



आयुक्त (अपील) का कार्यालय, केन्द्रीय माल एवं सेवा कर और उत्पाद शुल्क
 THE COMMISSIONER OF APPEALS, CENTRAL GST & EXCISE



श्रीमती. मल. बी एम सी प्रवा 1 2^{री} मंजूर, ईस्ट बंगाल,
 इस कार्य के लिए सी. - Race Gate या Ring Road,

मुंबई - 400 001
 Tel: Fax No: 0221 2177452/3/4/11/12
 E-mail: comptroller@nmt.gov.in

अपील के लिए सूचना :

क	अपील / फाइल संख्या / Appeal / File No. 22/2018/000000 7	नया अपील सं. / New App. No. 104/AC/2016X/00000000-17	दिनांक / Date 27.07.2018
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ख अपील अथवा संख्या/Order No./Order No.

BHV-EXCISE-000-APP-005-2018-19

अपील का दिनांक / Date of Order:	02.07.2018	अपील संख्या के दिनांक / Date of Issue:	12.07.2018
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Person In-Charge: Shri. Gopal Nath, Additional Director General (Audit), Ahmedabad Zonal Office, Ahmedabad.

श्रीमती. मल. बी. एम. सी. प्रवा 1 2^{री} मंजूर, ईस्ट बंगाल, के लिए एक अपील संख्या 104/AC/2016X/00000000-17 का प्रारंभिक अपील संख्या 22/2018/000000 7 के अंतर्गत है। श्रीमती. मल. बी. एम. सी. प्रवा 1 2^{री} मंजूर, ईस्ट बंगाल, का अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है। इस अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है।

In pursuance to Bureau's Notification No. 25/2017 dt. 25.07.2017, subject to approval with District Order No. 35/2017 dt. dated 10.11.2017, Shri. Gopal Nath, Additional Director General of Central Ahmedabad Zonal Office, Ahmedabad has been appointed as Appellate Authority for the purpose of hearing orders in respect of appeals filed under Section 85 of Central Excise Act, 1944 and Section 86 of the Customs Act, 1962.

- क इस अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है। अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है। अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है।
- आपेल नंबर ऑफ एपेल नॉटिफिकेशन, सी. ई. आर. डी. अडिशनल/डी. ऑफिस/एसिस्टेंट कमिश्नर, कस्टम, ईस्ट बंगाल, मुंबई/अहमदाबाद/बंगलूरु/कोलकाता

- ख अपीलकर्ता & प्रतिवादी का नाम एवं पता (Name & Address of the Appellants & Respondent)
 M/S World Medical, Old 215 Soap Factory, Near Patel Boudingpoint behind Alka Cinema Bhavnagar.

इस अधिसूचना से प्रेरित कोई व्यक्ति लिखित/लिखित तौर पर उपरोक्त अधिसूचना में निर्दिष्ट करने वाले अंतर्गत अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है। अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है। अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है।

- (A) अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है। अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है। अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है।

- (ii) अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है। अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है। अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है।

- (iii) अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है। अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है। अपील संख्या 104/AC/2016X/00000000-17 के अंतर्गत है।

To the Principal Judicial Officer of Customs, Excise & Service Tax Appellate Tribunal, C-2017/17, 2nd Floor, Bhavnagar Bhawan, Bhavnagar Ahmedabad-380001 in case of appeals filed under or maintained in No. 104/AC/2016X/00000000-17 above



2 Order in Appeal :

The present appeal has been filed by M/s. World Marine Cold Drying Agency, Near Daud Bazar, Bahadur Alta Cinema Bhawanagar (hereinafter referred to as the appellant) against the Order-in-Original No. 108/AC/STAX/STV/2016 dated 27.03.2017 passed by the Assistant Commissioner (ST), Central Excise, HQ, Bhavnagar (hereinafter referred to as the adjudicating authority).

2. Briefly stated, it was gathered that the appellant was evading payment of service tax by using bogus invoices / vouchers / receipts for transportation charges without actually paying it. Therefore, the sales and purchase invoices of the appellant was searched by the officers of Central Excise, Bhavnagar under Purchase orders dated 03.05.2012. During the search, some incriminating documents, vouchers for the inquiry were seized under Paragraphs Four to Six of A. in Paragraphs 10 to 14 of 2010-11, it was observed that the appellant had received income of Rs. 7,35,000/-, Rs. 10,00,000/- and Rs. 1,00,000/- from rendering of services during the FYs 2008-09, 2009-10 and 2010-11 respectively i.e. beyond the exemption limit of Rs. 10,00,000/- during a year. It was also observed that even though services of 'loading or unloading' falls under Services of Supply of Tangible Goods as defined under Section 65(10)(zzz) of the Finance Act, 1994, they do not take registration for providing such services and not paid applicable service tax on the same.

3. Thereafter, statements dated 03.05.2012 and 17.06.2012 of Shri. W. Jayantilal Shukla, Proprietor of the said appellant were recorded. It was found that the facts of non-registration and non-payment of service tax. Since this act of the appellant falls under the contravention of various sections and rules, a Show Cause Notice (SCN) No. 15-184/STV/2016-17 dated 30.03.2016 was issued to the appellant for demand of service tax of Rs. 1,46,040/- and imposition of penalty under Section 77 and Section 78 of the Finance Act, 1994. Said SCN was deleted by a Order-in-Original No. 108/AC/STAX/STV/2016-17 dated 27.03.2017 passed by the Assistant Commissioner (ST), Central Excise, HQ, Bhavnagar by conferring the demand of service tax of Rs. 1,46,040/- under proviso to Section 78(1) of the Finance Act, 1994 alongwith interest (since considering the nature of services provided in the



W.Y. 2005-10 of Rs. 519/- and in F.Y. 2010-11 of Rs. 1,12,68/- as cumulative penal and of imposing penalty of Rs. 5000/- under Section 77(2) of the Finance Act, 1994 for failure to file I.T. returns, Rs. 10,000/- or Rs. 200/- per day, whichever is higher for the period of failure of filing registration under Section 69(1) and Rs. 1,40,049/- under Section 78(1) of the Finance Act, 1994. Being aggrieved by the impugned order the appellants have filed this appeal.

4. While filing the appeal, the appellants had contended that -

(a) The appellants were not known to service tax law and they have not paid service tax with a bonafide belief that the same was not payable. Further, the service recipient had also not advised to pay service tax.

(b) On pointing out by the department they have immediately paid the service tax of Rs. 1,40,049/- and interest of Rs. 40,217/- by cheque dated 04.01.2013.

(c) They did not contract levy of service tax and so operated the officers. They are entitled for benefit of Section 80 and accordingly, no penalty should be imposed upon them. They cited judgments pronounced by Hon'ble High Court of Bombay in case of Commissioner of Central Excise & Customs Vs. Ashish Marathia Patel and in case of Commissioner of Service Tax Vs. Link Chemicals.

(d) Mere detection by the department does not mean that non payment was intentional. They have no knowledge that service tax was payable and no such fact has been narrated in the SCN.

5. Hearing in the appeal filed by the appellants was held on 16.03.2018, which was attended by Shri. Sanu Mehra, Chartered Accountant. During the hearing, he related the submission made in the appeal memo and also submitted additional submission dated 16.03.2018 for consideration.

6. I have carefully gone through the facts of the case, impugned order, an affidavit, appeal memo and submissions made by the appellants and find that appellants had not disclosed the levy of service tax and

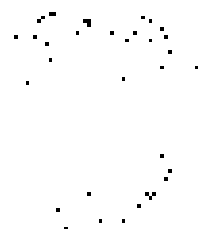
interest by the department. They are entitled to the right of penalty imposed on them. Accordingly, the only issue to be decided by me in this order is whether the appellants are eligible for benefit of Section 80A of the Finance Act, 1994 or not.

7. I find that there is no doubt that the appellants had provided services at New Hq. of Punjab Development Co. as per bill of material Section 6(a)(b)(xxvii) of the Finance Act, 1994 and while providing such services they have received Rs. 10,00,000/- in FY. 2009-10 and Rs. 1,00,000/- in FY. 2010-11 against providing such service, which was in excess to the exemption limit of Rs. 10,00,000/- for taking registration and payment of applicable service tax under Service Tax laws. The liability and classification of services provided by them was never verified. Further, request of treating them as exempted was also allowed by the administering authority and thereby dropped the demand of Rs. 15,048/- (Rs. 10,000/- service tax on gross receipt demanded in the SGN less Rs. 1000/- less 10,000/- service tax calculated on sum duty assigned) and confirmed only Rs. 1,00,000/- which was paid by the appellants alongwith interest of Rs. 10,217/- vide challan dated 04.01.2013.

8. I find that though the appellants were not registered with the Excise Tax department at the material time, they had correctly shown the amounts received against the activities of crane hiring in their financial records. Further, on being pointed out, they have immediately taken registration and paid the applicable service tax alongwith interest before issuance of the SGN. This shows that the appellants were under bonafide belief that they were not required to pay tax on the activities carried out by them. Hence, High Court, in the case of *CCIT vs Honey Bee - 2008 (12) 147 Tax 113 (1) - 13* rendered held that -

the respondents had discharged their liability under the Act on coming to know of the notice when the department had issued show cause notice proposing to levy the tax due and to impose penalties thereon. The Commissioner had exercised the penalty imposed under Section 79 of the Act and had withdrawn the penalties imposed under Sections 75 and 77 of the Act. As pointed out by the Hon'ble Court in the appellants, the penalties sustained by the Commissioner (A) had already been waived by the Tribunal

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on a finding that the failures were not responsible for the ignorance on the part of the respondents. In view of the above finding, there is no case to restore the pending business by the original authority as sought in the special Appeal filed by the Revenue is dismissed.

Since in the present case is similar to the above case law and therefore section 80 of the Finance Act, 1994 can be invoked to set aside the penalties imposed under section 77 and 78 of the Finance Act, 1994. Accordingly, the order imposing the penalties under section 77 and 78 of the Finance Act, 1994 is required to be set aside the appeal is required to be allowed.

5. In view of the above, appeal filed by the appellant is allowed and the order passed by the adjudicating authority so far as imposition of penalties is concerned, is set aside.

सचिव (आ),
आयकर विभाग,
मुंबई (पश्चिम),
पुणे-४११००१

02/04/2016

गोपी नाथ : Gopi Nathi

३ युनिवर्सिटी रोड, २०० महाविद्यालय (वे. ए.डी.डी.) /
Commissioner (Appeals) & ADG (Audit)

- No. 52/2016/BVR/2017

Date: 02.04.2016

By Regd. / Special Post No. 1.

To,

M/s. World Motion,
D/O 215 Sampark Road, Near Patel Bungalow,
P. Dindol Aher, Chhatrapati Shivrajnagar, 400007.

Copy forwarded to:-

- (i) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
- (ii) The Commissioner, CGST & Central Excise, Bhavnagar.
- (iii) The Deputy / Assistant Commissioner (AC), CGST & Central Excise, HQ, Bhavnagar.
- (iv) The Deputy / Assistant Commissioner (RA), CGST & Central Excise, HQ, Bhavnagar.
- (v) The Deputy / Assistant Commissioner (Recovery), CGST & Central Excise, HQ, Bhavnagar.
- (vi) The Deputy / Assistant Commissioner, CGST & Central Excise, _____ Division, Bhavnagar.
- (vii) The Deputy / Assistant Commissioner, CGST & Central Excise, Range _____ Division, Bhavnagar.
- (viii) Guard File / Notice Book.