



::प्रधानआयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE PRINCIPAL 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.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/29 /GDM/2018-19	23/JC/2016	28-11-2016

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

KCH-EXCUS-000-APP-077-2019

आदेश का दिनांक /

Date of Order:

15.07.2019

जारी करने की तारीख /

Date of issue:

16.07.2019

श्री कुमार संतोष, प्रधानआयुक्त (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 एवं 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/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

Manoj Yadav Rolling Mill & Labour Contractors, GIDC Industrial Area-332, Mithi Rohar, Gandhidham- Kutch

इस आदेश (अपील) से ब्यायत काई ब्याक्त निम्नलिखित तरीके में उपयुक्त प्राधिकारों / 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) सामा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रांत 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 मामलों सीमा शुल्क, केन्द्रीय उत्पादन 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- ३८००१६ को की जानी चाहिए। /

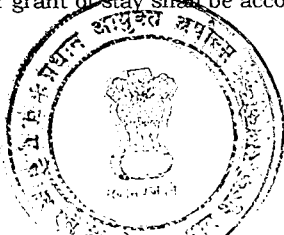
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) 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 मांग, ब्याज 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 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 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, ब्याज 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 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 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 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 आयात, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति इनामित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज कराने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 85 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जमा वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
 - सेनवेट जमा की ली गई गलत राशि
 - 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 :
- amount determined under Section 11 D;
 - amount of erroneous Cenvat Credit taken;
 - 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 कोपनरीक्षण 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 इकाई, 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 भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह से 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
 - 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 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.
 - 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 Ebutan, without payment of duty.
 - मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी केडीटी 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 समायाविधि 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.
 - उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट 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 साथ 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.
 - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न 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.
 - 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 पत्र कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण 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.
 - यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I 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.
 - सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित 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.
 - 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

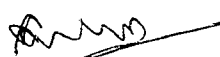
M/s. Manoj Yadav Rolling Mill & Labour Contractors, GIDC Industrial Area-332, Mithi Rohar, Gandhidham, District - Kachchh holding Service Tax Registration No. ABPPY1510MSD001 (hereinafter referred to as 'the appellant') has filed present appeal against Order-in-Original No. 23/JC/2016 dated 28.11.2016 (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, Central Excise & Service Tax, Gandhidham (hereinafter referred to as 'the lower adjudicating authority').

2. The brief facts of the case are that the appellant was engaged in providing taxable services, namely, Manpower Recruitment or Supply Agency service. During the course of audit in respect of Central Excise and Service Tax, Mango Range, Jamshedpur and scrutiny of the records of M/s. Kohinoor Steel (P) Ltd., Chandil, Jamshedpur (hereinafter referred to as 'M/s. Kohinoor Steel') by office of the Principal Accountant General, it was found that the appellant had rendered their services to M/s. Kohinoor Steel during 2009-10 to 2010-11 but no service tax was paid by them.

2.1 The appellant had not submitted documents, namely Balance Sheet, Profit & Loss Account, Form 26AS for the period 2009-10 to 2010-11 for necessary verification for their service tax liability even after repeated reminders issued by the department. Therefore, the department obtained Form 26AS from the Income Tax department, which revealed that the appellant had short paid service tax during 2009-10 to 2012-13. Show Cause Notice No. V.ST/AR-II-G'dham/COMMR/159/2014 dated 14.10.2014 was issued demanding service tax of Rs. 50,62,692/- which was adjudicated vide the impugned order confirming demand of service tax of Rs. 50,62,692/- under provision to Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') along with interest under Section 75 of the Act; imposing penalty of Rs. 10,000/- under Section 77 of the Act and penalty of Rs. 50,62,692/- under Section 78 of the Act on the appellant.

3. Being aggrieved by the impugned order, the appellant has preferred the present appeal, *inter alias*, on the following grounds:

- (i) The lower adjudicating authority has not considered service tax of Rs. 19,52,577.86 already paid by them, which was also shown in ST-3 Returns.
- (ii) The appellant received interest of Rs. 1,19,866/- on fixed deposits made with Bank which is not service taxable.



(iii) The appellant had not provided any service to M/s. Gangotri Iron & Steel Co. Ltd. and hence, the appellant is not liable to pay service tax on basis of gross amount of Rs. 58,48,332/- as per details given in Form 26AS.

(iv) The appellant had received Rs. 3,38,55,650/- on account of carrying out processes of manufacturing and hence, this amount is also not liable to service tax.

(v) Inasmuch as demand of service tax is not tenable, no interest is payable by the appellant and no penalty is imposable on them.

4. Personal hearing was granted to the appellant on 15.04.2019, 30.04.2019, 23.05.2019, 24.06.2019, 04.07.2019 and 12.07.2019 but no one appeared on behalf of the appellant on any of the above given dates.

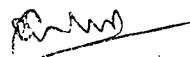
Findings:

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and the grounds of appeal detailed by the appellant. The issue to be decided in the present appeal is whether, in the given facts of case, the impugned order confirming demand, to pay interest and imposing penalty on the appellant is correct, legal and proper or otherwise.

6. I find that the impugned SCN has alleged that the appellant had provided taxable service of "Manpower Supply Agency" during the period from 2009-10 to 2012-13 and had short paid service tax on the basis of the audit of the statutory records of Central Excise & Service Tax, Mango Range, Jamshedpur and scrutiny of the records of M/s. Kohinoor Steel.

6.1 The lower adjudicating authority has held that the appellant had provided taxable service, namely, Manpower Supply Agency valued at Rs. 6,65,23,063/- involving service tax of Rs. 50,62,692/- to M/s. Kohinoor Steel for which the appellant issued invoices and they also received payment from M/s. Kohinoor Steel, the service recipient. I further find that the lower adjudicating authority has taken Form 26AS of the appellant as basis for calculation of service tax liability as no documents, namely, Balance Sheet, Profit & Loss Account or any other details/information for the period under question have been submitted by the appellant to the department even after repeated reminders issued in 2014 though they had taken service tax registration on 12.08.2011.

6.2 The appellant has contended that they received Rs. 3,38,55,650/- on account of carrying out processes of manufacturing but failed to give details of





manufactured items, their job work, for whom they did and their details etc. The appellant has also claimed that they had not provided any service to M/s. Gangotri Iron & Steel Co. Ltd., hence, they are not liable to pay service tax for amount of Rs. 58,48,332/- as per details given in Form 26AS, however, they failed to submit as to what for this large sum has been paid to them. The contention that the lower adjudicating authority has not considered service tax of Rs. 19,52,577.86 already paid by them and shown in their ST-3 Returns but the appellant failed to submit copies of ST-3 Returns or copy of challans or these details in their Appeal Memorandum and hence, can't be considered as true. I find that the appellant has not contested the fact that they had provided manpower supply agency service to M/s. Kohinoor Steel as alleged in the impugned SCN. I further find that the appellant has not submitted any documents, either before the lower adjudicating evidencing that they had not provided any services and had carried out manufacturing activities either for themselves or for others on job work even after several reminders issued by the department! I find that the lower adjudicating authority has stated in his findings that the audit report establishes that the appellant rendered taxable service of manpower supply agency to M/s. Kohinoor Steel and the appellant has received Rs. 6,65,23,063/- from M/s. Kohinoor Steel during the period from 2009-10 to 2012-13, on which the appellant was required to pay service tax of Rs. 70,40,074/- but paid service tax of Rs. 19,77,382/- only and thus, the appellant short paid service tax of Rs. 50,62,692/-. I also find that the appellant had provided the said service since 2009-10 but they obtained service tax registration in 2011-12 on 12.11.2011. In view of this factual position, the contention that they are not liable to service tax, on their income shown in Form 26AS, is only a bald argument made by the appellant without producing any documentary evidences, which cannot be accepted.

6.3 In view of above, the appellant is required to pay service tax of Rs. 70,40,074/- during the period from 2009-10 to 2012-13, however, out of which they have paid service tax of Rs. 19,77,382/- only. The appellant is, thus, required to pay service tax of Rs. 50,62,692/- as confirmed vide the impugned order. I, therefore, have no option but to uphold demand of service tax of Rs. 50,62,692/- as confirmed vide the impugned order.

7. I find that the appellant had provided taxable services and had short paid service tax to the Government, which he was required to pay immediately. Having not paid then, the appellant is duty bound to pay service tax now along




[Handwritten signature]

with interest forthwith. There is no doubt that the appellant has suppressed the material facts from the department filed incorrect ST-3 Returns with intent to evade payment of service tax only. I also find that the appellant had not obtained service tax registration in accordance with the provisions of Section 69 of the Act in time. Hence, I hold that the appellant has contravened the provisions of Section 68 and Section 70 of the Act with intent to evade payment of service tax and hence, the appellant is liable to penalty of Rs. 10,000/- imposed in the impugned order under Section 77 of the Act.

7.1 I also find that the appellant did not appear in personal hearing before the lower adjudicating authority nor submitted any defence reply to the SCN and also not appeared for personal hearing before the undersigned despite 7 opportunities given to them over a period of 3 months. It is also a fact that the appellant had not co-operated with the investigation and had not submitted any documentary evidences regarding their claim of non-taxable income inspite of repeated reminders issued by the department! All these facts reflect poorly on part of the appellant. Therefore, the impugned order has very correctly imposed penalty of Rs. 50,62,692/- under Section 78 of the Act, which is totally justified in the facts of this case.

8. I further find that the present appeal has been filed by the appellant on 31.05.2018 whereas the impugned order had been issued on 28.11.2016, however, in Form ST-4 they have mentioned receipt of the impugned order on 02.04.2018 almost after 16 months stating reason for delay in filing appeal as *"the order was handed over to the proprietor by one Shri Madhav Kumar, employee of a private accountant"*. On verification, Jurisdictional Range Superintendent informed that the impugned order had been received on 13.12.2016 by Shri Madhav, Accountant of the appellant with dated acknowledgment as below:-


A long arrow points from this signature down to the circular stamp below.



ACKNOWLEDGEMENT

Received the OIO No. 23/JC/2016, dated 28.11.2016 issued by the Joint Commissioner, Central Excise, Kutch in the matter of M/s. Manoj Yadav Rolling Mill & Labour Contractors, Gandhidham.

Received the above referred OIO, on dated 13.12.2016 by me (Madhav), Accountant of M/s. Manoj Yadav Rolling Mill & Labour Contractors from the office of the Superintendent of Service Tax Range-II Gandhidham.

Date: 13.12.2016

Madhav
13/12/16
(Madhav)
Accountant

M/s. Manoj Yadav Rolling Mill & Labour Contractors

8.1 The appellant's claim that Shri Madhav Kumar was employee of a private accountant is factually false as reported by Jurisdictional Range Superintendent and narrated in above Para. This claim of the appellant virtually amounts to fraud and hence, appeal is liable to be rejected on limitation of time also as Commissioner (Appeals) has power to condone delay upto 30 days only over normal period of 60 days from the date of receipt of the impugned order.

9. In view of above, I reject the appeal and uphold the impugned order and direct appellant to pay service tax along with interest and penalty forthwith.

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

9.1 The appeal filed by the Appellant is disposed off in above terms.

16/12/19

(कुमार संतोष)

प्रधान आयुक्त (अपील्स)

By RPAD

To,

M/s. Manoj Yadav Rolling Mill & Labour Contractors, GIDC Industrial Area-332, Mithi Rohar, Gandhidham, District - Kachchh

मे. मनोज यादव रोलिंग मिल एवं लेबर कोंट्राक्टर्स, जीआईडीसी इंडस्ट्रियल एरिया- ३३२, मीठी रोहर, गांधीधाम, जिल्ला-कच्छ.

प्रति:

- (1) प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अहमदाबाद क्षेत्र, अहमदाबाद को जामकारी हेतु।
- (2) आयुक्त, केन्द्रीय वस्तु सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम को आवश्यक कार्यवाही हेतु।
- (3) संयुक्त आयुक्त, केन्द्रीय वस्तु सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।
- (4) गार्ड फाइल