew was required to be declared as per the statute; that the department has failed to discharge the burden to establish this fact and therefore the SCN is barred by limitation; that the issue involved relates to interpretation of statutory provisions and consequently, the invocation of proviso to Section 73(1) of the Act is illegal and without authority of law.

(vii) Since the recovery of service tax is untenable in law, recovery of interest under Section 75 of the Act is not sustainable.

(viii) The impugned order imposed penalty upon the appellant under Section 77 of the Act is untenable since the appellant has never contravened any of the clauses of the said Section. Section 77 of the Act has number of clauses and the impugned order has not specified which clause had been contravened by the appellant.

(ix) The impugned order imposed penalty upon the appellant under Section 78 of the Act, however, necessary ingredients to invoke the said provisions like fraud or collusion etc. is completely absent in the present case. The appellant was under bonafide belief that the construction services provided by them to a Government authority was exempted from service tax since the same was wholly consumed within SEZ and therefore, the allegation of intent to evade payment of service tax is untenable and therefore penalty cannot be imposed under Section 78 of the Act. The present issue involved interpretation of law, imposition of penalty in such case is unsustainable in law. The impugned order imposed 100% penalty equal to service tax demanded is untenable in view of 1st proviso to Section 78 of the Act which provides that penalty shall be 50% of service tax demanded if the disputed transactions are recorded by the appellant as in the present case.

4. Personal hearing in the matter was attended by Shri Dinesh Jain, Chartered Accountant, who reiterated the grounds of appeal and submitted that they have provided service to KASEZ as sub-contractor through NBCC; that providing services to KASEZ is not under dispute; that letter



dated 10.6.2015 of KASEZ very clearly states that no service tax is payable for the services provided to the SEZ by NBCC as well as agency of NBCC; that they are agency of NBCC; that CESTAT, Ahmedabad in the case of Reliance Ports & Terminals Ltd. reported as 2015 (40) STR 200 (Tri. – Ahmd.) has allowed appeal in a similar matter; that their appeal needs to be allowed accordingly.

FINDINGS:

5. I have carefully gone through the facts of the case, impugned order, grounds of appeal and the submissions made during personal hearing. The issue to be decided in the present case is as to whether the appellant is liable to pay service tax on works contract service provided to Kandla Special Economic Zone through NBCC for construction of shed within SEZ area or not.

6. It was alleged in the SCN that the appellant was not able to produce relevant declaration in Form A-1 from the SEZ developer as provided in Notification No. 40/2012-ST dated 20.6.2012 and Notification No. 12/2013-ST dated 1.7.2013. I find from the facts of the case that the appellant in the capacity of sub-contractor provided works contract service to KASEZ, Gandhidham and constructed 12 Nos. of CIB (Special Type) Shed within SEZ area; that KASEZ, Gandhidham is developer of SEZ and is functioning under Ministry of Commerce & Industry of Government of India. I also find that Section 26(e) of SEZ Act, 2005 provides unconditional exemption to SEZ developer from payment of service tax on the services received for authorized operations. Section 51 of SEZ Act, 2005 provides that provisions of SEZ Act shall have overriding effect over other law/Act in case of any inconsistency as has also been clarified by CBEC in Para 3 of CBEC Circular No. 1001/8/2015-CX.8 dated 28.04.2015. Hence, I find that confirmation of demand of service tax under the impugned order is not legal, proper and correct.

7. I also find that the appellant has made the submissions in their defense before the lower adjudicating authority and many decisions of the Hon'ble CESTAT, Ahmedabad have been relied upon wherein it has been

consistently held that no service tax can be levied on the services consumed for authorized operations in SEZ in view of provisions of SEZ Act. However, the lower adjudicating authority neither discussed nor distinguished these decisions, which is against judicial discipline and he needs to be careful while passing adjudication orders. I find that intention of the Central Government is to grant ab-initio exemption from service tax to the service provider in respect of the services provided to and wholly consumed for authorized operations in SEZ in consistent with the SEZ Act. Notification No. 40/2012-ST dated 20.6.2012 and Notification No. 12/2013-ST dated 1.7.2013 prescribe the manner through which exemption can be claimed. It is a fact that the appellant has not produced Form A-1 from the SEZ developer, however, this procedure has to be condoned/ relaxed when it is established that the appellant has provided taxable services to SEZ developer, which is carrying out authorized operations in SEZ. It is settled legal position that interpretation of an exemption notification would depend upon the nature and extent thereof and the terminologies used in the notification would have an important role to play and that where the exemption notification *ex facie* applies, there is no reason as to why the purport thereof would be limited for no justified reason.

7.1. I find that the Hon'ble Supreme Court in the case of Malwa Industries Ltd. reported as 2009 (235) E.L.T. 214 (S.C.) has held as under: -

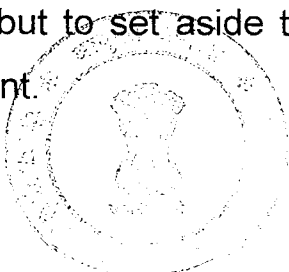
10. *An exemption notification should be read literally. A person claiming benefit of an exemption notification must show that he satisfies the eligibility criteria. Once, however, it is found that the exemption notification is applicable to the case of the assessee, the same should be construed liberally.*

11.


12. *A notification like any other provision of a statute must be construed having regard to the purpose and object it seeks to achieve. For the aforementioned purpose, the statutory scheme in terms whereof such a notification has been issued should also be taken into consideration.*

(Emphasis supplied)

8. In view of above factual and legal position, I hold that the appellant is not liable to pay service tax on works contract service provided to SEZ developer to carry on authorized operations in SEZ. Hence, I have no option but to set aside the impugned order and allow appeal filed by the appellant.



९. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal filed by the appellant is disposed off in above terms.


12/11/2018
(कुमार संतोष)
आयुक्त (अपील्स)
11/12/2018

By Speed Post

To,

M/s. Ramesh Meghji Sorathiya,
Plot No. 60, Shrimali Colony,
New Anjar,
Kutch

मेसर्स रमेश मेघजी सोरठिया,
प्लॉट न. ६०, श्रीमाली कोलोनी,
न्यू अंजार,
जिल्ला - कच्छ

Copy to:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for kind information please.
- 2) The Commissioner, CGST & Central Excise, Gandhidham Commissionerate, Gandhidham for necessary action.
- 3) The Deputy Commissioner, CGST & Central Excise, Anjar-Bhachau Division, Gandhidham (Kutch) for necessary action.
- ✓ 4) Guard File.

