



::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.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/61/GDM/2018-19	IV/GRD/Ref/GST (C.Ex)/06/2018-19	16-10-2018

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

KCH-EXCUS-000-APP-086-2019

आदेश का दिनांक / Date of Order:	27.09.2019	जारी करने की तारीख / Date of issue:	04.10.2019
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श्रीगोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri. Gopi Nath, Commissioner (Appeals), Rajkot

ग. अपील आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मृजित: /
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 :-

Deendayal Port Trust (Formerly, Kandla Port Trust), Administrative Office Building, PO Box No. 50, Sector 08, Gandhidham, Kutch (Gujarat)

इस आदेश (अपील) से व्यथित कोई व्यक्ति निलम्बित तुरंत क म उपयुक्त प्राधिकार / प्राधिकरण क 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) मामा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलाय न्यायाधिकरण क प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का धारा 35B क अंतगत एवं विन अधिनियम, 1994 का धारा 86 क अंतगत निलम्बित 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) बर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले 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 अमावा अहमदाबाद- 380016 का 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 फ़ॉर्म गे प्रपत्र EA-3 का 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 किमी भी मार्बजिनक 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। /

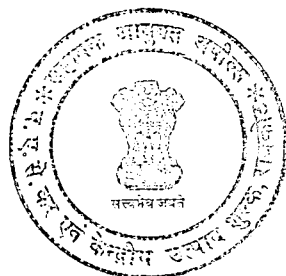
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty/demand/interest/penalty/refund 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) अपीलाय न्यायाधिकरण क समक्ष अपील, वस्तु अधिनियम, 1994 का धारा 86(1) क अंतगत सेवाकर नियमवाला, 1994, क नियम 9(1) क तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ आदेश क 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 किमी भी मार्बजिनक 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 more than five lakhs or less, Rs.5000/- 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 मकगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ 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 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 (सेस्टट) 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 रुपए में 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
- वशत कि इस धारा के प्रावधान वित्तीय (सं० 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 को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपूरतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मजिल, 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 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
 - 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 (रिवेट) 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 Bhutan, without payment of duty.
 - मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं० 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.
 - उपर्युक्त 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 संप्रपण 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 साध्य 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।
जहां संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये में 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 चाहिए। 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 जाना 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
 - यथामंशोधित 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-1 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 संबन्धित मामलों को सम्मिलित करने वाले नियमों की और 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.

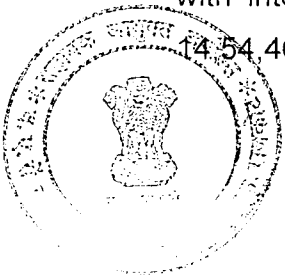


:: ORDER-IN-APPEAL ::

M/s. Deendayal Port Trust (Formerly known as Kandla Port Trust), AO Building, PO Box No. 50, Sector 08, Gandhidham – Kutch (hereinafter referred to as 'Appellant') has filed the present appeal against Order-In-Original No. IV/GRD/Ref/GST(C.Ex.)/06/2018-19 dated 16.10.2018 (hereinafter referred to as 'the impugned order'), passed by the Assistant Commissioner, CGST Rural Division, Gandhidham – Kutch (hereinafter referred to as "the adjudicating authority").

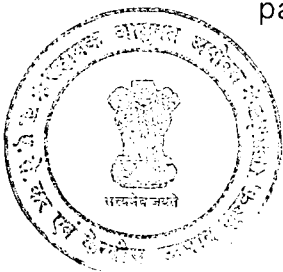
2. The facts of the case in brief, are that CERA audit & test check revealed that the during period from Financial year 2012-13 to 2015-16, appellant had not paid Service Tax in respect of works contract services as service receiver under the REVERSE CHARGE MECHANISM as per Notification No. 30/2012-ST dated 20.06.2012. The works contract service is a taxable service which is defined under clause zzzza of section 65(105) of the Finance Act, 1994, 'as any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams'. Works contract means a contract wherein transfer of property in goods involved in the execution of works contract is leviable to tax as sale of goods and the service portion in the execution of works contract is liable to service tax. Thus, the consideration for works contract service shall include both the value of material and the value of service provided during execution of the works contract. The manner for determining the value of service portion of a works contract from the total works contract is given in Rule 2A of the Service Tax (Determination of Value) Rules, 2006 as – 'the service portion involved in the execution of Original works is 40% of the total works contract and the service portion involved in the execution of works contract other than original works is 70% of the total works contract. The works contract service is covered under the reverse charge notification no. 30/2012. The liability of service tax under said service shall be paid equally by the contractor/provider of service and the recipient of the service. That is fifty percent of the service tax liability shall be paid by the contractor and the balance 50% shall be paid by the recipient of the service. In short, the service tax shall be paid at prevailing rate on 40% or 70% of the total works contract, as the case may be, by the provider of service and the receiver of the service on equal sharing ratio i.e.50:50 ratio.

2.1 Therefore, a Show Cause Notice No. IV/17-09/GIMUrban/Adj/17-18 dated 13.10.2017 was issued to them and subsequently the proceedings were finalized by the adjudicating authority vide Order-in-Original No. IV/GRD/Ref/GST(C.Ex.)/06/2018-19 dated 16.10.2018 wherein demand of Service Tax of Rs. 14,54,460/- was confirmed with interest Under Section 75 of the Finance Act, 1994 and penalty amount of Rs. 14,54,460/- under Section 78 of the Finance Act, 1994 was imposed.



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

- (i) The appellant is registered as 'Major Port' in terms of the provisions of the Major Port Trust Act, 1963 and is a public sector unit and confirming demand under the provisions of Section 65(105)(zzzza) of the Finance Act, 1994 was not applicable from 01.07.2012 as per the Notification No. 20/2012-ST dated 05.06.2012; hence, confirmed demand under above Section is not sustainable. Demand without charging section 66B of the Finance Act, 1994 as in force from 01.07.2012 and by referring to some of the provisions of section 65 of the Finance Act, 1994 which is not in force from 01.07.2012 is void ab initio. The appellant is providing port services and renting of immovable property services and appellant is entitled to avail Cenvat credit and service tax was payable by the appellant under REVERSE CHARGE MECHANISM, the same was available for availment of Cenvat Credit; hence it is revenue neutral situation.
- (ii) There is nothing on record to show that appellant has received works contract service and it is presumed by CERA audit observation that it is works contract service and it is settled law that demand of service tax cannot be confirmed based on assumption or presumptions. The appellant vide letter dated 27.06.2017 inter alia replied to CERA that in many cases appellant had paid full amount of service tax instead of 50% and 100% reimbursed to the Contractor on production of documentary evidence of payment of full service tax to providers and providers have paid the same to the Government; hence there is no short payment of service tax.
- (iii) That it is a local authority as can be seen from 4th letter "L" in its PAN No. AAALK0046N and they are not a body corporate in terms of the provisions of the Companies Act, 1956 and the REVERSE CHARGE MECHANISM is applicable only when the service recipient is body corporate.
- (iv) Confirming demand of service tax by invoking extended period of limitation under proviso of Section 73(1) of the Finance Act, 1994 and imposing penalty under Section 78 of the Finance Act even though there is not an iota of evidence of suppression or violation of any provisions of the Finance Act or the rules made thereunder with intent to evade payment of tax. Hence, extended period is wrongly invoked as there is no suppression or intent to evade payment of tax on the part of appellant.

(v) Further appellant relied upon following case laws:

Jet Airways (I) Ltd. reported as [2016 (44) STR 465 (Tr.Mum)]

Cochin Port Trust reported as [2011 (21) STR 25 (Tri.Bang)]

Persistent System Ltd. reported as [2016 (45) STR 177 (Tri.Mum)]

Modern Woolens reported as [2017 (52) STR 288 (Tri.Del

4. Personal hearing in the matter was fixed on 29.08.2019 which was attended by Shri Nilesh V. Suchak, Chartered Accountant, who reiterated the grounds of appeal and requested to allow the appeal on merit.

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and the written as well as oral submission made during the personal hearing. The issue to be decided in the present case is as to whether the determination of Service Tax liability, Interest and imposition of penalty under various section is legally sustainable?

6. I find that works contract service is covered under the Notification No. 30/2012-ST dated 20.06.2012, reads as under: -

The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1.	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
2.	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
9.	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%
10.	in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%



A

(Emphasis supplied)

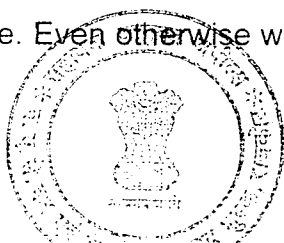
As per the above notification it is ample apparent that in execution of works contract service provider and service recipient have to pay 50% service tax.

7. I further find that appellant's contention is that he is entitled to avail Cenvat Credit in respect of input services including service tax paid under reverse charge mechanism also, as it is a revenue neutral situation and for the same appellant has relied upon the case laws in the case of Jet Airways (I) Ltd. reported as [2016 (44) STR 465 (Tr.Mum)] and Cochin Port Trust reported as [2011 (21) STR 25 (Tri.Bang)]. Regarding the contention of the appellant, I find that appellant is entitled to avail Cenvat Credit of input services including service tax paid under reverse charge mechanism after paying the service tax but the tax liabilities is governed by legal provisions applicable in terms of Finance Act, 1994 and the availability of Cenvat Credit by itself does not adopt the tax liabilities under the reverse charge and the revenue neutrality cannot be extended to a level that there is no need to pay tax on the taxable service.

7.1 For my above view, I take support of following case law:

M/s. ACL Mobile Ltd. reported as 2019 (20) G.S.T.L. 362 (Tri. - Del.);

Whereby it has been held that "regarding the contention of the appellant that they need not pay service tax as the situation is revenue neutral, we note that the question of revenue neutrality as a legal principle to hold against a tax liability is not tenable. In other words, no assessee can take a plea that no tax need have been paid as the same is available to them as a credit. This will be against the very basic canon of value-added taxation. The revenue neutrality can at best be pleaded as principle for invoking bona fideness of the appellant against the demand for extended period as well as for penalty which require ingredients of mala fide. Reliance was placed by the Ld. Consultant regarding the submission on revenue neutrality, on the decision of the Tribunal in Jet Airways (supra). We have noted that in the said decision the Tribunal recorded as admitted facts that the appellant is using the said facility for the taxable output services. We note that no such categorical assertion can be recorded in the present case. Even otherwise we note that the availability or otherwise of credit



on input service by itself does not decide the tax liability of output service or on reverse charge. The tax liability is governed by the legal provisions applicable during the relevant time in terms of Finance Act, 1994. The availability or otherwise of credit on the amount to be discharged as such tax liability cannot take away the tax liability itself. Further, the revenue neutrality cannot be extended to a level that there is no need to pay tax on the taxable service. This will expand the scope of present dispute itself to decide on the manner of discharging such tax liability. We are not in agreement with such proposition”.

8. Further Section 75 of Finance Act, 1994 states that:

Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest [at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette for the period by which such crediting of the tax or any part thereof is delayed:]

9. Regarding penalty imposed under Section 78 of the Act, I find that nonpayment of service tax under Reverse Charge Mechanism by the Appellant was unearthed during CERA Audit undertaken. Had there been no Audit of the records of the Appellant, the non-payment of service tax by the Appellant under 'REVERSE CHARGE MECHANISM' would have gone unnoticed. So, there was suppression of facts and extended period of limitation was rightly invoked in the impugned order. Since the Appellant suppressed the facts of non-payment of Service Tax, penalty under Section 78 of the Act is mandatory as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty as proposed by the adjudicating authority.

10. Therefore, considering the facts and circumstances of the case, I uphold the impugned order.



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

11.1. The appeal filed by the appellant stands disposed of in above terms.

सत्यापित
२०१५
संजय शेठ
अधीक्षक (अपील)

(Handwritten Signature)
(Gopi Nath) 2-21-15
Commissioner (Appeals)

By R.P.A.D.

To,

M/s. Deendayal Port Trust (Formerly known as Kandla Port Trust)
AO Building, PO Box No. 50, Sector 08,
Gandhidham – Kutch.



Copy to:

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Kutch Commissionerate, Gandhidham - Kutch.
3. The Assistant Commissioner, GST & Central Excise Rural Division, Gandhidham – Kutch.
4. Guard File.