



::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 नम्बर / Appeal / File No.	मूल आदेश नं / O.I.O. No.	दिनांक / Date
	V2/ 120/RAJ/2019	11/D/AC/2019-20	16/07/2019

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

RAJ-EXCUS-000-APP-082-2020

आदेश का दिनांक / Date of Order:	30.07.2020	जारी करने की तारीख / Date of issue:	30.07.2020
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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/ 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 Appellants & Respondent :-

M/s Inducto Hardening, 80 feet road, Opp Dena Bank, Bapunagar, Rajkot-360002.

इस आदेश (अपील) में 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 सम्बंधित 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 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्ट्रेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन अमरावा 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) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित फॉर्म ग्रेपत्र 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, रूप्य 5 लाख या उससे कम, 5 लाख रूप्य या 50 लाख रूप्य तक अथवा 50 लाख रूप्य से अधिक है तो क्रमशः 1,000/- रूप्य, 5,000/- रूप्य अथवा 10,000/- रूप्य 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 उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रूप्य 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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति 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, रूप्य 5 लाख या उससे कम, 5 लाख रूप्य या 50 लाख रूप्य तक अथवा 50 लाख रूप्य से अधिक है तो क्रमशः 1,000/- रूप्य, 5,000/- रूप्य अथवा 10,000/- रूप्य 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 उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रूप्य 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 fee of Rs. 1,000/- 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/-.

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(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त 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 है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति 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, रूप्य 5 लाख या उससे कम, 5 लाख रूप्य या 50 लाख रूप्य तक अथवा 50 लाख रूप्य से अधिक है तो क्रमशः 1,000/- रूप्य, 5,000/- रूप्य अथवा 10,000/- रूप्य 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 उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रूप्य 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 fee of Rs. 1,000/- 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/-.

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- (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 सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियां संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा महायुक्त आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) &9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (मेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील 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, अर्थात् कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवट जमा की ली गई गलत राशि
(iii) सेनवट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- अर्थात् यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किमी अपीलीय प्राधिकारी के समक्ष विचारधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश को पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी 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:
(i) यदि माल के किमी नुकसान के मामले में, जहां नुकसान किमी माल को किमी कारखाने से भंडार गृह के पारगमन के दौरान या किमी अन्य कारखाने या फिर किमी एक भंडार गृह में दूसरे भंडार गृह पारगमन के दौरान, या किमी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किमी कारखाने या किमी 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 किमी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के क्रेडिट (रिवेट) के मामले में, जो भारत के बाहर किमी 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 an 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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडिट क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं 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.
(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 संलग्न 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 माध्य 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 चाहिए। इस तथ्य के होते हुए भी की निम्न पट्टी कार्य में वचन 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 टिकट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने में संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in का 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 Inducto Hardening, Rajkot (*hereinafter referred to as "Appellant"*) filed appeal No. V2/120/RAJ/2018-19 against Order-in-Original No. 11/D/AC/2019-20 dated 16.07.2019 (*hereinafter referred to as 'impugned order'*) passed by the Asst. Commissioner, CGST Division, Rajkot-I, (*hereinafter referred to as "adjudicating authority"*).

2. The brief facts of the case are that during the scrutiny of ST-3 returns for the F.Y. 2012-13 to 2015-16, the Appellant was asked to submit Form 26AS, Balance Sheet etc. On comparing income reflected in Form 26AS and ST-3 returns filed by the Appellant for the said periods, it was found that the appellant had short paid service tax of Rs. 1,50,512/-. Therefore, Show Cause Notice dated 18.07.2018 was issued to the appellant calling them to show cause as to why Service Tax of Rs. 1,50,512/- should not be demand from them under Section 73(1) of the Finance Act, 1994 (*hereinafter referred to as 'Act'*) along with interest under Section 75 *ibid* and proposing penalty under Section 77 and 78 of the Act. Out of the above demand, the Appellant paid service tax totally amounting to Rs. 8,652/-, in respect of service rendered under the category of 'Supply of Tangible Goods Service' for the year 2012-13 and for service rendered under the category of ' Renting of Immovable Property Service' for the year 2013-14.

2.1 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order and who confirmed service tax demand of Rs. 1,50,512/- under Section 73(1) of the Act along with interest under Section 75 and imposed penalty of Rs. 1,50,512/- under Section 78 and Rs. 10,000/- under Section 77 of the Act.

3. Aggrieved, the Appellant has preferred appeal on various grounds, *inter alia*, as below :-

(i) That appellant was regularly filing ST-3 returns along with tax payment within time specified in law; that during the F.Y. 2012-13, 2013-14 and 2014-15, their customer M/s Tirth Agro Technology Pvt Ltd, had shown full Invoice value in 26AS including service tax; that showing full Invoice value in 26AS is widely accepted by the trade while tax should be deducted on amount net of service tax under Income Tax law; that the difference in amount shown in 26AS and ST-3 returns, in the said financial years, is the amount which the appellant charged as service tax in Invoice; that appellant had submitted copy of income tax return



along with profit and loss account and balance sheet for the said financial years: that amount of income is matched with ST-3 return and Profit and loss account during the said years; that demanding service tax on differential amount in 26AS and ST-3 returns amounts to double taxation; that the adjudicating authority erred in not considered this point while passing the impugned order.

(ii) That the appellant had earned job work income in the year 2014-15 and 2015-16 in respect of job work carried out of the following manufacturers :

- (a) M/s Piyush Engineering works, ECC No. ABQPR5972MEM002;
- (b) M/s Dhami Industries, ECC No. AABFD4787CXM001
- (c) M/s Freefit Corporation, ECC NO. AAAFF0406FXM002,

(iii) That ECC Number itself indicates that above firms are manufacturing units and income earned for carrying out job work of the above manufacturers is not liable to service tax; that they submitted Central Excise Registration certificates of above firms to the adjudicating authority but the same was not considered.

(iv) That appellant had received interest from M/s PGVCL during F.Y. 2014-15 and 2015-16, which is not taxable under service tax law; that Form 26AS clearly indicates that income received by appellant under Section 194A of Income Tax Act which deals with the provisions regarding TDS to be deducted on interest payable such as interest on fixed deposit, interest on loans and advances.

(v) That they had filed correct ST-3 returns and paid correct service tax liabilities and hence, penalty of Rs. 10,000/- imposed under Section 77 is liable to be set aside.

(vi) That there was no intent to evade payment of service tax nor made any fraud or made wilful misstatement and hence, penalty of Rs. 1,50,512/- imposed under Section 78 of the Act is liable to be set aside.

4. Hearing in the matter was scheduled on 14.01.2020, 28.01.2020, 12.02.2020 and 20.02.2020 but no one appeared on behalf of the Appellant. Shri M.K.Gandhi, Superintendent appeared on behalf of the Respondent Department and reiterated the findings of the adjudicating authority.

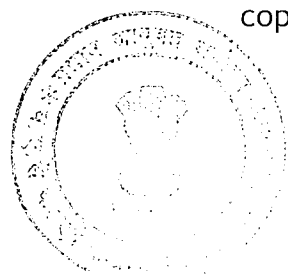
5. I have carefully gone through the facts of the case, the impugned order, ground of appeal submitted by the appellant and oral submission of the

respondent Department. I find that the issue to be decided in the present case is whether the impugned order confirming service tax demand of Rs. 1,50,512/- along with interest and imposing penalties under Section 77 and 78 of the Act, is correct, legal and proper or not.

6. On going through the records, I find that the impugned order has confirmed service tax demand of Rs. 1,50,512/- on the ground that there was difference between income shown in ST-3 returns filed for the years 2012-13 to 2015-16 and corresponding income reflected in Form 26AS.

7. The appellant has contended that in the years 2012-13 and 2013-14, their service recipient M/s Tirth Agro Technology Pvt Ltd had shown full invoice value including service tax, in Form 26AS and difference in amount shown in 26AS and ST-3 returns is the amount they charged as service tax; that they had submitted copies of Income Tax Returns, Profit and Loss Accounts, Balance sheet and Ledger accounts for the said financial years to the adjudicating authority and had tallied income shown in Form 26AS with ST-3 Returns and Profit and Loss accounts for the said years but the adjudicating authority did not consider their submission; that demanding service tax again would amount to double taxation.

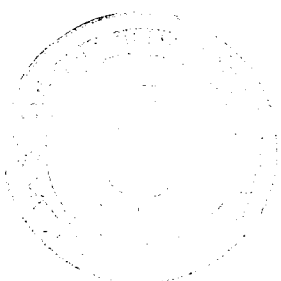
7.1 I find that if the service recipient of the appellant M/s Tirth Agro Technology Pvt Ltd had shown gross amount including service tax amount in Form 26AS for the purpose of deducting TDS, as claimed by the appellant, then there will be mis-match between amount reflected in Form 26AS and corresponding ST3 Returns. In that circumstances, demanding service tax on the amount reflected in Form 26AS would amount to double taxation, as rightly contended by the appellant. I find that the appellant had produced service tax workout along with copies of Income Tax Returns, Profit and Loss Accounts, Balance sheet, ledger account of the relevant years before the adjudicating authority but the adjudicating authority discarded the plea of the Appellant on the ground that they had not substantiated the said work out with documentary evidences. Considering peculiar facts of the case, I am of the opinion that the appellant deserves a second chance to prove that they had discharged service tax on the income received from M/s Tirth Agro Technology Pvt Ltd. The Appellant has not submitted any documentary evidences before this appellate authority, so it is not possible for me to cross check whether the Appellant has properly discharged service tax or not. For this limited purpose, I remand the matter to the adjudicating authority. I find that the Appellant had produced copies of Income Tax Returns, Profit and Loss Accounts, Balance sheet, ledger



account before the adjudicating authority. Apart from these documents, copies of invoices are required to arrive at a conclusion that they had indeed discharged service tax. I, therefore, direct the Appellant to produce copies of all invoices in respect of M/s Tirth Agro Technology Pvt Ltd before the adjudicating authority, who shall decide the issue by way of issuing speaking order and adhering to the principles of natural justice. I set aside the impugned order to the extent of confirmation of service tax demand on this count.

8. The appellant has pleaded that they had earned job work income in the years 2014-15 and 2015-16, in respect of job work carried out for various manufacturers and pleaded that they are not liable to pay service tax on such job work income. I find that the Appellant had taken this plea before the adjudicating authority and had also submitted copies of said Central Excise Registration Certificates, however, the adjudicating authority discarded their plea on the grounds that the Appellant failed to submit evidence that the said firms being a manufacturer have paid the Central Excise duty. I do not find any rationale in the stand taken by the adjudicating authority. The liability to pay service tax on jobwork income by a job worker arises, only if the job work activity does not amount to manufacture. In the present case, there is no allegation in the impugned order that activity undertaken by the Appellant did not amount to manufacture. It is not possible for the Appellant nor they are required to prove with documentary evidence that their principal manufacturer has discharged Central Excise duty. The Appellant may be liable to pay Central Excise duty, if the Department proves that their Principal manufacturer had not followed job work procedure and/or Central Excise duty was remained to be paid on the job work carried out by the Appellant, but confirming service tax demand on the ground that the Appellant failed to prove discharge of Central Excise duty liability by the principal manufacturers is not sustainable. I, therefore, hold that confirmation of demand on this count is not sustainable and required to be set aside, and I do so.

9. The appellant further contended that they had received interest income of Rs. 9,766/- in the year 2014-15 and Rs. 9,240/- in the year 2015-16 from M/s PGVCL, which is not liable to service tax; that Form 26AS clearly indicates that said income was received under Section 194A of Income Tax Act, which deals with deduction of TDS on interest payable on fixed deposit, loans and advances. I find that service tax was demanded on the above income on the grounds that the Appellant failed to produce any evidence to the effect that said income did not attract service tax. There is no rationale in demanding service tax on income



received from M/s PGVCL. Only because any amount is reflected in Form 26AS, it does not automatically become liable to service tax. The adjudicating authority has not disputed about contention of the Appellant that the TDS on said income was deducted under Section 194A of the Income Tax Act, 1961, which provides for deduction of TDS on payment of interest on fixed deposit etc. If that be the case, said interest income is not taxable. I, therefore, hold that the Appellant is not liable to pay service tax on the income received from M/s PGVCL and consequently, confirmation of demand on this count is not sustainable and required to be set aside, and I do so.

10. I find that the Appellant has not challenged confirmation of service tax demand totally amounting to Rs. 8,652/- in respect of service rendered under the category of 'Supply of Tangible Goods Service' during the year 2012-13 and for service rendered under the category of 'Renting of Immovable Property Service' during the year 2013-14. I, therefore, uphold the confirmation of service tax demand of Rs. 8,652/-, as not challenged. Since, demand is confirmed, it is natural that confirmed demand is required to be paid along with interest. I, therefore, uphold recovery of interest under Section 75 ibid. Further, non payment of service tax of Rs. 8,652/- was revealed during scrutiny of ST-3 returns and on the basis of Form 26AS. I find that the Appellant has been correctly held liable to penalty under Section 78 of the Act. I, therefore, uphold penalty of Rs. 8,652/- imposed under Section 78 ibid.

11. I find that the impugned order has imposed penalty of Rs. 10,000/- under Section 77 of the Act for failure to assess their tax dues correctly and for failure to file ST-3 Returns showing correct taxable value. I find that majority of demand is either set aside on merit or ordered for de-novo proceedings. Hence, penalty imposed under Section 77 is not justifiable and required to be set aside and I do so.

12. In view of above, I partially allow the appeal and modify the impugned order as discussed above.

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

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

सत्यापित,



विपुल शाह

अधीक्षक (अपील)

सत्यापित,

विपुल शाह

अधीक्षक (अपील)


(GOPI NATH)
Commissioner(Appeals)

By R.P.A.D.

To, M/s Inducto Hardening, 216 A, Sarvottam Complex, Opp. Panchnath Temple, Rajkot.	सेवामें, इंडक्टों हार्डनिंग, 216 A, सर्वोत्तम कॉम्प्लेक्स, पंचनाथ मंदिर के सामने, राजकोट .
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प्रतिलिपि :-

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

