::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,
द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142
Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/88/BVR/2017	AC/JND/14/2017	23.02.2017

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

BHV-EXCUS-000-APP-204-2017-18

आदेश का दिनांक / Date of Order:	15.03.2018	जारी करने की तारीख / Date of issue:	20.03.2018

Passed by **Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar.**

अधिसूचना संख्या २६.१७दिनांक (.टी.एन) .शु.उ.कें-२०१७/१० २०१७.के साथ पढे बोर्ड ऑफिस आदेश स . दिनां .टी.एस-२०१७/०५क १६ .के अनुसरण मे २०१७.११.श्री सुनील कुमार सिंह .आयुक्त, केंद्रीय वस्तु एवं सेवा कर एवं केन्द्रीए उत्पाद शुल्क,, गांधीनगर, को वित्त अधिनियम १९९४ की धारा८५केंद्रीय उत्पाद शुल्क , के ३५की धारा १९४४अधिनियम अंतर्गत दर्ज की गई अपीलों के सन्दर्भ मे आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.217 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar, has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम/ भावनगर। द्वारा उपरलिखित जारी मूल आदेश से सृजित. /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham/ Bhavnagar :

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

M/s Mangrol Pole Factory, Survey No. 240/3, Shepa Road, At : Sheriya Khan Taluka : Mangrol Dist : Junagadh

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीले सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावी अहमदाबाद- ३८००१६ को 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, जहा 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करे। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहा संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- 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 any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करे (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहा 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहा संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) 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) एव 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 (उनमे से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एव 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 जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं 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 :

(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 पुनरीक्षण याचिका निम्नलिखित मामलों मे, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले मे, 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 से माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह मे 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 मे, 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 ड्यूटी क्रेडीट 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 धारा 109 के द्वारा नियत की गई तारीख अथवा समायावधि पर या बाद मे 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 मे, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जैहां संलग्न रकम एक लाख रूपये या 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.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रूपये 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.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 मे वर्णित एवं अन्य संबन्धित 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 वैबसाइट www.cbec.gov.in को देख सकते है । /
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

The subject appeal no. 88/BVR/2017 is filed by M/s Mangrol Pole Factory, Survey No. 240/3, Shepa Road, At Sheriyakhan, Taluka, Mangrol (hereinafter referred to as 'the appellant') against Order in Original No. AC/JND/14/2017 dated 23.02.2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise, Junagadh Division Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case in brief are during audit of the records of the appellant by Central Excise & Service Tax Audit, Bhavnagar on 12.09.2012, it was found that they were not registered under service Category 'GTA Service- Transport of Goods by Road', as required under Rule 4(5A) and Rule 4(1) of Service Tax Rules, 1994. As per the provisions of Section 69 of the Finance Act, 1944 read with Rule 4(1) & (5A) of the Service Tax Rules, 1994, the appellant was required to get service tax registration within 30 days from the date of service tax liability. It was further found that the appellant, however, applied for service tax registration as 'Non-Assessee' during 2015. Therefore, show cause notice dated 12.02.2016 was issued to them proposing penal action under the provisions of the erstwhile Section 77 (1)(a) of the Finance Act, 1994.

3. The said show cause notice was decided vide impugned order wherein the adjudicating authority imposed total penalty of Rs.1,03,000/- (i.e. Rs.93,000/-,@ Rs.200/- per day for the period from 31.01.2012 to 09.05.2013 and Rs.10,000/- for the period 10.05.2013 onward) under provisions of Section 77 (1)(a) of the Finance Act, 1994.

4. Being aggrieved, the appellant filed the present appeal on the following grounds:

(i) The adjudicating authority failed to appreciate that as per determination done by Audit Officer / Central Excise Officer for service tax payable and communicated to the appellants vide FAR No.75/2013-14 dated 07.10.2013, the appellant paid service tax as demanded on 18.04.2015 and interest accrued thereon on 11.06.2015 relating to the period of dispute from 01.10.2011 to 31.03.2013. As the appellant paid service tax before issue of show cause notice, their case falls within the scope of sub-section (3) of section 73, the then time in force, accordingly, the then time no show cause notice was issued. Further, explanation 2 appended to the said sub-section (3) grants immunity from imposition of penalty under any provisions of the act which read as under:

> *"**Explanation 2.** — For the removal of doubts, it is hereby declared that no penalty under **any of the provisions of this Act or the rules made thereunder** shall be*

imposed in respect of payment of service tax under this sub-section and interest thereon."[Emphasis supplied]

Considering the statutory provision in force at the material time, imposition of penalty by the respondent is unjustified, unlawful and hence liable to be set aside at once.

(ii) The above contention of the appellant further fortified in view of CBEC Circular F. No. **137/167/2006-CX-4**, dated 03-10-2007. The CBEC clarified that sub-section (3) of Section 73 provides for conclusion of adjudication proceedings in respect of person who has voluntarily deposited the service tax.

(iii) The appellant was under bona fide belief that the seller of the inputs is liable to pay service tax, as always was case with the purchases made by them on freight paid basis hence these transactions escaped his attention. These transactions were duly recorded in his books and payment made to the transporter was also debited in the books leads to the conclusion there was complete absence of suppression of facts or contravention of any of the provisions of this chapter or of the rules made thereunder with intent to evade payment of service tax. Therefore, the adjudicating authority should have considered the provisions of section 80, as in force at the material time, for not imposing penalty in the interest of justice.

5. Personal hearing in the matter was fixed on 19.02.2018 which was attended by Shri Jatin Mehta, authorized representative of the appellant. During personal hearing he reiterated the grounds taken in the appeal and also filed a set of citations supporting their case.

6. The appellant have made pre-deposit, as required under Section 35F(i) of Central Excise Act, 1944.

7. I have carefully gone through the impugned order passed by adjudicating authority, the submission made by the appellant in the appeal memorandum as well as by oral submission at the time of personal hearing. The limited issue to be decided is – whether the appellant was liable for penalty under Section 77(1)(a) of the Finance Act, 1994 for not obtaining service tax Registration within 30 days from the date of service tax liability?

8. It is observed that the adjudicating authority has imposed penalty under Section 77(1) (a) of the Finance Act, 1994 holding that the appellant had not taken service tax registration in proper manner and 'Non-Assessee' registration obtained by them during 2015 cannot be considered to be proper for firm liable to pay service tax and hence the appellant had contravened the statutory provisions in this regard for which they had rendered themselves liable for penal action under Section 77(1)(a) of

the Act. The appellant on the other hand contended that as they had paid service tax before issue of show cause notice, their case falls within the scope of sub-section (3) of section 73 of the Act ibid. They have also relied upon following case laws in this regard:

(i) CCE & ST, LTU Bangalore vs Adecco flexion Workforce Solution Ltd.-2012 (26) STR 3(Kar)
(ii) CCE & ST vs Triveni Engineering & Industries Ltd.-2015 (317) ELT 408 (All.)
(iii) People Consultants vs CCE, Cus & S.T. - 2017 (4) GSTL 313 (Tri.- Bang)
(iv) Indian Oil Corporation Ltd. vs CCE, Mumbai-V -2017 (52) STR 282 (Tri-Mumbai)
(v) Indian Oil Corporation Ltd. vs CCE, Delhi-II-2017 (4) GSTL 190 (Tri.-Del)
(vi) CCE, Cus & ST vs JK Insulations - 2017 (4) GSTL 282 (Tri.-Hyd.)
(vii) Samara India Pvt. Ltd. vs Commissioner of S. Tax, New Delhi-2017 (4) SGTL 325 (Tri-Del)

9. It is observed that the show cause notice had been issued to the appellant only for penal action for failure to obtain service tax registration under Section 69 of the Finance Act, 1994. The subject SCN was not alleging demand and recovery of service tax. Hence, there is no force on the contention of the appellant that Section 73(3) of the Finance Act, 1994 will be applicable to their case. On perusing case laws cited by appellant, it is observed that in the case of Adecco Flexione Workforce Solution Ltd.-2012 (26) STR 3 (Kar.), the department appeal was dismissed by Hon'ble High Court of Karnataka on the ground that the service tax alongwith interest was paid by assessee before issue of SCN hence as per Section 73(3) of the Act no SCN was required to be served to the assessee and no penalty imposable under Section 76 of the Act. Similarly, in the case of Triveni Engineering-2015 (317) ELT 408 (All.), the issue was related to wrong availment of cenvat credit. The Hon'ble High Court of Allahabad has held that proviso to Section 11A of Central Excise Act, 1944 was not applicable being mere act of omission by assessee without there being any intention to evade payment of tax. Further, in the case of People Consultants-2017 (4) GSTL 313 (Tri-Bang), the issue before Tribunal was regarding non-payment of service tax under manpower recruitment. The Tribunal set aside penalty under Section 77 & 78 as there was no allegation of suppression of facts and the assessee had also deposited service tax alongwith interest before issuance of SCN. Similarly, in the case of IOCL-2017 (52) STR 282 (Tri-Mumbai), the Tribunal, Mumbai while setting aside the penalty under Section 76, 77 & 78 has held that there was existence of doubt during relevant period in respect of service tax liability on commission received on sale of item manufactured by someone else, hence fit case for invoking Section 80 of Finance Act, 1994. In the case of JK Insulation-2017 (4) GSTL 282 (Tri.-Hyd), the department appeal was dismissed by Tribunal on the ground that belated payment of service tax justifiable and reasonable cause as no intention to evade service tax liability because delay in discharge was due to non-receipt of payment from customers and the assessee was eligible to benefit of Section 73(3) of Finance Act, 1994. However, all the cited cases are distinguishable as the facts of these cases are altogether different from the fact of the present case. In the present case, the issue is related to imposition of penalty under Section 77(1)(a) of the Act for non-obtaining of service tax registration as an

'Assessee' under category 'Transport of Goods by Road' as the appellant had obtained registration as "Non-Assessee" during 2015 instead of as an 'Assessee' under the said category. The Central Board of Excise And Customs vide Circular No. 919/09/2010-CE dated 23.03.2010 clarified that "Non-Assessee registration is given to any individual, firm or company which requires to transact with the Central Excise or Service Tax Department, though not an assessee such as (a) merchant exporter, (b) co-noticee, etc." Therefore, the appellant was required to be obtain service tax registration as an 'Assessee' and not as 'Non-Assessee'. Further, in their appeal memorandum, the appellant has not furnished any proof evidencing obtaining of registration as an "Assessee" under service category 'Transport of Goods by Road'. Regarding obtaining of service tax registration, Section 69 of Finance Act, 1994 clearly states that '*every person liable to pay the service tax under this chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise*'. Further, Rule 4 of the Service Tax Rules, 1994 states that '*every person liable for paying the Service Tax shall make an application to the Superintendent of Central Excise in form ST-1 for registration within a period of 30 days from the date on which the service tax under section 66 of the Finance Act, 1994 is levied.*' It is further observed that Rule 4(5A) of the Rules ibid states that '*where there is a change in any information or details furnished by an assessee in Form ST-1 at the time of obtaining registration or he intends to furnish any additional information or details, such change or information or details shall be intimated in writing, by the assessee, to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, within a period of thirty days of such change.*'

9.1 Even otherwise also, it is observed that the SCN clearly spelt out the availability of element of suppression of facts with malafide intention to evade payment of service tax as the appellant had failed to obtain service tax registration as 'Assessee' under category 'Transport of Goods by Road', under Section 69 of the Finance Act, 1994. Therefore, waiver of issuance of show cause notice given under Section 73(3) of the Finance Act, 1994 will not be available to the appellant. Since, they had suppressed the vital facts of not obtaining of Service Tax Registration under aforesaid category of service under Section 69 of the Act ibid, their case is covered by Section 73(4) of the Finance Act, 1994. Therefore, on this count also, the case laws cited by appellant, as mentioned above, are not applicable to the present case.

9.2 From the plain reading of the provisions of Section 69 of the Finance Act, 1944 and Rule 4(1) and Rule 4(5A) of Service Tax Rules, 1994, it is observed that every person, who is liable to service tax, is required to obtain service tax registration within 30 days of from the date on which service tax is leviable. However, inspite of

knowing of the facts that they were required to pay service tax under category of service "Transport of Goods by Road", the appellant have failed to obtain registration under proper manner. Hence, I find that the adjudicating authority has correctly imposed penalty on the appellant under Section 77(1)(a) of the Finance Act, 1994 for contravention of the provisions of Section 69 of the Finance Act, 1994 read with Rule 4(1) and Rule 4(5A) of Service Tax Rules, 1994.

10. Further, the appellant has contended that they were under bonafide belief that the seller of the inputs was liable to pay service tax, as always was case with the purchases made by them on freight paid basis hence these transactions escaped their attention. It is observed that there is no doubt about the matter that the registration is a sine qua non in this case as terms are clearly spelt out in the statutory provisions. There is no scope of confusion or ambivalence on the issue of taking registration or not. So, the appellant contention for seeking waiver of penalty under Section 80 of the Finance Act, 1994 has no legs. The case laws cited are also of no help to support the claim of appellant.

11. In view of the above discussion, I uphold the impugned order passed by the adjudicating authority and dismiss the appeal filed by appellant.

12. The appeal filed by the appellant stands disposed of in above terms.

(Sunil Kumar Singh)
Commissioner (Appeals)/
Commissioner,
CGST & Central Excise,
Gandhinagar

F. No.: V2/88/BVR/2017

Date: 15.03.2018

BY Regd. Post AD

To,
M/s. Mangrol Pole Factory,
Survey No. 240/3,
Shepa Road, At Sheriyakhan,
Taluka, Mangrol.

Copy to:
(1) The Chief Commissioner, CGST & Central Excise, Ahmedabad.
(2) The Commissioner (Appeals), CGST & Central Excise, Rajkot
(3) The Commissioner, CGST & Central Excise, Bhavnagar
(4) The Assistant Commissioner, CGST & C. Ex., Junagadh Division, Bhavnagar
(5) The Assistant Commissioner (Systems), CGST, Rajkot.
(6) The Superintendent, CGST & Central Excise Range-Junagadh.
(7) PA to Commissioner of CGST & Central Excise, Gandhinagar.
(8) Guard file.