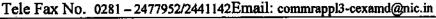


क

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

द्वितीय तल, जी एस टी भवन / 2[™] Floor, GST Bhavan रेस कोर्स रिंग रोड / Race Course Ring Road







DIN20230264SX000000E6FA

अपील / फाइलसंख्या/ Appeal /File No. GAPPL/COM/STP/1927/2022

मूल आदेश सं / O.I.O. No. 722/SERVICE TAX/ DEMAND/ 2021-22 दिनांक/Date 22-03-2022

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

BHV-EXCUS-000-APP-061-2023

आदेश का दिनांक / Date of Order: 20.02.2023

जारी करने की तारीख / Date of issue:20.02.2023

त्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

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

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

M/s. ADWEBSOFT, 316,Eva Surbhi Complex Saffron Building, Waghawadi Road,Bhavangar

इस बादेश(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.

सीमा शुल्क , केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम , 1944 की धारा 35B के अंतर्गत (A) एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निभ्नलिखित 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, बार॰ 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 असावा शेव सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, ,द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१ ६को की जानी चाहिए।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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 माँग, ज्याज की माँग और लगाया गया जुमोना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अववा 50 लाख रुपए से अधिक है, तो क्रमशं: 1,000/- रुपये, 5,000/- रुपये के मुंगतान, रुपए 5 लाख या उससे कम, 5 लाख रुपए तक अपने के प्रति के साथ, उससे कम, 5 लाख रुपए के सुवान के साथ उपए से अधिक है, तो क्रमशं: 1,000/- रुपये, 5,000/- रुपये के मुंगतान, क्रम के मांग से किसी भी सामिलनक क्षेत्र के बैंक द्वारा जारी रेखोकित इंग्स्ट द्वारा किया जाना चाहिए। संबंधित इंग्स्ट का मुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्ट ऑडर) के लिए आदेवन-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 dutydemand/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/-

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(४) 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 एक प्रति प्रमाणित होनी चाहिए। और इनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। और इनमें से कम से कम एक प्रति प्रमाण में मुक्त की माँग और लगाया गया जुर्मान ति स्वाप्त कम, 5 लाख कपए या 50 साख कपए तक अववा 50 लाख कपए से अधिक है तो कम्पा: 1,000/- रुपये, 5,000/- रुपये अर्थवा 10,000/- रुपये का निर्धारित जुना शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भूगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजस्टार के नाम से किसी भी सार्वजिनक केन के बैंक द्वारा जारी रेखांकित बैंक इपेट द्वारा किया जाना चाहिए। संबंधित इपेट का मुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थानम आवेश (स्ट ऑडरेर) 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.3 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 tax for the shall be certified to penalty levied is more than fifty Lakhs, Rs. 10,000/- where the amount of service tax & interest demanded & penalty levied is more than 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 saished & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the saished & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the saished & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the saished & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the saished & penalty levied is more than fifty Lakhs are penalty levied in the saished & penalty levied is more than fifty Lakhs are penalty levied in the penalty levied in the penalty levied is more than fifty Lakhs are penalty levied in the penalty levied in the penalty levied is more than fifty Lakhs are penalty levied in the penalty le

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केन्द्रीय अ

वित्त अधिनियम, 1994 की झारा 86 की उप-धारावों (2) एवं (2A) के अंतर्गत दर्ज की गयी जपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रथम S.T.-7 में की जा सकेगी एवं उसके साथ अयुक्त, केन्द्रीय उत्पाद मुल्क अयवा अयुक्त (अपील), केन्द्रीय उत्पाद मुल्क द्वारा पारित ओदेश की प्रतियो संस्था करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सुक्त अवाश्त का प्रमाण 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 (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise (Service Tax to file the appeal before the Appellate Tribunal.
वीमा शुल्क, केन्द्रीय उत्पाद सुक्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टर) के प्रति वर्षालों के मानसे में केन्द्रीय उत्पाद सुक्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टर) के प्रति वर्षालों के मानसे में केन्द्रीय उत्पाद सुक्क अवीत्त का कि विचार अधिकरण 1994 की धार 33 के क्षेत्र के अवीर्त को विचार का अधिकरण में अपील करते समय उत्पाद सुक्क /सेवा कर मांग के 10 प्रतिसत (10%), जब मांग एवं जुर्मालों कि सुक्त है, इस कार्यक के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद सुक्क /सेवा कर मांग के 10 प्रतिसत (10%), जब मांग एवं जुर्मालों विचादित है, या जुर्माला, अब केवल जुर्माला विचादित है, आ जुर्माला विचादित है, सा जुर्माला किया करते अपील को साण, अपति कर्माला करते स्वार कर्माल करते समय उत्पाद सुक्क /सेवा कर मांग कि ए प्रतिक्र काने वाला स्वार कर्माल करते सुक्त करते हैं सुक्त करते सुक्त करते हैं सुक्त हैं इस धार के अवर्गत करते हैं सुक्त करते वे सुक्त करते सुक्त करते हैं सुक्त हैं इस धार के अवर्गत करते हैं सुक्त करते हैं सुक्त करते हैं सुक्त हैं सुक्त हैं सुक्त हैं सुक्त करते हैं सुक्त ह (i)

भारत सरकार कोपूनरीवन कार्बेदन :
Revision application to Government of India:
इस आदेश की पूनरीक्षण आवेदन ईसाई, वित्त मंत्रालय, राजस्य विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए।

कि प्राप्त सरकार, पूनरीक्षण आवेदन ईसाई, वित्त मंत्रालय, राजस्य विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। (C) 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 subsection [1] of Section-35B ibid:

यदि माल के किसी नुक्तानोंके मामले में, जहां नुक्सान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे मंडार 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 नुक्सान 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 (i)

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 (रिवेट) के मामले में, . जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गवी 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. (ii)

यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भुटान को बाल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty. (iii)

सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न॰ 2),1998 की घारा 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. fivì

उपरोक्त आबेदन की दो प्रतियां प्रपन्न संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुन्क (अपील) नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संघ्य के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आबेदन के साथ मूल आदेश के अपील आदेश की दो प्रतियां संलग्न की आनी चाहिए। साथ है। केन्द्रीय उत्पाद शुन्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुन्क की अदायगी के सक्ष्य 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 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 OIQ 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. (v)

पुनरीक्षण आवेदन के साथ निम्निलिख निर्धारित शुस्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक साझ रूपये वा उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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. (vi)

यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुक्क का मुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तच्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीक्षीय नयाधिकरण को एक अपीक्ष या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers 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. (D)

यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के बनुसूची-I के बनुसार मूल जादेश एवं स्थान आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended. (E)

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्षित एवं अन्य संबन्धित मामलों को सम्भितित करने वाले नियमों की और भी ध्यान वाकवित 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. (F)

उञ्च अपीलीय प्राप्तिकारी 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. (G)



(ii)

:: अपासे आदेश / ORDER-IN-APPEAL ::

M/s. Adwebsoft, Bhavnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 722/Service Tax/DEMAND/2021-22 dated 22.03.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Bhavnagar-1 (hereinafter referred to as 'adjudicating authority').

- 2. The facts of the case, in brief, are that on the basis of data/ details provided by the Income Tax Department containing various persons i.e. Income Tax Assessee, who declared in their Income Tax Returns for financial year 2014-15, 2015-16 & 2016-17 to have earned income by providing services classified under various service sectors, it was found that the Appellant has not obtained Service Tax registration under the Finance Act, 1994 (hereinafter referred to as 'the Act'). The Income Tax Department had also provided data of Form 26AS showing details of total amount paid/ credited under Section 194C, 194H, 194I & 194J of the Income Tax Act, 1961 in respect of various persons which depicted that such persons had earned income from providing services. The Jurisdictional Range Superintendent issued letter dated 15.07.2020 to the Appellant calling for information/ documents for the financial year 2014-15, 2015-16, 2016-17 & 2017-18 (upto June-2017). No reply was received from the Appellant.
- 3. In absence of any information, the Show Cause Notice dated 25.08.2020 proposing to demand Service Tax of Rs. 7,79,998/- including all cesses under Section 73(1) of the Act, interest under Section 75 and penalty under Section 77(1)(a), 77(2), 77(1)(c) and Section 78 of the Act by invoking extended period. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 7,79,998/- under Section 73(1) with interest under Section 75 and imposed penalties of Rs. 5,000/- each under Section 77(1)(a), 77(2) and 77(1)(c) of the Act. The penalty of Rs. 7,79,998/- was also imposed upon the Appellant under Section 78 of the Act.
- 4. Being aggrieved, the Appellant has preferred the present appeal on ground that they are engaged in providing services in or in relation to software development and providing this work/service facility to a person/party out side the territory of India. They had regularly filed income tax returns which had been assessed by proper officer. Their services has no nexus with the provisions of the Act. The adjudicating authority erred in confirming the Service Tax since they are engaged in either exportation of taxable goods which also includes such technology develop by the concerned party/ person situated within the court of India. The Service Tax is not required to be paid by them since they were engaged in exportation of services and thus the impugned order is not correct,

oper and legal.

- 4.1 They have clearly established that the exportation of information technology has been dealt with outside the territory of India by issuing export invoices to various foreign parties and hence they are not liable to pay the Service Tax. They relied upon the decision in the case of Megma Design Automoation (I) Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore reported as 2015 (40) STR 800 (Tri.-Bang.), Ness Technologies (I) Pvt. Ltd. Vs. Commissioner of Service Tax Division-V, Mumbai 2016 (41) STR 984 (Tri.-Mumbai), Alliance Global Services IT India (P) Ltd. Vs. CCE & Service Tax Hyderabad-IV 2016 (44) STR 113 (Tri.-Hyd.), Commissioner of Service Tax, Chennai-III Vs. Scionspire Consulting Services (I) P. Ltd. 2017 (47) STR 188 (Tri.-Chennai), Mercedes Benz Research & Development India Pvt. Ltd. Vs. Commissioner of C.T. Bengaluru East 2021 (51) GSTL 391 (Tri.-Bang.). Lastly, they prayed to set aside the impugned order.
- 5. Personal hearing in the matter was held on 01.02.2023. Shri N. K. Maru, U. H. Qureshi, consultants and Shri H. V. Gohil, Partner of the Appellant appeared for personal hearing and submitted additional written submission. They submitted that the Appellant did not receive any letter, notice for personal hearing, Show Cause Notice or the order. The Order-In-Original was handed over to them much later by personally calling them over phone to CGST office. They submitted that the entire income pertains to export of software. They have enclosed export invoices, ITR, Balance Sheet, Profit & Loss account etc. with the appeal. They submitted that their export income is not liable to Service Tax and requested to set aside the impugned order improperly issued.
- 5.1 In the additional written submission, they have reiterated the grounds of appeals.
- 6. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. The issue to be decided in the case on hand is that whether the Appellant is liable to pay service tax on activity carried out by them or not. The Adjudicating Authority has issued ex-parte order in absence of data/ documents and the Appellant on the other hand stated that they have not received any letter, Show Cause Notice or Order-In-Original but they came to know about the issue over phone call from CGST office.
- 7. The Appellant in the written submission, grounds of appeal and during the course of personal hearing stated that they are engaged in providing services related to Information Technology -Software development related services for their customers outside India. On verification of Form 26AS submitted by the Appellant for the year 2014-15 to 2017-18, it is clear that they have received income of Rs. 1,18,322/- and Rs. 52,900/- during the year 2014-15 & 2016-17, pectively. Thus, they have received very meagre income from indigenous

customers. They have also submitted copies of invoices from 2014-15 to 2016-17 wherein they have provided services to various customers viz. Odesk Corp, US, UBN Software Solutions Pvt. Ltd., BokaMera AB, Sweden, MGI Solutions, USA, ATL Systems, UK, Han Technologies, WestausCom, Australia etc. In all these invoices the amount charged in either dollars or in pound from their customers. The Appellant have submitted the copies of FIRC certificates of inward remittance issued by Axis Bank wherein remittance amount has been mentioned in US Dollars or Pounds as well as in Indian Rupees during the period 2014-15 to 2017-15 and the name of remitter as well as Appellant has also been mentioned which tallies with the name of the customers as mentioned above. They have also submitted the copies of account statement issued by Axis Bank wherein they have received income through NEFT or paypal.

- 8. It is clear from the records submitted that the services provided by the Appellant is classifiable under the category of "Export Services". The Appellant is located in India and the service recipients are outside of India. Further, the services provided by the Appellant are not specified in the negative list as per Section 66D of the Act. The services have also been provided outside India and the payment received by the Appellant is in convertible foreign exchange. Therefore, I find that the activity of the Appellant falls within the four corners of the Rule 6A of the Service Tax Rules, 1994 (hereinafter referred to as 'the Rules'). On going through the case records and submissions made by the Appellant, I have no doubt that the Appellant is providing export services satisfying the provisions of the Place of Provision of Services Rules, 2012 notified vide Notification No. 28/2012-Service Tax dated 20.06.2012, as amended.
- 9. The place of provision of service has been defined under Place of Provision of Services Rules, 2012 (Notification No. 28/2012-Service Tax dated 20.06.2012) which reads as under:
 - *3. Place of provision generally.- The place of provision of a service shall be the location of the recipient of service:"

The provisions of Rule 6A of the Rules are re-produced below for reference:

- "6A. Export of services .-
- (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-
- (a) the provider of service is located in the taxable territory,
- (b) the recipient of service is located outside India,
- (c) the service is not a service specified in the section 66D of the Act,
- (d) the place of provision of the service is outside India,
- (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) the provider of service and recipient of service are not merely establishments of distinct person in accordance with item (b) of Explanation 3 of clause (44) of

section 65B of the Act

(2) "

On the basis of documents submitted by the Appellant, it is clear that the provider of service i.e. the Appellant is located in the taxable territory and the recipients of service are located outside India. Further, the service is not specified in the Section 66D of the Act. The place of provision of the service is outside India in terms of Rule 3 of the Place of Provision of Services Rules, 2012. The payment has been received in convertible foreign exchange and the same was remitted to Appellant's bank account in equivalent convertible Indian Rupees. On verification of sample copies of invoices submitted by the Appellant, it is clear that they had issued the invoices having amount either in US Dollar or GB Pound. As all these ingredients are satisfied, the service provided by the Appellant is nothing but export of service. Therefore, the services provided by the Appellant are not liable to Service Tax.

- 10. The services provided within India during the year 2014-15 & 2016-17 are below Rs. 10 Lakh which is covered under threshold limit of Rs. 10 Lakh as envisaged under Notification No. 33/2012-Service Tax dated 20.06.2012 and thus, they are not liable to pay Service Tax on the income earned from Indian customers as well. However, I am of the considered view that the Appellant was liable to obtain Service Tax registration and to file statutory returns, which they failed to do. Therefore, I find that they are liable for penalty under Section 77(1)(a) and Section 77(2) of the Act. Since the service tax is not leviable on the activities carried out by the Appellant, the question of levy of interest and penalty under Section 78 of the Act is not warranted.
- 11. In view of discussions and finding, I set aside the impugned order, except for upholding the penalty under Section 77(1)(a) and 77(2) as mentioned at para 10 supra. However, in view of the facts and circumstances of the case, I reduce the penalty from Rs. 5,000/- to Rs. 1,000/- under each of these sections.
- 12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

12. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested

आर. मेस. बोरीचा/R. S. BORICHA (शिव प्रताप सिंह)/(Shiv Pratap Singh),

मधीक्षक / Superintendent आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D. QGST Appeals, Rajkot

Τo.

M/s. ADWEBSOFT, C-4495, Shantinagar-1, Kalvibid, Bhavnagar-364 002.

सेवा में,

मेसर्स एडवेबसॉफ्ट, C-4495, शांतिनगर-1, कालवीबीड, भावनगर -364 002.



<u> प्रतिनिपि :-</u>

- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुक्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर/सयुंक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल, भावनगर-। को आवश्यक कार्यवाही हेतु।
- 🖇 गार्ड फ़ाइल।

