



::आयुक्त (अपील) 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. V2/76/RAJ/2017	मूल आदेश सं / O.I.O. No. 26/ADC/RKC/2016-17	दिनांक / Date 15-12-2016
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ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-011-2018-19

आदेश का दिनांक / Date of Order:	04.04.2018	जारी करने की तारीख / Date of issue:	11.04.2018
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Passed by **Shri Gopi Nath, Additional Director General (Audit), 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, श्री गोपी नाथ, अपर महानिदेशक ऑडिट, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय 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, Shri Gopi Nath, Additional Director General of Audit, 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 :

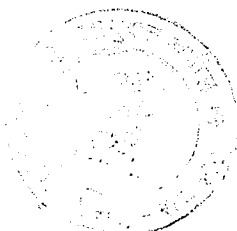
घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the **Appellants &** Respondent :-

1.M/s Shri Ratilal Kanjibhai Sherathia, Block No. 109, Gujarat Housing Board, Shri Hari Nagar Road, Veraval (Shaper),Dist : Rajkot

इस आदेश(अपील) से व्याथित 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



- (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 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 नियमवाली, 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 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) 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 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, बशर्ते 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 है

- धारा 11 डी के अंतर्गत रकम
- सेनवेट जमा की ली गई गलत राशि
- सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते 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 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.



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

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व 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 संमायाविधि 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।
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 चाहिये। इस तथ्य के होते हुए भी की लिखा पंढी 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 filled 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 और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (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

M/s Ratilal kanjibhai Sherathia, Block No. 109, Gujarat Housing Board, Shree Hari Nagar Road, SIDC Road, Veraval (Shapar), Gujarat (hereinafter referred to as "the appellant") has filed the present appeal against Order-in-Original No.26/ADC/RKC/2016-17 dated 15.12.2016 (hereinafter referred to as the "impugned order") passed by the Additional Commissioner, Central Excise & Service Tax, Rajkot (here in after referred to as "the Adjudicating Authority").

2. The appellant firm was proprietorship firm engaged in providing taxable service under the service category of "Manpower Supply/Recruitment Agency" under Section 65(105)(k) of Finance Act, 1994; obtained service tax Registration No. CROPS2379PSD001 w.e.f.25.9.2012 under section 69 of the Finance Act, 1994. The instant case was emerged during the course of verification undertaken of third party data by the Range Officers. It was observed that before 1.7.2012, the appellant was liable to make payment of service tax at 100% on the taxable value and after 1.7.2012, as per the Notification No. 30/2012-ST dated 20.6.2012 the appellant was liable to pay service tax at 25% of the taxable value, however, verification of the documents revealed that the appellant failed to pay service tax amounting to Rs. 5,79,777/- during the period from 2010-11 to 2014-15. Accordingly, Show Cause Notice No. V.ST/15-73/ADJ/2015-16 Dated 19.10.2015 was issued by the Additional Commissioner, Central Excise & Service Tax, Rajkot to the Appellant. The adjudicating authority under the impugned order confirmed the total demand of Service Tax of Rs. 5,79,777/- on the appellant under proviso to Section 73(2) of the Finance Act, 1994; recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fee of Rs. 2000/- per ST-3 return not filed upto 31.3.2011 and Rs. 20,000/- per return not filed from 1.4.2011 onwards under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994; imposed penalty under Section 77(1) of the Finance Act, 1994 for non-obtaining the service Tax Registration till 24.9.2012; imposed penalty of Rs.90,000/- under the provisions of Section 77(2) of the Finance Act, 1994; also imposed penalty of Rs. 5,79,777/- under Section 78 of the Finance Act, 1994.



3. Being aggrieved by the impugned order, the Appellant filed the present appeal, inter alia, mainly on the following grounds;

- (i) The Adjudicating Authority had erred in confirming the demand on the ground as mentioned in the impugned order and also on the ground that the demand confirmed on the basis of the definition applicable from 01.07.2012 is bad in law when the period involved is 2007-08 to 2011-12.
- (ii) The reliance placed by the Adjudicating Authority on the decision of the Hon'ble Commissioner (Appeals) dated 31.03.2015 by applying the principle of "later is better" is bad in law as the decisions referred by them were on identical facts and also by following the decisions of the Hon'ble CESTAT, Ahmedabad and other benches.
- (iii) Further, since no man power was supplied in the present case, the decisions relied upon by the Adjudicating Authority is bad in law. Further, the decisions relied upon by the Adjudicating Authority was in relation to activity of Cargo Handling involving supply of man power. Hence, on this ground, the impugned order is not sustainable.
- (iv) The Adjudicating Authority erred in confirming the demand ignoring the facts that the activity covered under Notification 6/2005- ST dated 01.03.2005 and was also exempt from service tax.
- (v) The Adjudicating Authority erred in confirming the demand ignoring the facts that in the case of the contractor working with the same company, the Hon'ble Appellate Authority had dropped the proceedings and the department had also accepted such decisions.
- (vi) The order for recovery of interest and imposition of various penalties is also wrong since no service tax liability arises in their case in view of the grounds stated above.

4. Hearing was held on 19.2.2018 wherein Shri Paresh V. Sheth, Advocate appeared on behalf of the appellant and reiterated the submission of the appeal memorandum and also filed a copy of Judgement reported at 2018(8)G.S.T.L.224(Tri. Mumbai) for consideration and requested to decide the case accordingly.

5. I have gone through the appeal memorandum, and oral submission made during personal hearing. Since the appellant has already made the payment of Rs.43,484/- (7.5 % of Rs. 5,79,777/- due amount of Service Tax)



in compliance towards fulfillment of mandatory pre-deposit in pursuance to the amended provisions of Section 35F of the Central Excise Act, 1944 made applicable to Service Tax matter in terms of the Section 83 of the Finance Act, 1994 effective from 06.08.2014, I proceed to decide the case on merits.

6. The issue for decision before me is whether the Adjudicating Authority under the impugned order had correctly held the said services provided by the appellant as taxable and subjected to service tax under the category of "Manpower Recruitment or supply Agency services" as defined under Section 65(68) of the Finance Act, 1994. I find that The matter purely involves interpretation of the activity undertaken by the appellant, vis-à-vis the evidences and the submissions put up by the appellant and consequently its classification into taxable services existing and defined under Section 65 of the Finance Act, 1994 during the period under dispute.

6.1 In this regard, I find that the Adjudicating Authority has reproduced the definition of "Manpower Recruitment or Supply agency" ,as in force prior to 01.07.2012, as provided under Section 65(68) of the Finance Act, 1994 at Para-28 of the impugned order.

65(68) "manpower recruitment or supply agency" means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person".

Further, Adjudicating authority took cognizance to the CBEC instruction No. B1/6/2005-TRU dated. 27.7.2015

MANPOWER RECRUITMENT SERVICE

(Board's Clarification vide TRU's letter No. B1/6/2005-TRU dt.27.7.2005)

22.1 Prior to 16-5-2005, service tax was leviable on services provided by manpower recruitment agencies in relation to recruitment of manpower. Amendments have been made to levy service tax on temporary supply of manpower by manpower recruitment or supply agencies.

22.2 A large number of business or industrial organizations engage the services of commercial concerns for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Services rendered by commercial concerns for supply of such manpower to clients would be covered within the purview of service tax.

22.3 In these cases, the individuals are generally contractually employed by the manpower supplier. The supplier agrees for use of the services of an individual employed by him to another person for a consideration. The terms of the individual's employment may be laid down in a formal contract or letter of appointment or on a less formal basis. **What is relevant is that**

the staff are not contractually employed by the recipient but come under his direction.

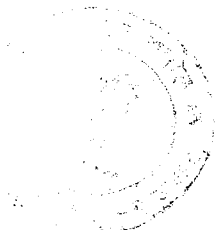
....”

And Also, took cognizance to the CBEC instruction No. B1/6/2005-TRU dated. 27.7.2015 (relevant part reproduced as below),

Reference Code	Issue	Clarification
(1)	(2)	(3)
010.02/ 23-8-07	Business or industrial organizations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Whether service tax is liable on such services under manpower recruitment or supply agency's service [section 65(105)(k)].	In the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual. Such cases are covered within the scope of the definition of the taxable service [section 65(105)(k)] and, since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" [section 65(68)] and are liable to service tax.

6.2 I find that for ascertaining the activity conducted by the appellant so as to decide its taxability under the category of "Manpower Recruitment or Supply Agency services", the Adjudicating Authority mainly relied on Contract/agreement dated. 23.3.2010 and interpreted the same in terms of definition in force prior to 1.7.2012, Clarification issued vide instruction No. B1/6/2005-TRU dated. 27.7.2005, Circular No. 96/7/2007-ST dated 23.8.2007 and then held that the service rendered by the appellant was taxable and subjected to service tax under the category of "Manpower Recruitment or Supply Agency services" (Relevant Para 31 of the impugned order is reproduced below).

*"31 on careful scrutiny of the contract/agreement dated. 23.3.2010 submitted by the Noticee, I find that in point 5 of the contract contains that **"the persons deployed by the contractor shall be treated as servants of the contractor and will be considered as his employees..."**. Therefore, as per the contract, the*



Asst

*noticee was responsible for recruitment or supply of persons for that particular task. The laborers recruited as per the requirement of the service recipient i.e. M/s Galaxy Bearing Ltd. and worked as per the instructions of the company. Thus, although not explicitly worded but the laborers definitely came under the supervision of the company i.e. M/s Galaxy Bearing ltd., as it is also evident from the point 4 contract which read as **"The contract is given to the contractor for labour work only, raw materials, tools & tackles was provided by the company and work will be carried out as per direction of the company.."** Hence, the services rendered by the Noticee were by way of supply of manpower. In light of these clarifications issued by CBEC and the terms of contract, which clearly state that the labour supplied by the noticee remains under his own control instead of M/s Galaxy Bearing Ltd., I find that the basic ingredient required to classify the service as "Supply of Man power" gets satisfied even as per erstwhile provision of the Act. I also find that the noticee has supplied man power for carrying out certain work and the work has been done in the factory premises of the recipient of the services."*

6.3 I do not find any infirmity in the findings of the Adjudicating Authority and accordingly uphold the decision of the Adjudicating Authority that the work assigned to the appellant was actually not job work but it was supply of manpower in the factory of the service recipient. I find not force in the argument of the appellant that the Adjudicating Authority had erred in confirming the demand on the basis of the definition applicable from 01.07.2012 when the period involved is 2007-08 to 2011-12; contention w.r.t. non taxability as their their activity were covered under Job Work.

6.4 The fact remains as the appellant has contributed by way of provision of skilled labor based on the contractual agreement. Hence, I find that the entire activity on the part of the appellant bears the essential characteristics of Manpower Supply and not of job work. Accordingly, the benefit of Notification No. 8/2005-ST dated 1.3.2005 also does not come into play. Further, claiming benefit of the said notification is also not correct as no documentary evidence regarding receipt of raw materials/semi finished goods for job work under challan and returned back the manufactured/produced goods has been submitted by the appellant or by the said service recipient.

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6.5 In view of the facts and discussion herein above, the appellant's contention that the Adjudicating Authority had erred in confirming the demand ignoring the facts that the contractor working with the same company, the Hon'ble Appellate Authority had dropped the proceedings and the department had also accepted such decisions, would be of no help to the appellant.

6.6. Further the appellant contended that the reliance placed by the Adjudicating Authority on the decision of the Hon'ble Commissioner (Appeals) dated 31.03.2015 by applying the principle of "later is better" is bad in law as the decisions referred by them were on identical facts and also by following the decisions of the Hon'ble CESTAT, Ahmedabad and other benches; that the decisions relied upon by the Adjudicating Authority was in relation to activity of Cargo Handling involving supply of man power. and hence, on this ground, the impugned order is not sustainable.

6.6.1 I find that the Adjudicating Authority at Para-34 of the impugned order has placed reliance on the decisions in the case of K K Appachan- 2007(7) STR-230, Janardhan Tukaram Thorat-2010(19) STR-148, J & J Enterprises- 2006(3) STR-655 and Renu Singh & Co.- 2007(7) STR-397. I have gone through these judgements and find that these decisions have settled the issue that if a service provider just provides manpower to carry out certain work with the machines and equipments of the service recipient, then in such case the services rendered by the service provider would be covered under the category of 'Manpower recruitment or supply service' and thus, apply squarely in the present case. Thus, the appellant's contention that decisions relied upon by the Adjudicating Authority were not applicable since they cover taxability of 'Cargo Handling services' is of no help to them.

6.7 Further, I find that the appellant had already obtained Service Tax Registration and started charging service tax from September 2012 and also deposited service tax amount of Rs.2,41,332/- in respect of service tax liability arised during the period from 2012-13 to 2014-15. This is also an additional point concerned for my decision to hold the said activities taxable under the category of 'Manpower Recruitment or Supply service' as defined under Section 65(68) read with Section 65 (105)(k) of the of the Finance Act, 1994 in as much as apart from obtaining registration under the said category and payment by the

appellant, the service recipient in the present case which is a private limited concerned had also agreed with the said approach of the appellant and thus, continued the transactions with the appellant.

6.8 The appellant's contention that the Adjudicating Authority had erred in confirming the demand ignoring the facts that the activity covered under Notification No. 6/2005- ST dated 01.03.2005 and is exempt from service tax, I find that the Notification has been shown wrongly instead of Notification No. 8/2005-ST dated 01.03.2005. However, in view of the facts and discussion in foregoing paras, I hold that the appellant is not eligible for the benefit of the said Notification No. 8/2005-ST dated 01.03.2005 since their activities carried out at the service recipient premises is not the job work but provision of the services of Manpower Supply. Further, with regard to the benefit of Notification No. 06/2005-ST dated 01.03.2005, I find that a table at para -7 of the impugned order very categorically show the value of said services provided during the relevant period, which has not been disputed by the appellant hence, benefit of this Notification No. 06/2005-ST dated 01.03.2005 is not available to the appellant. Further, for the period 2010-11 also, the exemption under Notification No. 06/2005-ST dated 01.03.2005 is not admissible since value of services provided in the previous year not made available so as to decide the eligibility of exemption under the said Notification No. 06/2005-ST dated 01.03.2005. Hence, I hold that the appellant is not eligible for the said benefit.

6.9 As regards the contention of the appellant that the order for recovery of interest and imposition of various penalties is also wrong since no service tax liability arises in the present case in view of the grounds stated at para-3 above, in view of the discussion and facts herein forgoing paras, this contention finds no place and therefore rejected. Hence, I uphold the levy of penalty under Section 76 of the Finance Act, as the appellant has failed to pay the appropriate service tax under Section 68 of the Finance Act, 1994, on the services provided by them made taxable under the category of 'Manpower recruitment or supply service' as defined under Section 65(68) read with Section 65 (105)(k) of the of the Finance Act, 1994. Further, for suppression of value of taxable services with intent to evade the tax, penalty under Section 78 *ibid* had been correctly imposed under the impugned order. Similarly the appellant has failed to obtain the Service Tax Registration under the said head from the department within prescribed time limit and also failed to correctly assess the service tax liability for the said services provided by them, during the relevant period and have contravened the provisions of the Finance Act hence, liable for penalty under Section 77 of the

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Finance Act, 1994. Further, the appellant have failed to file the Service Tax Returns for the period in dispute, hence, the late fee stands necessitated under Section 70 read with Rule 7C of the Service Tax Rules, 1994.

6.10 In view of the facts and discussion in foregoing paras, I uphold the impugned order confirming demand under the category of 'Manpower recruitment and supply services' along with interest thereon and imposing of various penalties/late fee under the impugned order. The appeal filed by the appellant thus, rejected.

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

7. The appeal filed by the appellant stands disposed off in above terms.

सत्यापित,
 4 अप्रैल
 11/04/2018
 प्रवीण पोपट
 अधीक्षक (अपील्स)

गोपी नाथ
 04/4/18
 (गोपी नाथ)

अपर महानिदेशक ऑडिट / आयुक्त (अपील्स)

By Regd. Post A.D. /Speed Post

F.NO.V2/76/RAJ/2017

Dated 4.4.2018

BY R.P.A.D.

To,

M/s Ratilal kanjibhai Sherathia,
 Block No. 109,
 Gujarat Housing Board,
 Shree Hari Nagar Road,
 SIDC Road,
 Veraval (Shapar), Gujarat.

Copy To:-

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner (Appeals), Central Taxes, Rajkot.
- 3) The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
- 4) The Additional Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot
- 5) The Assistant Commissioner, GST & Central Excise, Division.....,Rajkot.
- 6) The Superintendent, Range-....., GST & Central Excise, Division.....,Rajkot.
- 7) Guard File.
- 8) Guard File for O/o the Additional Director General (Audit),Ahmedabad Zonal Unit, Ahmedabad.