



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



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/162/RAJ/2017	मूल आदेश सं / O.I.O. No. 111/ADC/PV/2016-17	दिनांक / Date 04-01-2017
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ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-001-2018-19

आदेश का दिनांक / Date of Order:	05.04.2018	जारी करने की तारीख / Date of issue:	09.04.2018
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Passed by Dr. Balbir Singh, Additional Director General (Taxpayer Services), Ahmedabad Zonal Unit, Ahmedabad.

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, डॉ. बलबीर सिंह, अपर महानिदेशक करदाता सेवाएँ, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा ८५, केंद्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Dr. Balbir Singh, Additional Director General of Taxpayer Services, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ 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 / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-
M/s Bhagwati Enterprises, Quarter No. 15, SNCCIL Colony, Jamnagar-Jam-Khambhaliya Highway, Jam-Khambhaliya, Dist-Jamnagar

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) 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 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 असावा अहमदाबाद- ३८००१६ को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

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

- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied by a fee of Rs. 1,000/- Rs.5000/-, 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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee 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) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 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 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 (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं
- धारा 11 डी के अंतर्गत रकम
 - सेनवेट जमा की ली गई गलत राशि
 - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। /

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10

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 and appeals pending before any appellate authority prior to the commencement of (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) 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

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य 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.

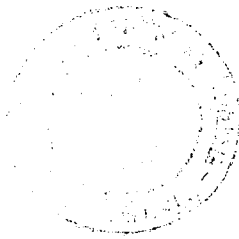
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

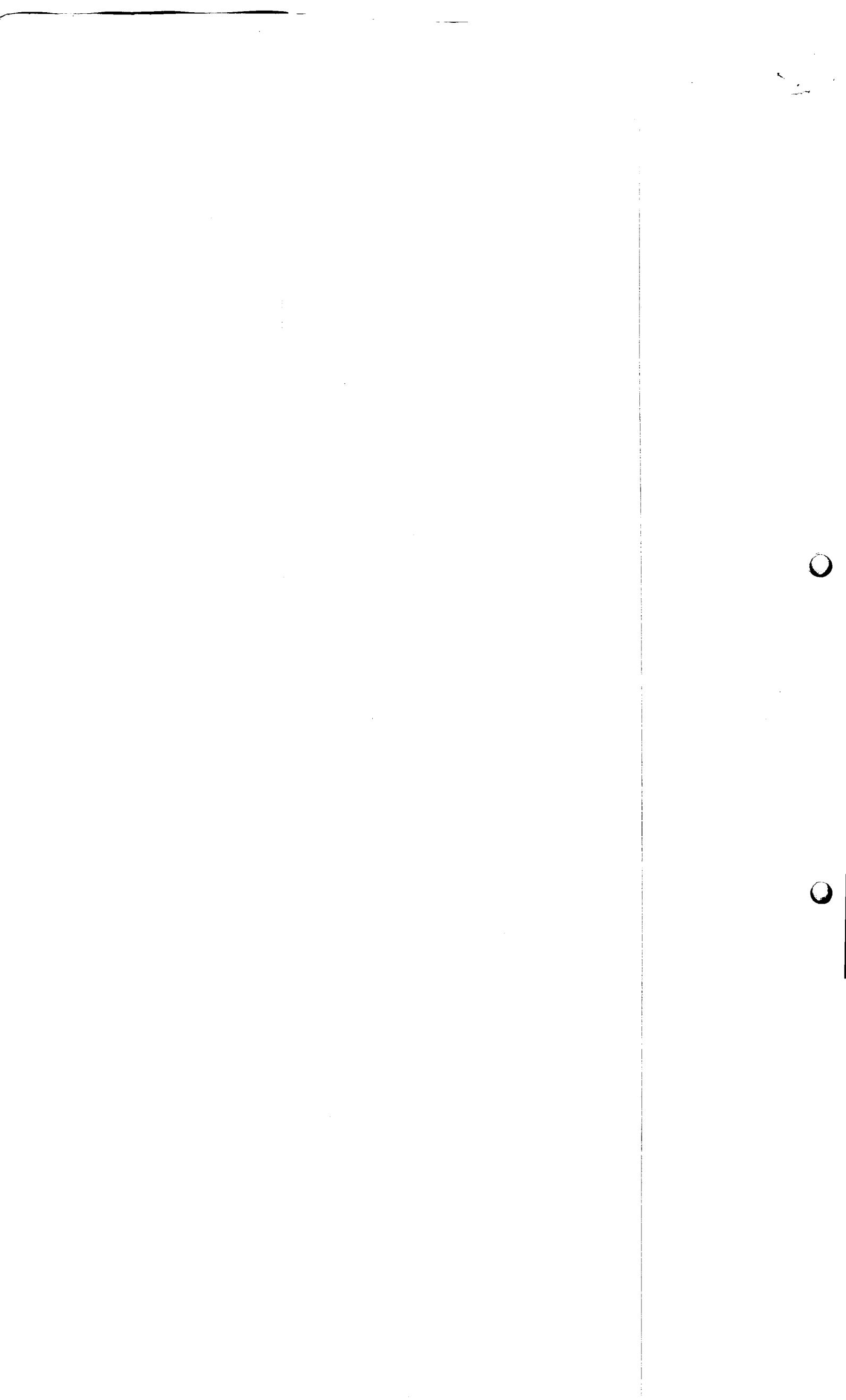
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (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 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

V2/162/RAJ/2017

M/s. Bhagwati Enterprise, Quarter No. 15, SNCCIL Colony, Jamnagar-Jam-Khambhaliya Highway, Jam-Khambhaliya, Dist : Jamnagar (hereinafter referred to as "the appellant") has filed this appeal against OIO No. 111/ADC/PV/2016-17 dated 04.01.2017 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Central Excise & Service Tax, Rajkot (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts are that a search was conducted at the premises of the appellant on 21.02.2013. The oral and documentary evidences revealed that during the period from 2008-09 to 2012-13, the appellant had rendered services under the category of 'Manpower Recruitment or Supply Agency' to their clients but discharged service tax liability of Rs. 50,74,728/- only against the actual liability of Rs. 59,27,280/-. Therefore, it was observed that the appellant was required to pay differential service tax of Rs. 8,52,552/- alongwith interest and consequential penalty. This impugned order is a remand back case. Initially a show cause notice dated 07.10.2013 was issued, which was adjudicated vide OIO No. 17/ADC/PV/2014-15 dated 29.10.2014, wherein all the demand with interest and penalties were confirmed. Aggrieved the appellant appealed to the Commissioner (Appeals-III), Central Excise, Rajkot. The Commissioner (Appeals-III), Central Excise, Rajkot vide OIA No. RAJ-EXCUS-000-APP-031-15-16 dated 30.10.2015 remanded the case back to the adjudicating authority with a direction to the appellant to reconcile the figures shown in invoice value, balance sheet and 26 AS and file proper justification alongwith relevant documents for difference in figures therein for the period under dispute in support of their claim within 20 days of receipt of this order and ordered the adjudicating authority to grant fair opportunity of hearing to the appellant and shall pass a reasoned and speaking order. Accordingly, the adjudicating authority vide the impugned order confirmed the demand of Rs. 8,52,552/- alongwith interest and imposed penalty of Rs. 2,00,000/- under Section 77(2) for failure to file ST-3 returns, under Section 77 imposed penalty of Rs. 10,000/- and under Section 78 imposed penalty of Rs. 8,52,552/-.

3. Feeling aggrieved, the appellant had filed the appeal on the following grounds :

- That the adjudicating authority has erred in failing to give consideration to sale proceeds received on account of sale of water during the years 2010-11 and 2011-12, that is duly certified by Chartered Accountant;
- That the adjudicating authority has erred in failing to give consideration to the submissions dated 29.08.2016. The appellant had provided detailed calculation of their service tax liability alongwith payment particulars of service tax payable and interest paid on account of delay and that the appellant had discharged the entire service tax liability and there was no short payment as alleged;
- That the adjudicating authority has erred in failing to appreciate that Section 72 (b) of Finance Act, 1994 cannot be applied in such a manner so as to rely on different set of documents for different years to determine service tax liability.
- That the adjudicating authority could not take invoices to determine service tax liability for 2008-09 and then switch over to Form 26AS for 2010-11 and 2012-13 and Balance

B. S. Chatterjee
05/04/18

- Sheet for 2011-12 inasmuch as this would only result in over-lapping of income resulting in double taxation, which is not permitted in law;
- That the appellant has already discharged the service tax payable alongwith interest, it is submitted that the appellant is not liable to penalty under the provisions of Section 78 of Finance Act, 1994;

4. Personal hearing was held on 16.03.2018, Shri Vikas Mehta, Consultant appeared on behalf of the appellant and reiterated the submissions made in the appeal memorandum. He submitted that the adjudicating authority has erred in adopting pick and choose method for applying best judgement assessment inasmuch as he has demanded service tax by taking into account 26AS, invoices as well as balance sheet for one or the other year, which is not correct. He further submitted that until 2011, service tax was payable on receipt basis, which has not been given due consideration by the adjudicating authority. He requested for one week's time to make further submission. Later on 28.03.2018, further submissions were given alongwith copy of worksheet relied upon by them.

5. The appeal was filed before the Commissioner (Appeals), Rajkot. The undersigned has been nominated as Commissioner (Appeals) / Appellate Authority as regards to the case of appellant vide Board's Circular No. 208/6/2017-Service Tax dated 17.10.2017 and Board's Order No. 05/2017-Service Tax dated 16.11.2017 issued by the Under Secretary (Service Tax), G.O.I, M.O.F, Deptt of Revenue, CBEC, Service Tax Wing.

6. The appellant has sought condonation of delay of 27 days. As the appeal was filed late from the normal period of 60 days due to reasons explained by them in their application for condonation of delay and the appellate authority is empowered under Section 35 of the Central Excise Act, 1944 to condone the delay of further 30 days beyond the normal period of 60 days on his part, accordingly, I condone the same. Condoning the delay, I proceed to decide the main appeal on merits.

7. I have carefully gone through the facts of case, the grounds mentioned in the appeals, the submissions made by the appellant and worksheet relied upon. The issue to be decided in the present case is to determine the correct service tax liability upon the appellant.

8. I find that the adjudicating authority relied on invoices to determine service tax liability for 2008-09 and 2009-2010, then relied on Form 26AS to determine service tax liability for 2010-11 and 2012-13 and relied on the Balance Sheet to determine service tax liability for 2011-12. Here, I observe that the appellant has not disputed the taxability of services rendered by them, but has contented the method adopted by the adjudicating authority, by taking the highest value out of invoice value, balance sheet value and 26-AS statement year-wise for the purpose of calculation of service tax liability upon them.

9. I find that the appellant is correct in arguing that the highest value taken by the adjudicating authority from invoice value, balance sheet value and 26 AS statement for purpose of calculation of service tax liability upon them is not correct. I also feel it is not appropriate and in accordance with law for the time being in force as no valid reasons or arguments have been discussed by the adjudicating authority while confirming the demand of service tax on the basis of highest value available. Demand on the basis of highest figures has to be supported with



evidences, which the adjudicating authority has failed to provide in the impugned order. The appellant has provided a worksheet based on the value as per Balance sheet, during the personal hearing which is reproduced below :

Sr. No.	F.Y	Value as per Balance sheet	Less Service tax	Value of water	Value of services	Rate of tax (%)	ST Payable	ST paid	Balance ST payable
1	2008-09	7698414	840979	0	6857435	12.36	847579	329616	517963
2	2009-10	13670511	1292755	0	12377756	10.30	1274909	1053028	221881
3	2010-11	16010344	1610962	374280	14025102	10.30	1444586	966603	477983
4	2011-12	22217376	1762351	3342223	17112802	10.30	1762619	2041140	-278521
5	2012-13	190116	15958	0	174158	12.36	21526	684341	-662815
	TOTAL	59786761	5523005	3716503	50547253		5351218	5074728	276490

10. The appellant further relied on the Hon'ble Tribunal's decision in the case of Shri Vijay Engg. & Metal Works V/s. Commissioner of Central Excise, Delhi-IV, 2011 (272) ELT 593 (Tri. Del):

"Demand and penalty – Clandestine removal – Balance sheet figures, reliability of – Department's case of clandestine removal of finished goods based on position of stock of inputs shown in balance sheet – There being evidence of unaccountable receipt of inputs, RG23A Pt-I figures not reliable at all, hence Department justified in determining balance of various inputs based on stock position shown in balance sheet – No infirmity in impugned order – Demand and penalty sustainable – Section 11A(1) and 11AC of Central Excise Act, 1944. Appeals dismissed"

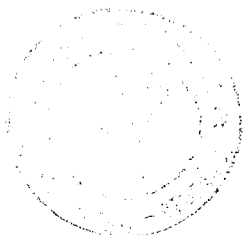
Here, I find that the appellant had not been able to ascertain the exact taxable value as the value shown as per Form 26 AS, Balance Sheet and invoice value are all different. Therefore the adjudicating authority had to resort to Section 72 of the Finance Act, 1994 for the Best judgement assessment. Here, the adjudicating authority erred in holding that the highest value of the services ought to be taken for calculating the service tax liability. I hold that the adjudicating authority could not take invoices to determine service tax liability for 2008-09 and 2009-10, then switch over to Form 26AS for 2010-11 and 2012-13 and Balance Sheet for 2011-12 inasmuch as this would only result in over-lapping of income resulting in double taxation, which is not permitted in law. Therefore, I hold that for determining the taxable value, the figures shown in the Balance sheet should be relied upon, as all the figures shown in balance sheet are checked and authenticated by the auditors and there is no reason to disbelieve the same. Accordingly, as per the worksheet shown above, the service tax liability is of Rs. 2,76,490/- as per value shown in balance sheet. Therefore, I reduce the amount confirmed vide the impugned order from Rs. 8,52,552/- to Rs. 2,76,490/-. Further, I agree with the charging of interest under Section 75 of the Finance Act, 1994 and imposition of penalty under Section 70, 77, for non filing of service tax returns. Further penalty under Section 78 of the Finance Act, 1994 is also revised to the reduced amount confirmed.

11. In view of above, the impugned order dated 04.01.2017 is partially modified and appeal is partially allowed.

12. The appeal filed by the appellant stand disposed of in above terms.

(DR. BALBIR SINGH)
 ADDITIONAL DIRECTOR GENERAL (DGTG)
 AZU, AHMEDABAD.

सत्यापित
 निखिल ए. हमारेलिया
 अधीक्षक (अ. व. व.)



V2/162/RAJ/2017

F.No. V2/162/RAJ/2017

Date : .03.2018

BY RPAD.

To,
M/s. Bhagwati Enterprise,
Quarter No. 15, SNCCIL Colony,
Jamnagar-Jam-Khambhaliya Highway,
Jam-Khambhaliya, Dist : Jamnagar

Copy to :

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Rajkot.
3. The Additional Commissioner, CGST & Central Excise, Rajkot.
4. The Jt/Addl Commissioner , Systems, CGST, Rajkot
5. Guard File.
6. P.A.

