

285



::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 / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /  
Appeal / File No.  
V2/200/BVR/2017

312570 9130

मूल आदेश सं /  
O.I.O. No.  
BHV-EXCUS-000-JC-79 to 80-  
2016-17

दिनांक /  
Date  
31.03.2017

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

**BHV-EXCUS-000-APP-048-2018-19**

आदेश का दिनांक /  
Date of Order: 20.04.2018

जारी करने की तारीख /  
Date of issue:

27.04.2018

Passed by **Dr. Balbir Singh, Additional Director General (Taxpayer Services), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १६.१०.२०१७ के साथ पट्टे 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 Jagdish M. Pithia, C/o. Reliance Mobile Store, B-11 Balaji Avenue, Near Moti Baug, Junagadh**

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:-
- (ii) 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.
- (iii) 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, 2<sup>nd</sup> 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/- Ps.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 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/-.

- (ii) 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 प्रतियों 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.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) 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, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, 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 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी 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। 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 पेटी कार्य से बचने 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-1 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 संबंधित 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](http://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](http://www.cbec.gov.in)

**ORDER IN APPEAL**

M/s. Jagdish M Pithia, C/o. HPCL COCO, Plot No. 211/3, Junagadh (hereinafter referred to as "the appellant") is engaged in providing taxable services. However, they have not registered themselves with the department and have filed this appeal against OIO No. BHV-EXCUS-000-JC-79 to 80-2016-17 dated 31.03.2017 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts are that it was found that M/s. Hindustan Petroleum Corporation Limited are operating "Company Operated Company Owned" (known as COCO) outlets through various contractors with whom they have entered into agreements for running the outlets and such services provided by the contractors were taxable services falling under the category of "Business Auxiliary Services". Since one such contractor was the appellant and accordingly, it was found that the appellant had provided the taxable service under the category of "Business Auxiliary Service". It was also found that in order to provide such services to M/s. HPCL, the appellant had recruited and supplied manpower for carrying out jobs as per the contract for which M/s. HPCL had made payments to the appellant. The said service was classifiable under the category of "Manpower Recruitment of Supply Agency Service". Thus, on the basis of value provided by the M/s. HPCL the service tax liability of the appellant was found to be Rs. 9,23,808/- for the period from 2006-07 (October to March) to 2010-11. Accordingly, SCN dated 12.04.2012 was issued to the appellant demanding service tax of Rs. 9,23,808/- for the period from 2006-07 (October to March) to 2010-11 along with interest and proposed penalties under Section 76, 77 and 78 of Finance Act, 1994. Another SCN dated 11.10.2012 was issued to the appellant demanding service tax of Rs. 2,24,996/- along with interest for the F.Y. 2010-11 and proposed penalties under Section 76, 77 and 78 of Finance Act, 1994.

3/- The above notices were adjudicated vide OIO No. 32 to 33/14-15 dated 20.01.2015 by the Additional Commissioner, Bhavnagar wherein the demand of Rs. 9,23,808/- and Rs. 2,24,996/- were confirmed along with interest under Section 75 and Penalties under Section 76, 78 and 77(1)(a) and 77(2) were confirmed.

4/- Against this order, the appellant filed appeal before the Commissioner (Appeals), Rajkot. In turn, the Commissioner (Appeals), Rajkot vide Order In Appeal No. BHV-EXCUS-000-APP-134-16-17 dated 27.09.2016 remanded the case to original adjudicating authority. He had further held as under:

*"10.1 --- I observe that the issue needs to be decided after considering the documents for entire period involved e.g. agreement prior to 27.03.2010 and/or other relevant documents to ascertain the "consideration" amount received by the appellant in terms of Schedule III under clause 9 of the above contract and matter needs to be remanded back to re-determine the tax liability in accordance with law, after hearing the appellants.*

*11. I further direct the appellant to file all the relevant documents in support of their claim within 30 days from receipt of this order. On basis of information furnished by the appellant, the lower adjudicating authority re-determine the tax liability in accordance with law, after hearing the appellants, and shall pass a reasoned and speaking order."*

5. Accordingly, the adjudicating authority under the denovo adjudication vide impugned order dated 31.03.2017 confirmed the demand of Rs. 9,23,808/- and Rs. 2,24,996/- along with interest; imposed equal amount of penalty under Section 78 ; imposed penalties under Section 77(1)(a) and 77(2) of Finance Act, 1994.



6. Feeling aggrieved, the appellant filed Appeal on the following grounds.

- that from the para 8 of the OIA dated 29.09.2016 , it is clear that all the expenses are reimbursement expenses and the only thing the assessee needs to follow is to produce proper supportive document to the lower authority.
- that from the text of para 10.1 of the OIA, it is discernible that the assessee is under the threshold limit and not required to pay tax if the expenses are re-imburement expenses, which should be proved by the supporting documents.
- The appellant further submitted various agreement and extension letters of the agreement.
- that the Show Cause Notice is not maintainable as it is time barred.
- that Order In Original dated 31.03.2017 may be set aside.

7/- 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 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 on the basis of Board's Circular No. 208/6/2017-Service Tax dated 17.10.2017.

8/- Personal hearing was held on 19.02.2018 wherein appellant's legal representative reiterated the earlier submissions made by them. He sought a week's time for submission of CA certificate. Accordingly, the same was submitted, issued by Shri Himmat Gangvani & Co., Chartered Accountants vide letter dated 28.02.2018 and 03.04.2018 as additional proof of their defense submission.

9/- I have carefully gone through the facts of case, the grounds mentioned in the appeals and the submissions made by the appellant. The question to be decided in the appeal is whether the demand of Rs. 9,23,808/- [for the period from 2006-07 (Oct to March) to 2010-11] and Rs. 2,24,996/- (for F.Y. 2011-12) confirmed along with interest and penalties imposed under Section 77(1)(a), Section 77(2) and Section 78 of Finance Act, 1994 are justified or otherwise.

10/- I have found that the impugned order is a denovo adjudication as ordered by the Commissioner (Appeals) vide Order In Appeal dated 29.09.2016.

Commissioner (Appeals) under para 8 of the order had observed as under:

*"It can be consider seen that the consideration includes re-imburement charged by the provider in the course of providing a taxable services and not any other expenses. Now, in the instant case, paying a telephone bill, electricity bill, or physical loss of goods i.e. a sale transaction or a trade by M/s. HPCL, cannot be by any stretch of imagination considered, and related to, as amount of charged towards provision of the services by the appellant. Therefore, I am of the view that re-imburement on account of adjustment due to product price variation, stock loss due to evaporation and actual expenses on property of M/s. HPCL by the appellant in terms of clause 2.4, 4 and 14 is by all means fall out of the purview of the Section 67(i) of the Act, and this act is squarely falls within the definition of 'pure agent' and hence, I find merit in the appellant's plea in light of the specific agreement between the two party."*

11. From the above, it is clear that all the above mentioned expenses were only re-imburement expenses, which were allowed under the above OIA subject to verification.

12. Further, in the impugned order, the adjudicating authority after verification of agreement dated 27.03.2010 has held that the conditions for re-imbursables are mentioned in the agreement.

13. I have also found that the appellant in his submission has stated that the agreement executed on 8<sup>th</sup> May 2006 is much identical with the agreement executed on 27.03.2010.

14. Since the adjudicating authority has verified the fact of availability of condition related to reimbursement in the agreement dated 27.03.2010, I do not interfere in depth with regard to the same.

15. The appellant has provided the break-up of actual value of services provided as well as actual cost of re-imburement as under:

Year	Labour charges (A)	Commision (B)	Stock loss (C)	Reimburse ment expenses (D)	Adjustm ent payable (E)	Total amt. claimed (F)	Claim received from HPCL	Taxable Amt. (A + B)
2006-07 (OCT to MAR)	245715	77682	258980	204971	62291	849639	846981	323397
2007-08	491430	276580	550610	612629	35581	1895669	1881902	768010
2008-09	491430	279913	641990	601834	138742	2153908	2130312	771343
2009-10	368573	218246	461789	313151	58805	1302954	1305304	586819
2010-11	622253	270913	682052	382872	99356	1858733	1842541	893165

16. The appellant has also submitted the certificates dated 26.2.2018 & 03.04.2018 issued by the chartered Accountant showing the income of Shri Jagadish Pithiya, the appellant as under. He has further certified that the other income has been received as recovery of reimbursement expenses from the HPCL.

Year	Receipt as per Profit and Loss Account
2006-07	323397
2007-08	768010
2008-09	771343
2009-10	586819
2010-11	893165
2011-12	1008561

17. Thus, I conclude that as the amount paid to the appellant, as an agent, is reimbursement expenses which cannot be considered as his income and is not required to be considered while calculating threshold limit of exemption. To support my view, I rely upon the recent judgement dated 07.04.2018 of the Hon'ble Supreme Court in the case of Union of India v/s. M/S. Intercontinental Consultants And Technocrats Pvt. Ltd. in the Civil Appeal No. 2013 Of 2014 With Ors.


18. Further, I have found that aggregate services below Rs. 4 lakhs were exempted from Service tax as per Notification No. 6/2005 dated 01.03.2005. This limit was subsequently increased to Rs. 8 lakhs in the year 2007-08 vide Notification No. 4/2007-Service Tax dated 01.03.2007, and then again increased to Rs. 10 lakh in the year 2008-09 vide Notification No. 8/2008-Service Tax dated 01.03.2008.

19. In view of the above, it is clear that if reimbursement expenses are not considered, the income mentioned in the table at para 16 of this Order for the year 2006-07 to 2010-11 falls under the threshold exemption limit. However, I find that the appellant has crossed the threshold exemption limit of Rs.10 lakh in the year 2011-12.

20. Thus, I do not find appellant liable for payment of Service tax for the period from 2006-07 to 2010-11. Since there is no liability of Service tax, interest under Section 75 and penalty under Section 78 are also not warranted for this period. However, the appellant is liable for payment of Service tax for the taxable amount above threshold limit of Rs. 10 lakh along with applicable interest and penalty for the year 2011-12.

21. With regard to penalty imposed under the Section 77(1) (a) and 77(2) of Finance Act, 1994, I do not interfere with the quantum of penalty.

22. In view of the foregoing discussion, the appeal is hereby disposed off to the above extent.

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

F.No. V2/200/BVR/2017

Date : .04.2018

BY RPAD.

To,  
sk. Jagdish M Pithia  
B-11, Balaji Avenue,  
Near Moti Baug,  
Junagadh.

Copy to :

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Bhavnagar/ Commissioner (Appeals), Rajkot.
3. The Jurisdictional Deputy/ Assistant Commissioner, Bhavnagar.
4. The Jt/Addl Commissioner, Systems, CGST, Rajkot
5. Guard File.