



::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

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रजिस्टर्ड टैक्स ए.डी. द्वारा

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2021/09/15

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अपील / फाइल नम्बर /
Appeal / File No.

मूल आदेश सं /

दिनांक /

V2/12/BVR/2021

O.I.O. No.

Date

01/JC/MT/BVR-2/2020-21

15-10-2020

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

BHV-EXCUS-000-APP-005-2021

आदेश का दिनांक /

Date of Order:

15.09.2021

जारी करने की तारीख /

Date of issue:

16.09.2021

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

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अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरनिर्दिष्ट जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

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अपीलकर्ता/प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

M/s. Ashish Ship Breakers Private Limited, C-919-920, Near Natraj Shopping Centre, Kaliyabid, Bhavnagar-364002

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 उत्पाद 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 अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन अमरावा अहमदाबाद- 380016 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 रजिस्ट्रार 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। स्वयं 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 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 नियमवानी, 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 रजिस्ट्रार 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। स्वयं 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 is more than five lakhs or less, Rs.5000/- 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 नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकने वाली एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करे (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलवीय 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 Form 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 अपीलवीय प्राधिकरण (सेन्ट्रल) के प्रति अपील 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 अपीलवीय 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 जेपैडित देय राशि दम 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
 - सेनबेट जमा की गयी गलत राशि
 - सेनबेट 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 अपीलवीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।
- 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 कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणवाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर मन्त्रि, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन्त 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 में 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 छूट (स्विट) 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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी 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, इन आदेश के पारिपत्रक 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 साथ-साथ 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 जाएगा। 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 कोई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इन तथ्य के होने हुए भी की लिखा पत्रों कार्य से बचने के लिए यथास्थिति अपीलवीय 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, 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-1 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-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलवीय 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 अपीलवीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलवाची विभागीय वेबसाइट www.cbec.gov.in की 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

This appeal has been filed by **M/s Ashish Ship Breakers Pvt. Ltd.**, C - 919-920, Near Natraj Shopping Centre, Kaliyabid, Bhavnagar 364 002 (hereinafter referred to as the 'appellant'), against **Order-In-Original No. 01/JC/MT/BVR-2/2020-21 dated 15.10.2020** (hereinafter referred as "*impugned order*") passed by the Joint Commissioner (*in situ*), CGST Division Bhavnagar-2, Bhavnagar Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant is engaged in the manufacture of goods obtained out of ship breaking, falling under Chapter 72 to 83, in terms of Section Note 9 of Section XV of First Schedule to the erstwhile Central Excise Tariff Act, 1985 and were holding Central Excise Registration No.AACCA2703KXM001. During the course of audit of records of the appellant for the period from November, 2013 to June, 2017, it was noticed that the director of the appellant has rented out his immovable property to the appellant for an agreed upon consideration and that the said appellant had totally paid Rs.7,25,000/- during the period from November, 2013 to March, 2016 to the said director as rent towards such immovable property. The audit observed that Renting of Immovable Property for use in the course of furtherance of business or commerce is declared taxable service in terms of the provisions made under Section 65 and Section 66E of the Finance Act, 1994. It was further observed that since the service was provided by a director of a company to the said company which is a body corporate, it appeared to be liable to service tax under reverse charge mechanism under Notification No. 30/2012-ST dated 20.06.2012, as amended by Notification No. 45/2012-ST dated 07.08.2012, and the appellant was liable to pay 100% of the service tax payable on the said services received by them. Accordingly, a Show Cause Notice dated 31.07.2018 was issued to the appellant proposing demand of service tax amounting to Rs. 94,335/- on the amount of rent paid to their director under proviso to Section 73(1) along with interest under Section 75 of the Finance Act, 1994. Penalty upon the appellant was also proposed under Section 76, 77 and 78 of the Finance Act, 1994. The aforesaid Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order wherein he had confirmed the demands along with interest under Section 75 and also imposed penalty under Section 77 and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

- (i) That the director of the company has provided the services renting of immovable property to them in his personal capacity and not as a director of the company; that renting of immovable property service related to the property owned by the director of the company; that it was not the case that the appellant had leased or provided accommodation to the said director; that they were not service provider but were only recipient of renting of immovable property service. They also contended that rent was being charged by the director of the appellant company individually and not by the appellant; that renting of immovable property is not specified in Notification No. 30/2012-ST dated 20.06.2012 and hence the appellant is not liable to pay service tax as

demanded under the impugned order in question.

(ii) That as per provisions of Section 68(1) of the Act, the service tax is payable by the person providing taxable service in such manner and within such period as specified; that Section 68(2) of the Act empowers the Central Government to notify the services and specify the person liable to pay service tax in respect of such notified services; that the Central Government in exercise of these powers has issued Notification No.30/2012-ST dated 20.06.2012 notifying the services and the person liable to pay service tax; that the person liable to pay service tax is specified in rule 2(1)(d) of the Rules; that Renting of immovable property is not specified in this Notification and hence the person providing the service shall be the person liable to pay service tax and therefore, in their case the director in his personal capacity is liable to pay service tax and the appellants are not liable to pay service as recipient of service; that the Notifications No. 30/2012-ST dated 20.06.2012 specifically provided that in case of service of renting immovable property provided by Government or Local Authority, the service tax will be payable by the Government or Local Authority and not by the recipient of service.

(iii) that they relied upon the decision of Hon'ble Supreme Court in the case of Oryx Fisheries Pvt. Ltd., Vs. Union of India wherein it has been made clear that if on a reasonable reading of show cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in the quasi-judicial proceeding under the regulation which promise to give the person proceeded against a reasonable opportunity of defence.

(iv) That the revenue authority cannot invoke the extended period of limitation, when the records of the appellants were first audited by the officers for the period from September-2012 to October-2013 but no short payment was found at that time and therefore, the demand is time barred and without authority of law as the demand is for the period from November, 2013 to March, 2016 and the notice was received by them on 01.08.2018 alleging suppression with intent to evade payment of service tax and subsequent the impugned order is also illegal; that the extended period cannot be applicable and the show cause notice is time barred.

(v) no service tax is payable by them, therefore demand of interest and imposition of penalty under the impugned order is also not sustainable.

4. Personal Hearing in the matter was held on 18.08.2021 in virtual mode through video conferencing. Shri Sarju S. Mehta, Chartered Accountant, on behalf of the appellants attended the personal hearing. He reiterated the submission of appeal memorandum as well as in written submission dated 18.08.2021 wherein it has been argued that the demand has been raised on the

basis of ledger accounts and balance sheet for the relevant year; that balance sheet is a public document and available to all the concerned; that the reflection of the expenditure and the said activity in the ledger account and the balance sheet will reflect upon the absence of any will suppression and mis-statement on the part of the appellant to invoke longer period of limitation and therefore, the show cause notice issued to the appellant is time barred. In this regard, they relied upon the order in the case of M/s. Rama Paper Mills V/s. CCE Meerut – 2011 (22) STR (19) (Tri. Del.).

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum and oral as well as written submissions made at the time of personal hearing. The issue to be decided in the case is whether the appellant, as a service recipient, is liable to pay service tax under reverse charge mechanism on the rent amount paid to their director in respect of immovable property given on rent to the company in the light of provisions of Rule 2(1)(d)(EE) inserted with effect from 07.08.2012 read with the provisions of Notification No. 30/2012-ST dated 20.06.2012 as amended, or not.

6. It is observed from case records that the appellant had paid an amount of Rs.7,25,000/- during the period from November, 2013 to March, 2016 as rent to the director of their firm for renting to company the immovable property owned by him. The adjudicating authority confirmed service tax demand of Rs. 94,335/- under Section 73(1) of the Act on the ground that in respect of services provided or agreed to be provided by the directors of the company or a body corporate to the said company or the body corporate, service tax is payable under Reverse Charge Mechanism @ 100% by the company or the body corporate in view of the Notification No. 30/2012-ST dated 20.06.2021 as amended vide Notification No. 45/2012-ST dated 07.08.2012.

7 I find that that the Appellant has contended that the director of the company has provided the service of renting of immovable property to them in his personal capacity and not as a director of the company. The property which was given on rent was owned by the director of the company and it was not the case that the appellant had leased or provided accommodation to the said director. The Appellant further contended that they were not service provider but were only recipient of renting of immovable property service and that rent was being charged by their director individually and not by the appellant.

8. It is pertinent to examine the relevant legal provisions i.e. Rule 2(1)(d)(EE) of the Service Tax Rules, 1994 involved in the present case, which are reproduced as under:

(d) "person liable for paying service tax". - (i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

*.....
(EE) in relation to service provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate, the recipient of such service;*

8.1 As per the aforesaid provisions, a company or a body corporate is liable to pay service tax on the services provided or agreed to be provided by their director on reverse charge basis.

Further, Notification No.30/2012-ST dated 20.06.2012 as amended by Notification No.45/2012-ST dated 07.08.2012 has prescribed percentage of service tax payable by recipient of service. The relevant portion of the notification is reproduced as under:

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
5A	in respect of services provided or agreed to be provided by a director of a company to the said company	Nil	100%

8.2 In backdrop of the above legal provisions and on examining the facts, I find that the taxability of the service provided or received in the case viz. the renting of immovable property is not in dispute. The dispute is regarding whether the said service, in the facts of the present case, is taxable at the hands of the service recipient or otherwise. The adjudicating authority has held that appellant is required to pay Service Tax on the amount of service received from the director and that it clearly comes out that the appellant had received taxable service viz. Renting of Immovable Property from its director and an amount of Rs.7,25,000/- rent paid during the period from November, 2013 to March, 2016 in terms of Notification No.30/2012-ST dated 20.06.2012 as amended by Notification No. 45/2012-ST dated 07.08.2012 and therefore, the appellant was held liable to pay service tax under Reverse Charge Mechanism.

8.3 It is observed in this regard that the said view of the adjudicating authority does not seem to be a fair and correct interpretation of law as it is not supported by the language used in the Notification. The words used in the said Notification are 'by a director of a company to the said company' and not 'by a person who is director of a company'. Therefore, if the director of the company provides a service in some other capacity, the tax liability would be on the part of director as an individual service provider and it will not be correct to consider the same as a service provided in the capacity of a director of the company to the company. The notification intends to cover the services provided by a director of the company to the said company in the capacity of the director post held by him. Other services performed beyond the function of director are not covered by the above Notification. Such a view can fairly be inferred on analysis of other similar kind of entries in the Notification like entries pertaining to taxable services provided or agreed to be provided by an insurance agent to any person carrying on the insurance business and taxable services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company. In these entries, taxable services provided as insurance agent or as recovery agent are what are intended to be covered. The said entries can only be said to be referring to taxable services provided in the capacity in which services sought from such person by the recipient. By no stretch of imagination, it can be assumed that all taxable services provided by such persons are covered under the said notification. The intention of the legislation is to cover only those services provided by the person for which it was necessary to be in that capacity and not all services which can also be

provided without being in that capacity. Therefore, I do not find any merit in the contention of the adjudicating authority that any service provided by the director would be attracting service tax under reverse charge mechanism.

8.4 It is pertinent to mention that the director, who is owner of the property, has given his property on rent to the appellant and is getting the rent from the appellant being the owner of the property and not being the director of the appellant. Appellant is also paying the rent to the director being the owner of the property (who has provided service to the appellant) and not being the director of the appellant. It is not the case of the Department that the director has rented their immovable properties to the company as they were obliged to do so for being appointed as director of the company or that the renting services were provided by them as a part of their function as director of the company. Further, it is a fact that for providing renting services one need not be a director of the company. The department has not brought on record anything which suggest that the impugned renting services received by the appellant from their director were received by them in the capacity of director of the company. Whereas the appellant has contended that the said services were received by them from their director in his personal capacity as owner of the property and not as a director of the company. The appellant are paying the rent to the person being the owner of the property and not being the director of the appellant and the director is receiving the amount not as remuneration for his services as a director but in his individual capacity of an owner of the property. Such a case, in my view, is not intended to be covered under the reverse charge mechanism in terms of Notification No.30/2012-ST dated 20.6.2012, as amended but rather the director, as a service provider, would be liable to discharge the applicable service tax liability, if any.

8.5 Further, it is observed that had the director of the appellant given his property on rent to some other company, the director of the appellant would have been held liable to pay the service tax being the owner of the property and being in his individual capacity as service provider. Similarly, if such a renting service is received by the appellant from an individual other than director, then liability to pay tax, if any, on such service is not on the appellant but on the service provider. This logic makes it clear that if the director of a company is providing any sort of service in the capacity of director to the said company, then only the service becomes liable to service tax at the end of that company being service recipient. This is the intention of law and therefore such words have been incorporated in the said rules and in the Notification. Further, I find that the CBEC, in their Circular No.115/9/2009-ST dated 31.07.2009 issued on the subject of Service tax on commission paid to Managing Director / Directors by the company has clarified that "*the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category 'Management Consultancy service'. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax*". In other words, the service provided by the director in the personal capacity to the Company, would be payable by the person who rendered such service and not by the company under Reverse Charge Mechanism.

8.6 Under the circumstances, the fair conclusion which can be drawn is that just because the owner of the property is director of the appellant, the renting service received by the appellant does not become taxable at their end being the service recipient. The rent paid by the appellant company in the present matter, therefore, cannot be charged to service tax under Notification No.30/2012-ST dated 20.6.2012, as amended. The liability to pay service tax in the case would lie on the service provider. Hence, the order of adjudicating authority to charge service tax amounting to Rs.94,335/- under reverse charge mechanism under the Notification No. 30/2012-ST as amended vide Notification No. 45/2012-ST dated 07.08.2012, is not legally correct and fails to sustain on merits and requires to be set aside.

8.7 It is further observed that similar view has been taken by the Commissioner (Appeals), Ahmedabad earlier also in Order-in-Appeal No.AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 in the case of M/s. Jay Pumps Pvt. Ltd. and in Order-In-Appeal No. AHM-CXCUS-003-APP-003-18-18 dated 27.04.2018 in the case of M/s Advance Addmine Pvt. Ltd.

9. Since the demand of service tax is not sustainable on merits, I am not delving into the aspect of limitation raised by the appellant. When the demand fails to survive, there does not arise any question of interest or penalty in the matter.

10. Accordingly, in view of foregoing discussions, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the appellant.

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

11. The appeal filed by the appellant stand disposed off in above terms.

(Signature)
15th September,
2021.
(Akhilesh Kumar)
Commissioner (Appeals)

Attested

(Jatin Kundalia)
Superintendent (Appeals),
CGST, RAJKOT.

BY R.P.A.D. / SPEED POST TO :

To,

01	M/s Ashish Ship Breakers Pvt. Ltd., C-919-920, Near Natraj Shopping Centre, Kaliyabid Bhavnagar - 364 002	मेसर्स आशीष शिप ब्रेकर्स प्रा ली सी-919-920, नटराज शॉपिंग सेन्टर के पास, कलियाबिड, भावनगर 364 002
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Copy to:-

1. The Pr. Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Bhavnagar.
3. The Deputy / Assistant Commissioner, Central GST Division-II, Bhavnagar.
4. Guard File.