

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



सत्यमेव जयते



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: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20220964SX0000044095

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / OIONo.	दिनांक / Date
	V2/386/RAJ/2021	1/D/Supdt/2021-22	08-06-2021

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

RAJ-EXCUS-000-APP-283-2022

आदेश का दिनांक / Date of Order:	12.09.2022	जारी करने की तारीख / Date of issue:	15.09.2022
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श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त / संयुक्त आयुक्त / उपायुक्त / सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क / सेवाकर / वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधामा द्वारा उपरलिखित 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 :

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

**M/s. Poojara Telecom Pvt. Ltd., Amrut Commercial Centre, Sardarnagar
Main Road, Near Astron Chowk, Rajkot**

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 मामलों में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को 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 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asawa 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 demanded/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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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 fee of Rs. 1000/- 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 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 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 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) 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 स्थान नहीं 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 :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) 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 पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक 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 प्रसंस्कार 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 (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 छूटी कैडीट 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 सभायाविधि 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 उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आवेदन 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 O/O 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 पत्र 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, notwithstanding the fact that the one appeal to the Appellate 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 टिकट नग्रा 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 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 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



immovable property owned by such directors in their own names cannot be said to be covered under the Notification No. 30/2012-ST dated 20.06.2012, as amended by Notification No. 45/2012-ST dated 07.08.2012; consequently, appellant cannot be asked to pay service tax under RCM on the value i.e. rent of such service in terms of the above notification.

- (ii) That the rent agreements submitted before the Adjudicating Authority clearly revealed that the immovable properties were rented by the directors are owned in their personal capacity and given on rent in personal capacity only; that department failed to prove or substantiate its claim that all these properties were owned by them in the capacity of director and not in personal capacity; that is was not the case of the department that all these properties are owned by the directors in the capacity of directors of the company
- (iii) That they had also provided copy of the Minutes of the Open House on Central Excise and Service Tax held in presence of the Chief Commissioner of CE, Ahmedabad on 22.09.2014 along with copy of letter issued by the Principal Chief Commissioner, Ahmedabad under letter F. No. IV/16-36/CCO/Tech/17-18 dated 05.03.2018 addressed to the Commissioner (Audit), Rajkot for remedial action; in the said meeting issue relating to a director of company who provides on rent his own immovable property or professional consultancy service to a company, who will be liable to pay service tax, whether the director or the company under RCM? was raised; that in the said meeting it was clarified by the department that "if the director provides his personal property on rent or provides management consultancy service to the company, he himself will be liable to pay service tax on the same in such cases as the service being provided in personal capacity."; however, the Adjudicating Authority has discarded the aforesaid clarification on the ground that the said Minutes were unsigned; that is settled law that instructions issued by the department are always binding to the Adjudicating Authority
- (iv) That the service of renting of immovable property has not been provided any person in the capacity of director of appellant but the directors of the company in their personal capacity have provided immovable properties, which are registered in their own names, on rent to the company and therefore, it cannot be said that the directors have provided service of renting of immovable property to the company in the capacity of a director; that copies of all the agreements relating to rent of above immovable properties were duly submitted by them to the Adjudicating Authority;
- (v) That renting of immovable property was defined under Section 65(90a) of the Act as stood prior to 01.07.2012 which includes renting, leasing, licensing or other similar arrangements of immovable property for use in the course of business; that in the negative list regime with effect from



ORDER-IN-APPEAL

This appeal has been filed by **M/s. Poojara Telecom Pvt Ltd.**, Amrut Commercial Centre, Sardarnagar Main Road, Near Astron Chowk, Rajkot-360 001 (hereinafter referred to as the '*appellant*') against **Order-In-Original No. 01/D/Supdt/2021-22 dated 08.06.2021** (hereinafter referred as "*impugned order*") passed by the Superintendent, CGST Division, Rajkot-I, Rajkot- Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. Briefly stated, the facts of the case are that during the course of audit of records of the appellant for the period from April, 2014 to March, 2017, it was noticed that the directors of the appellant has rented out immovable property to the appellant. 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 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 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 22.05.2018 was issued to the appellant proposing demand of service tax amounting Rs.12,35,511/- on the amount of rent paid to their directors 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 77 and 78 of the Act, 1994. The aforesaid Show Cause Notice was adjudicated vide Order-in-Original No.07/D/AC/2019-20 dated 29.05.2019 by the Assistant Commissioner, Division-I, Rajkot. Since the appellant continued the practice, show cause notice for the further period April 2017 to June 2017 demanding service tax of Rs.46,800/- was issued under F. No. V.84(4)Q4/MP/D/Supdt/19-20 dated 05.02.2020. By the impugned order, the adjudicating authority had confirmed the demand of Rs.46,800/- along with interest under Section 75 of the Finance Act 1994. Penalty of Rs.10,000/- under Section 77(2) and penalty of Rs.4,680/- under Section 76 of the Finance Act 1994 were imposed on the appellant.

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

- (i) That service of renting of immovable property provided by the directors of the appellant company in their personal capacity by providing their own immovable properties on rent to appellant company cannot be termed as service provided by them in official capacity as Directors and therefore, service of renting of



01.07.2012 Section 66(E)(a) specified renting of immovable property as declared service; that Notification No. 30/2012-ST dated 20.06.2012, as amended from time to time, specifies certain services in respect of which the person receiving such specified services is liable to pay service tax under RCM; that however, renting of immovable property services does not find place in the said notification requiring recipient of service to pay service tax; that therefore any person who is recipient service of renting of immovable property is not required to pay service tax but the person who provides such service is required to discharge due amount of service against the service of renting of immovable property provided by him.

- (vi) The Commissioner (Appeals), CGST & C.Ex, Rajkot in their own matter pertaining to earlier period ruled in their favour vide Order-in-Appeal No.RAJ-EXCUS-000-APP-72-2020 dated 30.06.2020.
- (vii) Since the service tax is not required to be paid no interest is payable and penalty is imposable.

5. The personal hearing in the matter was held on 25.08.2022 through video conferencing. Shri P. D. Rachchh, Advocate, appeared for personal hearing on behalf of the appellant. He reiterated the submissions made in appeal memorandum.

6. 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 directors in respect of immovable property given on rent to the company in the light of provisions of Rule 2(1)(d)(EE) of the Service Tax Rules, 1994 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.

7. It is observed from case records that the appellant had paid an amount of Rs.3,12,000/- during the period from April, 2017 to June, 2017 as rent to the directors of their company for renting to company the immovable property owned by them. The adjudicating authority confirmed Service Tax demand of Rs.46,800/- 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 20.06.2012 as amended vide Notification No. 45/2012-ST dated 07.08.2012.



8. 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.

9. 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;

9.1 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%

9.2 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 in terms of Notification No. 45/2012-ST dated 07.08.2012 and, therefore, the Appellant was held liable to pay service tax under Reverse Charge Mechanism.

9.3 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.

9.4 It is pertinent to mention that the directors, who are owner of the property, has given his property on rent to the appellant and are getting the rent from the appellant being the owner of the property and not being the directors of the appellant. Appellant is also paying the rent to the directors 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 far being appointed as director of the company or that the renting services were provided by them as a part of their function as directors 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 directors are receiving the amount not as remuneration for his services as owner of the property but in his individual capacity of an owner of the property. Such a case, in my



confirmed by the impugned order is in the nature of periodical demand. The findings of the Commissioner (Appeals), Rajkot for the demand of earlier period is squarely applicable to the instant case.

10. Since the demand of service tax is not sustainable on merits, there does not arise any question of interest or penalty in the matter.

11. 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.

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

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

सत्यापित / Attested

[Signature]
Superintendent
Central GST (Appeals)
Rajkot

[Signature]
(Akhilesh Kumar)
Commissioner (Appeals)
14th September, 2022.

BY SPEED POST TO :

To,

01	M/s. Poojara Telecom Pvt Ltd., Amrut Commercial Centre, Sardarnagar Main Road, Near Astron Chowk, Rajkot-360 001	मेसर्स धूजारा टेलीकॉम प्रा. ली. अमृत कमर्शियल सेंटर सरदारनगर मैन रोड, नियर अस्ट्रोन चौक राजकोट - 360 001 - गुजरात
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) उप / सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल राजकोट- I, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

