

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

द्वितीय तल,जी एस टी भवन \ 2nd Floor, GST Bhavan

रेस कोर्स रिज रोड / Race Course Ring Road

राजकोट / Rajkot – 360 001

Tele Fax No. 0281 - 2477952/2441142Email: commrappi3-cexamd@nic.in

DIN202302645X0000322774

1202.11.52 दिनाक/Date

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CAPPL/COM/STP/381/2023 Appeal /File No. अपील / फाइलसंख्या/

(B)

(11)

(A)

BHV-EXCUS-000-APP-067-2023 अपील आदेश संख्या(Order-In-Appeal No.):

Date of issue:23.02.2023 जारी करने की तारीख।

£202.20.£2 Date of Order: \ कांन्ज्ञी ाक 195IIE

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot. ी शिव प्रताप सिह, आयुक्त (अजील्स), राजकोट द्वारा पारित ।

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / इंगरा उपरातिखित जारी मूल आदेश से सुजित: । अपर आयुक्त) संयुक्त आयुक्त। उपायुक्ती सहायक आयुक्त, केन्द्रीय उत्पाद शुक्क। सेवाकर/वस्तु एवं पेवाकर,राजकोट / जासनगर / नाधीधाम।

GST, Rajkot / Jamnagar / Gandhidham :

-: Alebnotes के साम एवं पता / Name & Address of the Appellant & Respondent

IT PARK, KALYANINAGAR, PUNE, MAHARASHTRA-411014 M/s. AM INFOWER PRIVATE LIMITED, 3RD FLOOR, OFFICE NO. 3A, BUILDING 3, CEREBRUM

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी \ प्राधिकरण के समझ 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.

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:-

वर्गीकरण मुल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवांकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।

उपरोक्त परिचम क्षेत्रीय पाउँचम क्षेत्रीय गए अपीलें के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलेय न्यायाधिकरण (१) कि पश्चिम क्षेत्रीय पीठिका,,दवितीय तत, बहुमाली भवन असावां अहमदाबाद- ३८००१६को की जानि पाउँचम क्षेत्रीय ।/ The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Pursm, New Delhi in all matters relating to classification and valuation.

(111)

ा तिहा करन पत्र के साथ 500/- रुपए का निधीरित शुल्क जमा करना होगा।। To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) हा, 2nd Floor, Bhaumali Plawsn, Asarwa Abmedshad-380016in case of appeals other than as mentioned in para-1(a) above. Bhawan, Asarwa Abmedshad-380016in case of appeals other than as mentioned in para-1(a) above. अपनित करान करान के जिल्ला के प्राप्त के साथ, जहां उत्पाद करान 6 के अंग्लेश करान की मांग किए जाना चाहिए । इनमें से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग का जाना चाहिए। इनमें से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग का जाना चाहिए। उत्पर्ध के साथ कराए से अधिक है तो कमशः 1,000\- उपये, 5,000\- उपये अधाव 10,000\- उपये का बिसी भी सोवजितक की प्रति संस्ति के देवारा किया जाना चाहिए ज्याराधिकरण की शाखा के सहायक रिजरात के बाम से किसी भी सोवजितक को के देवारा जाता चाहिए ज्याराधिकरण की शाखा के सहायक राजिए के बाम से किसी आ साबित के बाम के देवारा किया जाता चाहिए चिंका का अधाव किया जाता चाहिए चिंका के सहाय के उस शाखा में होना चाहिए जहां संबंधित अधाव के साखा किया मांच के सहाय किया चाहिए जहां से साथ किया जाता चाहिए जहां से साथ किया जाता चाहिए किया के साखा के सहाय के उस शाखा में होना चाहिए जहां संबंधित अधाव के साखा के सहाय के उस शाखा में होना चाहिए जिल्ला का अधाव के साखा के सहाय के साखा के सहाय के शाखा में होना चाहिए जहां संबंधित अधाव के आधाव किया के साखा के सहाय के साखा के सहाय के अधाव में किया चाहिए जहां संबंधित इसके का अधाव के उस शाखा में किया चाहिए जहां से साखा के सहाय के से साखा के सहाय के साखा के सहाय के साखा के सहाय के साखा के साखा के साखा के स्वास के साखा के साखा

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. to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registra of fine place where the bench of any nominated public sector bank of the place where the bench of stay 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/-

ा गार्ड नाथ ५००१- ४पए का निर्धारित शुल्क जमा करना होगा।। तिया कि स्वाप्त के स्वप्त के स्वाप्त के स्वाप्त के स्वाप्त के स्वाप्त के स्वाप्त के स्व मितिय करायायिक एक १,4991, कि समस के प्राप्त हैं। 1987 के 1994 की धारा कि 1997, के समस के एक मित्र के प्राप्त की प्राप्त के 1997 के समस के प्रवास मित्र के मित्र मित्र क

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 lax 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 a more than the beautiful service tax & interest demanded & penalty levied a more than the lating Rs. Fifty Lakhs, Rs. 10,000/- where the amount of service tax & interest demanded & penalty levied a more than the lating results and the form of crossed bank draft in favour of the Assistant Registration of the Assistant Regist



The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST ? 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 and Commissioner of Central Excise (Service Tax to file the appeal before the Appellate Tribunal Commissioner of Central Excise (Service Tax to file the appeal before the Appellate Tribunal Commissioner of Central Excise (Service Tax to file the appeal at the Appellate Tribunal Commissioner of Central Excise (Service Tax to file the appeal at the Appellate Tribunal Commissioner of Central Excise (Service Tax to file the appeal at the Appellate Tribunal Commissioner of Central Excise (Service Tax to file the Appellate Tribunal Commissioner of Central Excise (Service Tax to file appear १। गाँगति गिरुक जिल्हा से होता कि शिर कि १३ हिन हो होते हैं। इस के अपीरीय ब्यायाधिकरण के अविदेश हो कर के कि हैं। इस हो हैं हो हैं से संस्कृत उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ सलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और जायुक्त दवारा सहायक आयुक्त अथवा एवं 9(AS) के तहत निर्धीप्रेत प्रपत्र S.T. र में की जा सकेशी एवं उसके साथ आयंक्स, केन्द्रीय उत्पाद शुरूक अथवा आयुक्त (अपील), केन्द्रीय (S) सगरी के ,4001 की धारा की की साथ की कि एवं (AS) के अंतर्गत की की अपी अपीक, मेवाकर जिल्लाका की कार अप अपि अप

धारा 11 डी के अंतर्गत रकम है लिसीए रूकि में कर्णुं गार प्रकी हास" लोकार के उकावर वर कर्जुं प्राप्त प्रक्रिक ांत न किया है के पर होरेक सर शिए हरें तिक्षिण कि कारा की मह पर होरा के अधिक के साथ है की साथ करते हैं। प्राधिकरण में अपील करते समयं उत्पाद शुल्कासेवा कर गांग के 10 प्रतिशत (10%), जब मांग एवं जुनीजा विवादित है, या जुनीजा, जब केवल

की धारा 35एफ के अंतरोत, जो की वितीय अधिनियम, 1994 की धारा 83 के अंतरोत सेवाकर को भी लागू की गई है, इस आदेश के अंति अपीलीय

सेनवेट जमा की ली गई गलत राशि

मेनवेर जमा नियमावली के जियम ६ के अतर्गत देथ रकम

स्थान अजी एव अपील को लागू नहीं होगे।। न्विप्राञ्च सिम्प के ग्रिकिशीर घिलिएस फिली देप प्र संग्रास के 410S स्प्रकिशिस (S.मे) घिनदी नाथवार के प्राथ सड़ की द्र्य तिष्ठ -

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable 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 where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a smount facterimined under Section 11 D;

(ii) amount determined under Section 11 D;

(iii) amount payable under Rule 6 of the Cenvat Credit Rules

(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.

आरत सरकार कोपुनरीक्षण आवेदन :

Revision application to Government of India: इस आदेश की पुनरीक्षण प्रावेदन इंकाई, वित मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001. को किया जाना चाहिए। , के राज्यां आता 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 Delin-110001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35E ibid;

यदि माल के किसी नकसान के मामले में, जहां नकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के हौरान या किसी अन्य कारखाने

पाद शाल के सक्सा के कार्या के तान के नाम के नाम के दौराल, जा किसी आंदर में हुए में भारत के प्रसंकरण के दौराल, किसी मां के मा मां के मा

सामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्मात की गयी है। \ In case of rebate of duty of excise on goods which are exported to any country or territory outside India. material used in the manufacture of the goods which are exported to any country or territory outside India. के (उर्हेरी) उकु के केली ट्रापट प्रक्रिक है। पिस प्र लास के प्रमुक्त के एप्सिली में एप्सिली के हो। के प्रमुख के प्रम (11)

यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भुरान को माल निर्यात किया गया है। \ In case of koods exported outside India export to Nepal or Bhutan, without payment of duty.

महिल्ला के स्वाहा स्वाहा स्वाहा के स्वाहा के स्वाहा के स्वाहा स्वाहा के स्व प्रींस है हैंग कि प्रनास नड़ा के बिलायेगए निब्धिय क्षेत्र हैंग भए होता है हैंग कि प्रना के नार्वा के नार्वा के प्राप्ट के आपट के आपट के अपने हैं हैंग

के सहेश के संप्रेषण के 3 सार के अतिक की जानी चाहिए। उपरोक्त मोवेंटन के साथ मूल आदेश व अपील भादेश के हा कि हैं उपरोक्त आवेदन की दो प्रतिया प्रपन्न संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिदिष्ट 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.

6 की प्रति सक्त की जाहीए। \ 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 OlO 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, under Major Head of Account. जाने याहिए। साथ ही केन्द्रीय उत्पाद बुल्क अधिनियम, 1944 की धारा 35-E.E के तहत नियीएत जुल्क की अदाधभी के साध्य के तीर पर TR-

तो रूपये 1000 -/ का भ्रेगतील 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. पुनिशाण आवेदन के साथ किनलिखित होत्तर शुल्क की अदायगी कि जानी चाहिए। जहाँ सलग्न एक लाख रूपये या उससे कम हो ते रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो

 $\xi \mid \sqrt{\ln}$ case, if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the sforesaid 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. I lakh fee of Rs. 100/- for each

न्यायालय शुल्क दिकिट लेगा होना याहिए। \ 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. ाक रंपक 02.8 मिर्गोर्गकी प्रम निए कि १५६१स नाष्ट्र वर्ग १९११ में अस्मित के 19.18 के अनुसूची 19.18 के 19.18 कि १९०० एक प्रमाणक विवास के 19.18 कि १९०० एक एक प्रमाणक विवास के 19.18 कि 1

tention is also invited to the rules covering these and other related matters contained in the Customs, Excise deferring Tribunal (Procedure) Rules, 1982. ाई in प्रकी तमिलास नाध्य क्षि और कि सिंग्रल नाम किया नामा है। सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) कियमावली, 1982 में वीणेत एव अन्य संबाज्यत भामला

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. उन्सहर अपीक्षेय प्राप्तिकारी हे भिष्ते हो स्वाधित स्प्रापक, विस्तृत और तिकास प्रावधानों के लिए, अपीलाथी विभागीय वेबसाइट



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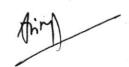
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:: अपील आदेश / ORDER-IN-APPEAL ::

- M/s. A. M. Infoweb Pvt. Ltd., Bhavnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-LD-003-2021-22 dated 26/29.11.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Bhavnagar (hereinafter referred to as 'adjudicating authority').
- The facts of the case, in brief, are that the Income Tax Department shared the third-party information/ data based on Income Tax Returns/ 26AS for the Financial year 2014-15, 2015-16 & 2016-17 of the Appellant. Letter dated 15.07.2020 was issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents viz. copies of I.T. Returns, Form 26AS, Balance Sheet (including P&L Account), VAT/ Sales Tax Returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. for the Financial year 2014-15, 2015-16, 2016-17 & 2017-18 (upto June-2017). The Appellant vide their email dated 17.07.2020 informed that the Pune GST department had issued similar notice demanding documents from them with relation to Service Tax pertaining to Financial Year 2015-16 on 22.01.2020 and they had done one submission. However, due to strict lockdown, they would not be able to send the acknowledgement copy of the same till 23.07.2020. Once the lockdown is lifted, they will send the acknowledgement copy of their submission. Their premises registered for S.T.02 is at Pune office. However, no further communication was received from them till issuance of the Show Cause Notice by the department. The Appellant had even not supplied any proof of making any submissions to Pune GST Department for the year 2015-16 as mentioned in their above referred letter. Further, the Appellant had not clarified whether they had made any submissions of the documents for the Financial Year 2014-15, 2016-17 & 2017-18 (Upto June-2017) to Pune GST or not.
 - 3. In absence of data/ information, a Show Cause Notice dated 03.09.2020 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 1,88,68,274/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 77(1)(a), 78, 77(2) and 77(1)(c) of the Act upon the Appellant.
 - 4. The adjudicating authority vide the impugned order confirmed the demand of Rs. 1,88,68,274/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 1,88,68,274/- under Section 78 of the Act, imposed penalty of Rs. 5,000/- each under Section 77(1)(a) and 77(2) of the Act and dropped the penalty proposed under Section 77(1)(c).

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- Being aggrieved, the Appellant has preferred the present appeal on 5. ground that they are engaged in the activities of export of outsourcing services to their clients/ customers situated outside India and also maintaining necessary records related to their export. The Service Tax should be charged only on those services which are provided in taxable territory which is defined under Section 65B(52) of the Act. In Para 3.5 and 3.6 of the impugned order, the Adjudicating Authority mentioned that the activity of the Appellant falls within all the four corners of the Rule 6A of the Service Tax Rules, 1994, thus falls into the category of export of services. They being exporter of the services provided outside the taxable territory hence, charging Service Tax on export services is not justified. The Adjudicating Authority referred to Section 93A of the Act which pertains to rebate of tax paid on input services which are used in export of goods or services and not to the output services, hence charging Service Tax on export services on the basis of misinterpretation of the law/ section is not justified. The Adjudicating Authority referred to the Notification No. 41/2012-Service Tax dated 29.06.2012 wherein procedure and conditions for claiming the rebate of Service Tax paid on input services used in export of goods and services have been laid down. This Notification does not mention anything on charging of Service Tax on export of services, hence charging Service Tax on export services on the basis of misinterpretation of the law/ section is not justified. They have submitted documents related to Financial Year 2014-15 through email on 29.07.2020. They are not liable to Service Tax, interest and penalties as imposed vide the impugned order. During the year 2014-15, their value of taxable service does not exceed Rupees Ten Lakhs. Since the demand of Service Tax is not sustainable, the question of levy of interest and penalty does not arise and they relied on the case of H.M.M. Limited - 1995 (76) ELT 497 (SC), Commissioner of Central Excise, Aurangabad V. Balakrishna Industries - 2006 (201) ELT 325 (SC).
- 6. Personal hearing in the matter was held on 22.02.2023. CA Shri Vijay Kathe appeared for personal hearing and reiterated the submissions in the appeal. He submitted that the Appellant is exporter of services which are exempt from Service Tax. Section 93A referred by the Adjudicating Authority in Para 3.7 is applicable to export of goods and not for export of services. They have provided copy of audit report and FIRC's before Adjudicating Authority and also enclosed with the appeal. In view of this he requested to set aside the Order-In-Original and to allow the appea.
- 7. 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 at Para 3.5 & 3.6 of the



impugned order by referring provisions of Rule 6A of the Service Tax Rules, 1994, held that the Appellant is located in India, where the Service Tax Rules, 1994 applicable and the service recipients are outside of India as per invoices. 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. Further, the payment received by the Appellant is in convertible foreign exchange. Thus, the activity of the Appellant falls within all the four corners of the Rule 6A of the Service Tax Rules, 1994.

- The Appellant produced copies of Form 26AS wherein no income of TDS details is shown except details of tax paid by the Appellant and details of TDS on sale of immovable property. The Appellant also produced copy of audit report for the year 2014-15 wherein at column 9 C of the Directors' report, the details of foreign exchange earnings and outgo of Rs. 15,26,55,939.62 have been mentioned. On verification of invoices submitted, it is seen that they have provided services to Major Media Consulting, Inc, Exact Match Media, LLC, Citizens Disability LLC, First Serve, Insideup Inc, Consumer Ally LLC, Julie LLC, L Asutin Majors, Michelle Pak, Bernstein Liebhard LLP, 360 Partners Holdings LP, Alliance Security Inc, PRGI Inc., G P Internet Marketing Inc, Elite Marketing Group LLC, Sail Rock Services LLC, All Your Leads Needs Inc, Lead Headquarters LLC, Exact Match Media LLC, Anvil Advertising Group LLC, ER Inrteractive LLC, all from United States of America. They have also produced copies of FIRC issued by the respective banks wherein the bill amount has been mentioned in US Dollar. Thus, based the case records, submissions and documentary evidences submitted by the Appellant, I am in agreement of the views/ findings recorded by the lower Adjudicating Authority and hold that the service provided by the Appellant is export of service satisfying the provisions of the Place of Provision of Services Rules, 2012 notified vide Notification No. 28/2012-Service Tax dated 20.06.2012 read with provisions of Rule 6A of the Service Tax Rules, 1994.
- 9. 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.
- 10. 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 a 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. 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 as the ICICI Bank has received the payment in US dollar 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. 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 being not provided within taxable territory, are not liable to Service Tax under Section 66B of the Act.

- 11. I find that the lower Adjudicating Authority has placed reliance on the provisions of Rule 6A(2) of the Rules, 1994 read with Section 93A of the Act, which is re-produced below for reference:
 - 6A. Export of services.-
 - (1)
 - (2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.

On this, I find that the Rule 6A(2) of the Rules deals with the grant of rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to conditions and limitations as provided by the Notification. The rebate provisions under Section 93A of the Act which are as under:

"SECTION 93A. Power to grant rebate. — Where any goods or services are exported, the Central Government may grant rebate of service tax paid on taxable services which are used as input services for the manufacturing or



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processing or removal or export of such goods or for providing any taxable services and such rebate shall be subject to such extent and manner as may be prescribed or specified by notification in the Official Gazette."

The above provisions speak about grant of rebate of Service Tax paid on taxable services used as input services for providing any taxable services on export of services. This is a beneficial legislation for reversal of tax suffered on input services, based on the concept that taxes should not be exported. This is an additional benefit available to the exporter at his choice. The same does not override the provision under Section 66B to make them applicable outside taxable territory. The exporter cannot be forced to claim rebate of tax on input services, or worse, forced to pay tax on non taxable exported services, that too, with heavy penalty etc. Here, in the case on hand the issue is levy of service tax on export services provided by the Appellant outside taxable territory and not rebate of service tax incidence suffered on input services used for providing export services. Therefore, on conjoint reading of Section 66B, Rule 6A ibid with Section 93A ibid, I am of considered view that there is no stipulation that a person engaged in export of service has to first pay the Service Tax on the exported output service and then claim just rebate of taxes paid on input services used, in the manner and time specified under the Notification No. 41/2012-Service Tax dated 29.06.2012. These findings by the Adjudicating Authority, after holding the activity as nothing but export of service, are misconceived and untenable.

- 12. Accordingly, I set aside the impugned order of the Adjudicating Authority holding the Appellant liable to pay Service Tax on exported services. Since the service tax is not leviable, the levy of interest and penalties imposed vide the impugned order are not warranted at all.
- 13. In view of discussions and finding, I set aside the impugned order and allow the appeal filed by the Appellant.
- 14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

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

सत्यापित / Attested

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

अधीक्षक / Superintendent के. व. एवं सेवा कर अपील्स, राजकोट्आयुक्त (अपील)/Commissioner (Appeals)

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

To,

M/s. A. M. Infoweb Pvt. Ltd., B-3, 3rd Floor, Cerebrum IT Park, Kalyani Nagar, Pune- 411 014.

सेवा में,

मेसर्स ए. एम. इन्फोवेब प्राइवेट लिमिटेड B-3, तीसरी मंजिल, सेरेब्र्म आई. टी. पार्क, कल्याणी नगर, पुणे- 411 014.

प्रतिलिपि:-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर/सयुंक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेत्।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-। मण्डल को आवश्यक कार्यवाही हेतु।
- **र्फा**ई फ़ाइल।

