



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

द्वितीय तल, जी एम 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 नम्बरा / Appeal / File No	मूल आदेश नं / O.I.O No	दिनांक / Date
	V2/ 107/RAJ/2019	07/D/AC/2019-20	29/05/2019

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

RAJ-EXCUS-000-APP-072-2020

आदेश का दिनांक / Date of Order:	30.06.2020	जारी करने की तारीख / Date of issue:	03.07.2020
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ महायुक्त आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मूजित: /
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 Appellants & Respondent :-

M/s Poojara Telecom Pvt. Ltd., Amrut Commercial Centre, Sardarnagar Main Road, Near Astron Chowk, Rajkot.

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) मीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलनीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं विवेक 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) सर्वोच्च न्यायालय में संवर्धित सभी मामलों में मीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलनीय 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 में मीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलनीय न्यायाधिकरण (सिस्टम) 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) अपीलनीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए 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, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संवर्धित अपीलनीय न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार के नाम में किसी भी मार्बजिनक क्षेत्र के बैंक द्वारा जारी रखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संवर्धित ड्राफ्ट का भुगतान, बैंक की उम शाखा में होना चाहिए जहां संवर्धित अपीलनीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्ट. ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपय 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) अपीलनीय न्यायाधिकरण के समक्ष अपील, विन अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती एवं उमके 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, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संवर्धित अपीलनीय न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार के नाम में किसी भी मार्बजिनक क्षेत्र के बैंक द्वारा जारी रखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संवर्धित ड्राफ्ट का भुगतान, बैंक की उम शाखा में होना चाहिए जहां संवर्धित अपीलनीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्ट. ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपय 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) विन 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 प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलार्थी 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 अपीलार्थी प्राधिकरण (सेन्टेड) के प्रति अपीलार्थी के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की विनीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलार्थी प्राधिकरण में अपील करने 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 रुपय 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
 - सेनबेट जमा की ली गई गलत राशि
 - सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान विनीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलार्थी प्राधिकारी के समक्ष विचाराधीन स्थान 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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर मन्त्रि, भारत सरकार, पुनरीक्षण आवेदन इकाई, विन मंत्रालय, राजस्व विभाग, जौरी मंजिल, जीवन दीप भवन, ममद 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 स्टूट (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 झुटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियंत्रित 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.
 - 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 संग्रहण 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 माध्यम 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 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.
 - यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग में किया जाना चाहिए। इस तथ्य के होने हुए भी की निम्नवा पट्टी कार्य से बचने के लिए यथास्थिति अपीलार्थी 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
 - यथामुहोदित 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.
 - सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी 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.
 - उच्च अपीलार्थी प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और त्वरित 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 Poojara Telecom Pvt. Ltd, Rajkot (hereinafter referred to as "appellant") filed appeal No. V2/107/RAJ/2019 against Order-In-Original No. 07/D/AC/2019-20, dated 29.05.2019 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Central GST Division Rajkot-I (hereinafter referred to as "the adjudicating authority").

2. The brief facts of the case are that during the course of Audit of the records of the appellant for the period from April 2014 to March 2017, it was observed that the appellant was paying rent to its Directors towards hiring of premises. Thus, the appellant was receiving service of 'Renting of Immovable Property' from its Directors; that the appellant had paid rent totally amounting to Rs. 90,62,000/- to its Directors during the audit period; that as per Notification No. 30/2012-ST, dated 20.06.2012, as amended by Notification No. 45/2012-ST, dated 07.08.2012, service tax is payable under reverse charge mechanism (RCM) @100% by the company or the body corporate, in respect of service provided or agreed to be provided by the Director of a company or a body corporate to the said company. It appeared that the appellant, being a Limited Company, service tax was payable by them under reverse charge mechanism.

2.1 Show Cause Notice No. ST/CGST-Audit/CIR-I/DC/02/2018-19 dated 22.05.2018 was issued to the appellant calling them to show cause as to why service tax of Rs. 12,33,511/- should not be demanded from them under proviso to Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'Act') along with interest under Section 75 and proposed penalty under Sections 76, 77 and 78 of the Act.

2.2 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed service tax demand of Rs. 12,33,511/- under Section 73(1) of the Act along with interest under Section 75 *ibid* and imposed penalty of Rs. 12,33,511/- under Section 78 of the Act and Rs. 10,000/- under Section 77 *ibid*.

3. Aggrieved, the appellant preferred the present appeal, *inter-alia*, on the various grounds as under:

(i) that service of renting of immovable property provided by its directors in their personal capacity by providing their own immovable properties on rent to appellant company cannot be termed as service provided by them in official capacity as Directors. Therefore, the said service can not be covered under the



provisions of Notification No. 30/2012-ST, dated 20.06.2012 as amended by Notification No. 45/2012-ST, dated 07.08.2012.

(ii) that rent agreement executed clearly revealed that the immovable properties rented by the Directors were owned by them and given on rent in their personal capacity only.

(iii) that they had provided copy of the minutes of the open house on Central Excise and Service Tax held in the presence of Chief Commissioner, CCE, Ahmedabad on 22.09.2014 alongwith copy of letter issued by the Principal Chief Commissioner, Ahmedabad under letter dated 05.03.2018 addressed to the Commissioner (Audit), Rajkot for remedial action. That issue raised in the said open house meeting was that when a director of company provides on rent his own immovable property or professional consultancy services to a company, who will be liable to pay service tax, that it was clarified by the Department in the said meeting that "*if the director provides his personal property on rent or provides management consultancy service to the company, he himself will be liable to pay service tax on the same in such cases as the service being provided in personal capacity*"; that the adjudicating authority has discarded the above clarification on erroneous ground that the said minutes were unsigned. That the adjudicating authority appears to have overlooked that the said minutes were sent to the Commissioner (Audit) Central Tax & Central Excise, Rajkot by the Office of the Principal Chief Commissioner, Ahmedabad under letter dated 05.03.2018.

(iv) that adjudicating authority failed to judge that the issue involved does not warrant decision on taxability on renting of immovable property service in terms of Section 66E(a) of the Act; that the findings of the adjudicating authority in the impugned order to consider the disputed service as "service provided by director to the company" in terms of Notification No. 45/2012-ST is unsustainable in law.

(v) that copies of all the agreements on the issue were submitted to adjudicating authority but there is no mention of the said agreements in the impugned order; that by becoming a director of the company, he does not cease to be individual person apart from the director of the company.

(vi) that renting of immovable property was defined under Section 65(90a) of the Act, as stood prior to 01.07.2012. In the negative list regime with effect from 01.07.2012, Section 66E(a) specifies renting of immovable property as declared service. However, the renting of immovable property service does not find place in the Notification No. 30/2012-ST, requiring recipient of service to pay service tax.

(vii) that they have never suppressed any facts from the Department and the Show Cause Notice itself admits that it was issued on the basis of records maintained by it; that they relied upon the case laws of Uniworth Textiles Ltd -2013 (288) ELT 161, Anand Nishikawa Co. Ltd- 2005 (188) ELT 149 and Infinity Infotech Parks Ltd 2014- (36) STR 37. That in absence of any evidence leading to establish intentional suppression of facts etc, even if the Department's allegations were considered for sake of argument, in that case also the notice was required to be issued within normal period of eighteen months from the relevant date. Under the circumstances impugned order invoking extended period is not sustainable and relied upon case law of Rochem Separation Systems (India) P. Ltd -2015(39) S.T.R. 112 (Tri.-Mumbai) which was further affirmed by the High Court of Bombay as reported at 2019 (23) G.S.T.L. 446 (Bom.).

(viii) that in view of the above facts, it is ample clear that when they do not require to pay Service Tax under RCM, question of interest does not arise.

(ix) that penalty imposed under Section 77 and Section 78 of the Act is also not sustainable for the reason that no service tax has been evaded. that as per 6th Proviso to Section 78, if the penalty is payable under this Section, then provisions of Section 76 shall not apply. All the disputed transactions were duly recorded in its statutory records. The objection was raised only on the basis of the documents produced before the Departmental officers at the time of audit. This apart, there was no reason for it to suppress any facts from the Department with intent to evade payment of service tax because it was entitled to avail cenvat credit of any service tax paid on RCM basis in terms of Cenvat Credit Rules, 2004. Thus the entire exercise was revenue neutral. Under such circumstances adjudicating authority has erred in imposing penalty under Section 78 of the Act and relied upon the case law of Landis Gyr Ltd - 2017 (49) STR 637 (Tri.- Kolkata), Sun Pharmaceuticals Industries Ltd -2017(49) STR 609 (Tri.-Ahmd.) and Sundaram Finance Ltd - 2018 (11) GSTL 305 (Tri.-Chennai).

4. In hearing, Shri P.D.Rachchh, Advocate, appeared on behalf of the appellant and reiterated the submissions of appeal memorandum and also submitted further submission dated 06.01.2020 and requested to decide the case on the basis of their submissions.

4.1 In additional submission dated 6.1.2020, it has been contended that,

(i) That appellant refers to the OIA No. RAJ-EXCUS-000-APPELLANT-175-2019, dated 22.10.2019 issued by the Commissioner (Appeals), Rajkot in the matter of



M/s Falcon Pumps Pvt Ltd, Rajkot; that as per the provisions of the Company Act, 2013 relation of the directors and company are of employee and employer and services provided by the employee to the employer is excluded from the definition of 'Service' under Section 65B(44) of the Finance Act, 1994.

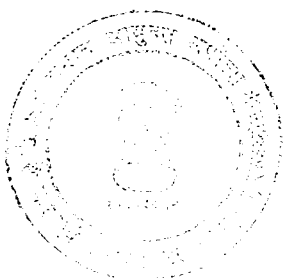
(ii) That as per the provisions of Companies Act, 2013, the relation of the directors and company is of employee and employer only.

(iii) That Service tax was leviable under Section 66B of the Finance Act, 1994 on the value of "Service" and "Service" is defined under Section 65B(44) of the Finance Act, 1994 which specifically excludes a provision of service by an employee to the employer in the course of or in relation to his employment; that it is not in dispute that all the directors were employee of the appellant company and relation between them were of employee and employer only; therefore, demand of service tax confirmed under impugned order is not sustainable.

5. I have carefully gone through the facts of the case, impugned order and the submissions of the appellant in the memorandum of appeal and during hearing. The issue to be decided in the present appeal is whether Service Tax is payable under reverse charge mechanism by the appellant on the rent amount paid to the Directors towards hiring of premises or not.

6. On going through the records, I find that the Appellant hired premises from their Directors and paid rent to them. The adjudicating authority confirmed service tax demand on the rent amount paid by the Appellant to their Directors on the ground that the appellant had received service of 'Renting of Immovable Property' from their Directors and any service rendered by Directors to its Company are covered by Notification No. 30/2012-ST, dated 20.06.2012, as amended by Notification No. 45/2012-ST, dated 07.08.2012 and hence, the appellant was liable to pay service tax as recipient of service.

6.1 The Appellant has contended that service of renting of immovable property provided by its directors in their personal capacity by providing their own immovable properties on rent to appellant cannot be termed as service provided by them in official capacity as Directors; that rent agreement executed suggest that the immovable properties rented by the Directors were owned by them and given on rent in their personal capacity only and hence, not covered under the provisions of Notification No. 30/2012-ST dated 20.06.2012 as amended.



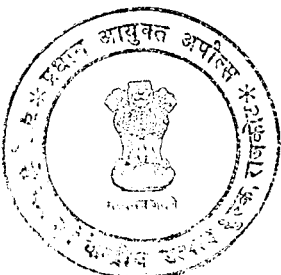
7. I find that renting of immovable property service is not a specified service covered under Notification No. 30/2012-ST, dated 20.06.2012 or its amending notification. So, Service Tax is not payable on reverse charge mechanism on receipt of 'Renting of Immovable Property Service' *per se*.

8. Now, I examine whether the renting of immovable property service received by the appellant can be said to have been provided by its Directors or not. I find that as per Notification No. 30/2012-ST, dated 20.06.2012, as amended by Notification No. 45/2012-ST, dated 07.08.2012, service tax is payable under reverse charge mechanism by a company or body corporate, in respect of service provided or agreed to be provided by the Director of a company or a body corporate to the said company.

8.1 I have gone through the agreements submitted by the appellant and find that the appellant had entered into agreement with following persons for hiring premises:

- (a) Smt Manjulaben L Poojara
- (b) Shri Laxmidas M Poojara
- (c) Shri Rahil Yogeshbhai Poojara
- (d) Smt Ritaben Poojara
- (e) Shri Yogeshbhai Poojara and Smt Ritaben Poojara.

8.2 I find that the above persons who gave their premises on hire basis to the appellant also happened to be Directors of the Appellant. However, services of Renting of Immovable Property were provided by the Directors in their individual capacity and not in the capacity of a Director, as reflected from the respective agreements. Merely because the person also happens to be the Director of the appellant company, it can not be construed that they have provided the services of renting of immovable property in the capacity of Director. I also find that adjudicating authority failed to prove that the properties were owned by the Directors' and not in their personal capacity. Therefore, 'Renting of immovable property' service provided by the Directors in their individual capacity cannot be termed as service provided by Director to the Appellant and not covered under Notification No. 30/2012-ST, dated 20.06.2012, as amended. Considering the facts of the case, I hold that the Appellant is not liable to pay service tax on rent amount, as recipient of service. Hence, confirmation of service tax demand is not sustainable and required to be set aside and I do so. Since, demand is set aside, penalty and interest are also set aside.



9. In view of the above, I set aside the impugned Order and allow the appeal filed by the appellant.

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

9.1 The appeals filed by the appellant stands disposed off accordingly.

सत्यापित

जे. एस. नाग्रेचा

अधीक्षक (अपील्स)

(Signature)
(Gopi Nath)
Commissioner (Appeals)

By RPAD:

To,

M/s. Poojara Telecom Pvt Ltd,
Amrut commercial Centre,
Sardarnagar Main Road,
Near Astron Chowk, Rajkot

मै. पूजारा टेलिकॉम प्राइवेट लिमिटेड, अमृत
कोमर्सियल सेंटर, सरदारनगर मेन रोड, एस्ट्रोन
चोक के पास, राजकोट

Copy to:

1. The Principal Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot.
3. The Assistant Commissioner, CGST Division-I Rajkot.
4. Guard File.

