



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

द्वितीय तल, जी एस 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 संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/251/RAJ/2017	DC/JAM/ST/49/2016-17	28.02.2017

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

RAJ-EXCUS-000-APP-072-2018-19

आदेश का दिनांक / Date of Order:	03.05.2018	जारी करने की तारीख / Date of issue:	07.05.2018
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**कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

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. Shri GMS Marine Services, 313,317 Cross Road Complex, 3rd Floor, P. N. Marg,, 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- 380016 को की जानी चाहिए। /

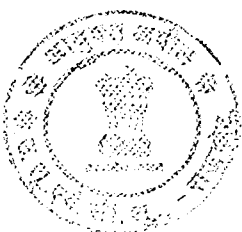
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए 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 (जुर्माने 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए 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/-.



ORDER-IN-APPEAL

M/s. GMS Marine Services, 313/317 Cross Road Complex, 3rd Floor, P N Marg, Jamnagar (*hereinafter referred to as 'the Appellant'*) has filed the present appeal against Order-in-Original No.DC/ JAM/ ST/ 49/ 2016-17 dated 28.02.2017 (*hereinafter referred to as 'the impugned order'*) passed by the Deputy Commissioner, Central Excise Division, Jamnagar (*hereinafter referred to as 'the lower adjudicating authority'*).

2. Brief facts of the case are that the Appellant was holding service tax registration number AACFK1869MS001 for various taxable Services, however, investigation of a case of M/s. Dosti Fabricators, Jamnagar revealed that Shri Juma Gulmohammad Sati, Proprietor of M/s. Dosti Fabricator was authorized person of the Appellant also and had commenced operations of the Appellant from April, 2014 from the same premises. Show Cause Notice dated 26.02.2016 demanding service tax of Rs.9,03,123/- was issued under Section 73(1) of the Finance Act, 1994 (*hereinafter referred to as "the Act"*), interest under Section 75 of the Act, proposed Penalty under Section 76, Section 77(2) and Section 78 of the Act. The lower adjudicating authority vide impugned order decided the show cause notice and confirmed demand of Rs.7,54,578/-, interest of Rs.2,04,846/- and imposed penalty of Rs.7,54,578/- under Section 78 of the Act.

3. Being aggrieved by the impugned order, Appellant preferred the present appeal, mainly on the following grounds:

(i) Allegation of Suppression is not justified inasmuch as Appellant was not liable for Service Tax during the years 2013-14 and 2014-15 and Tax Audit of financial records were not mandatory; that as per Annexure B to the Show Cause Notice also, Service Tax is shown payable in ST-3 return; that once tax liability is accepted by showing the same in ST-3 return and tax is also paid with interest at subsequent stage, no allegation of suppression of facts of facts can be made.

(ii) Provisions of Section 72 of the Act were not followed by the adjudicating authority while making Best Judgment Assessment as no notice as well as no personal hearing was given by him to the Appellant.

(iii) In spite of Appellant having produced the worksheet, two invoices and service tax calculation, the adjudicating authority has not considered their submission to reduce the Service Tax liability of Rs.2,00,850/-; that while working liability for the whole financial year, adjudicating authority had all the details available with him; that the tax amount was paid with total service tax for the period in regular course and not through separate challans; that there was outstanding tax liability of Rs.24,825/- only; that adjudicating authority has failed to record in findings with regard to allegation that appellant failed to assess the correct tax liability as nothing more was revealed in the impugned order other than what was already reported by the Appellant; that therefore service tax demand of Rs.24,825/- confirmed and penalty of Rs.7,54,578/- imposed upon them are required to be dropped.

4. Personal hearing in the matter was attended to by Shri R.T Vajani, Consultant, and Shri Niral Shah, CA on behalf of the Appellant who reiterated grounds of appeal and submitted that allegation of suppression of facts is wrong; that service tax amount of Rs.2,05,850/- paid by them needs to be reduced from value of the Services provided by them in F.Y. 2014-15; that penalty of Rs.7.54 lacs was not imposable on them as they have already made payment of Rs.7.29 lacs before issue of SCN as stated in Para 29 of the impugned order also and hence appeal may be allowed.

FINDINGS

5. I have gone through the facts of the case, impugned order, appeal memorandum and written as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is as to whether demand of service tax confirmed and penalty imposed on the Appellant by the adjudicating authority is correct or not.

6. I find that Appellant has contended that amount of Rs.2,00,850/- of service tax was wrongly included in the value of the services by the SCN and also by the impugned order and hence demand of 24,825/- is wrongly confirmed by adjudicating authority. Appellant submitted details of debit notes detailing two invoices in support of their claim, which are as under:-

DEBIT NOTE dated 31.03.2015 in respect of M/s. Rishi Shipping



GMS
MARINE SERVICES

DEBIT NOTE

INVOICE NO. :- GMS/01/2014-15

Date: 31.03.2015

To,
Rishi Shipping,
Gandhidham

SR. NO.	PARTICULARS	AMOUNT
01.	Being the Amount of Survey New Construction YARD No. GMS / 01 Paid to Indian Register of Shipping, Invoice No. KND51/1415/00512 Dated 07-01-2015, Kandla on behalf of you. (60% OF THE TOTAL CLASSIFICATION Fees Rs. 15,54,430/-)	9,92,658.00
	Towards New Construction of TUG V "RISHI VISTARA I" Fabricated At Okha Port in Yard No. GMS /01.	9,92,658.00
	ADD: SERVICE TAX 12%	1,19,119.00
	EDU. CESS @ 2%	2,382.00
	HIGHER EDU. CESS @ 1%	1,191.00
		1,22,692.00
		11,15,350.00

RS :-ELEVEN LAKH FIFTEEN THOUSAND THREE HUNDRED AND FIFTY RUPEES ONLY.

E. & O.E.
Service Tax No. AAMFG0797JSD001
PAN - AAMEG0797J
HDFC BANK A/C.NO. :- 50200001902744


For, GMS MARINE SERVICES

S. G. Sath.

Partner

313-317, 3rd Floor, "Cross Road" Complex, Opp. D.K.V. College, P. N. Marg, Jamnagar - 381 008.
Tel: +91-288-2761319, Fax: +91-288-2765804 E-mail: gmsmarineservices@gmail.com

Debit Note dated 31.03.2015 in respect of M/s. Indian Roadlines



GMS

MARINE SERVICES

DEBIT NOTE

INVOICE NO. :- GMS/02/2014-15

Date :- 31.03.2015

To,
Indian Roadlines
Jamnagar

SR. NO.	DESCRIPTION	AMOUNT
01.	Being the amount of new construction YARD No. GMS / 03 paid to Indian Register of Shipping, Invoice No. KND / 1415 / 00513 dated 07-01-2015, Kankia on behalf of you. 60% OF THE TOTAL CLASSIFICATION FEE (Rs. 10,53,909/-)	6,32,345.00
	Towards New Construction of Ship "SHIVAM" fabricated at Okhla, Delhi No. GMS / 03	6,32,345.00
	ADD: SERVICE TAX @ 12% 75,891.00 EDU. CESS @ 2% 1,518.00 HIGHER EDU. CESS @ 1% 75,900.00	78,158.00
		7,10,503.00

RS :- SEVEN LAKH TEN THOUSAND FIVE HUNDRED AND THREE RUPEES ONLY.

E. & O.E.
 Service Tax No. AAMFG0797JSD001
 PAN - AAMFG0797J
 HDFC BANK A/C. NO. :- 50200001902744

For, GMS MARINE SERVICES
S. G. Sati
 Partner

6.1 Appellant has submitted that for the year 2014-15 their actual value of services provided by them as per their profit and loss account was Rs.81,73,171/- as against their declared value in ST-3 return as Rs.99,99,024/-. They explained that the

difference of Rs.18,25,853/- was also due to above Two Debit Notes where service tax amount of Rs.2,00,850/- was considered as value of the services on which they were not required to pay Service Tax. Appellant has contended that Rs.16,25,003/- was of Reimbursement received from M/s. Rishi Shipping and M/s. Indian Roadlines and no service tax was payable. I find that as per Annexure B to the Show Cause Notice demand for F.Y. 2014-15 was made by considering highest value i.e. value declared in monthly ST-3 returns as compared to value shown in their Profit and Loss account. I also find that the amount involved in these debit notes includes service tax components also and hence value of Rs.18,25,853/- is required to be treated as Rs.16,25,003/-. I, therefore, find merit in Appellant's argument that service tax demand of Rs. 24,825/- is not payable as incorrect value was mentioned in ST-3 return. I am of the considered view that the impugned order is not correct, legal and proper for confirming demand of Rs.24,825/- as discussed hereinabove. I, therefore, set aside the demand of Rs.24,825/- confirmed in the impugned order.

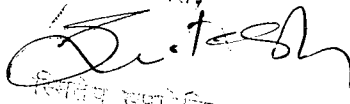
7. Appellant further contended that there is no suppression of facts on their part as they had declared value of the services and service tax payable in their periodical ST-3 returns; that they have paid service tax of Rs.7,29,754/- with interest for delayed payment of S. Tax. I find that adjudicating authority has confirmed demand of Rs.7,54,578/- relating to F.Y. 2014-15, which comprises of Rs.7,29,754/- already paid by the Appellant and Rs.24,825/- has been held to be not payable by the Appellant as per above Para. I further find that the adjudicating authority, at Para 31 of the impugned order, has stated that all ST-3 returns were filed in stipulated time and demand for FY 2014-15 is also made on the basis of value declared in ST-3 returns filed by the Appellant. I, therefore, find that this is a case of delayed payment of service tax which was paid by the Appellant along with interest and this fact has not been disputed in the impugned order and hence no case of suppression of facts etc. by the Appellant is established. I, therefore, hold that there is no ingredient for suppression of facts etc. on part of the Appellant and in absence of any ingredients prescribed under Section 78 of the Act, no penalty is imposable on the Appellant under Section 78 of the Act. Accordingly, I set aside the penalty under Section 78 of the Act imposed by the adjudicating authority in the impugned order.


8. In view of above facts, I hold that service tax demand of Rs.24,825/- does not sustain and no penalty is imposable upon the appellant under Section 78 of the Act.

Accordingly, I set aside the impugned order and allow the appeal.

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

9.1 The appeal filed by the Appellant stands disposed off in above terms.

सत्यापित,

 निम्नलिखित उपरोक्तिका
 अधीक्षक (अपील्स)


 (कुमार संतोष)
 आयुक्त (अपील्स)

By R.P.A.D.

To

M/s. G M S Marine Services, 313-317, 3rd Floor, "Cross Road" Complex, Opp DKV Colege, Pn Marg, Jamnagar- 361008	मेसर्स जी एम एस मरीन सर्विस ३१३ ३१७ तीसरी मंजिल ,क्रॉस रोड कॉम्प्लेक्स डी के वी कॉलेज के सामने पी एन मार्ग - जामनगर ३६१००८
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Copy to:-

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, CGST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Additional Commissioner, Sub Commissionerate, CGST & C Excise, Jamnagar.
4. The Assistant Commissioner, CGST & Central Excise, Jamnagar.
5. Guard File.

