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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

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/229/BVR/2017	मूल आदेश सं / O.I.O. No. AC/JND/28/2017	दिनांक / Date 31.03.2017
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

BHV-EXCUS-000-APP-262-2017-18

आदेश का दिनांक / Date of Order:	28.03.2018	जारी करने की तारीख / Date of issue:	05.04.2018
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Passed by **Dr. Balbir Singh, Additional Director General (Taxpayer Services), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या 26/2017-के.उ.शु. (एन.टी.) दिनांक 16.10.2017 के साथ पढ़े बोर्ड ऑफिस आदेश सं. 04/2017-एस.टी. दिनांक 16.11.2017 के अनुसरण में, डॉ. बलबीर सिंह, अपर महानिदेशक करदाता सेवाएँ, अहमदाबाद जोनल यूनिट को वित्त अधिनियम 1998 की धारा 24, केन्द्रीय उत्पाद शुल्क अधिनियम 1998 की धारा 34 के अंतर्गत दर्ज की गई अपील के सन्दर्भ में 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 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Dr. Balbir Singh, Additional Director General of Taxpayer Services, Ahmedabad Zonal Unit, Ahmedabad 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/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। 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 :
- घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**
M/s Shardha Enterprise (Prop. Chetanbhai C. Shiyal), Opp : Mehta Hospital, Tower Chowk, Jafrabad - 365 540 Dist : Amreli

इस आदेश(अपील) से व्यक्ति 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 अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 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) नियमवली, 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 रजिस्टार 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। 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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार 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। 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 नियमवली, 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 प्रतियों 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 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 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 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) सेनवेट जमा की ली गई गलत राशि
- (iii) सेनवेट जमा नियमवली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी 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 पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पैरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (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 an 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 इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं।
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, 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।
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, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेट्री कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण 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 रुपये का न्यायालय शुल्क टिकट 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 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, अपीलाधी 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

ORDER IN APPEAL

The present appeal has been filed by M/s. Shradha Enterprise, having office opposite Mehta Hospital, Tower Chowk, Jafrabad, Dist. Amreli-365 640 (hereinafter referred to as the "appellant") engaged in providing taxable services. The appellant is registered as provider of taxable service in nature "Maintenance or Repair", "Commercial and Industrial Construction" and services other than "Negative List" given under Section 66D of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as "the Act"). The Appellant are holding Service Tax Registration Number BSZPS8471DST001 dated 27.03.2008 amended on 22.11.2012 for providing taxable service, issued under Section 69 of the Act and have undertaken to comply with the conditions prescribed in the Act and the Service Tax Rules, 1994 (hereinafter referred to as "the Rules").

2. A Show Cause Notice dated 22.10.2013 was issued to the appellant on the basis of Final Audit Report No. 11/ST/2013-14 dated 04.09.2013 alleging that the appellant had not paid Service Tax during the period of 2008-09 to 2012-13. Accordingly, the demanded Service Tax of Rs.25,94,633/- (**Table-D of the SCN**) under the proviso to section 73(1) of the Finance Act, 1994. Also, interest at appropriate rate on delayed payment of service tax from the due date of payment of service tax to the actual payment of the same. An interest amounting to Rs.8,682/- for short payment of interest on late payment of service tax for various quarters. The SCN also proposed various penalties on the appellant under the Finance Act, 1994 viz. u/s 77(1), 78(1) of the Finance Act, 1994 and also proposed a Late fee of Rs.2500/- as applicable under Rule 7C of the Service tax Rules, 1994 as amended for late filing of ST-3 returns for the relevant period.

3. The issue is that the appellant has wrongly taken the benefit of Notification No. 1/2006-ST dated 01.03.2006 which provides abatement in gross amount charged against the taxable service of Commercial and Industrial Service, subject to the relevant conditions specified in the corresponding entry in column (4) of the table :

Sr. No.	Sub Clause of Clause (105) of Section 65	Descripti on of taxable service	Conditions	Perc enta ge (%)
1	2	3	4	5
7	(zzq)	Commer cial or industrial construct ion service	This exemption shall not apply in such cases where the taxable services provided are only completion and finishing services in relation to building or civil structure, referred to in sub- clause (c) of clause (25b) of section 65 of the Finance Act. Explanation - The gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of 33 the construction service for providing such service	33

4. From the above notification, it is clear that for availing abatement @ 33% on total value of invoice, as per Notification No. 1/2006-ST dated 01.03.2006; there is a condition that the value should include the expenses towards consumption of goods and material for providing the taxable services.

5. From the foregoing paras, it appeared that the appellant, by their acts of omission and commission have contravened the following provisions of the Chapter V of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under with an intent to evade the payment of service Tax :

- (i) Section 67 of the Act in as much as they have suppressed the value of Taxable Services rendered;
- (ii) Section 68 of the Act read with Rule 6 of the Act 1994 inasmuch as they failed to pay the appropriate service tax on the gross value of taxable services rendered by them;

Shradha
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- (iii) Section 75 of the Act inasmuch as they failed to correctly assess and pay full amount of interest on delayed payment of Service Tax.
- (iv) Rule 5 of the Rules in as much as they failed to maintain the records of invoices issued against the Services provided by them.
- (v) Failed to file the Service Tax Return within the time limit prescribed under Rule 7 © of the Service Tax Rule 1994 stipulates that where the return prescribed under Rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government for the period of delay :
- Up to 15 days : Rs. 500/-
 - More than 15 days but up to 30 days : Rs.1,000/-
 - Beyond 30 days : Rs. 1,000 + Rs. 100/- for everyday

Provided that the total amount payable in terms of this rule, for delayed submission of return, shall not exceed the amount specified in section 70 of the Financial Act, 1994. Total of penalty towards delay submission of ST-3 Returns required to be paid comes to Rs.2,000/-. The appellant agreed but no response received.

- (vi) From the above, it also appeared that the appellant has suppressed the facts about the services provided by them with intent to evade the Service Tax and thereby rendered themselves liable to penal action under Section 78 of the Finance Act.

6. All the above acts of contravention of the various provisions of the Finance Act, 1994 as amended from time to time, and Rules framed there under, on the part of the said service provider appeared to have been committed by way of suppression of facts, with an intention to evade payment of service tax. The Service Tax not so paid is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 as amended from time to time, by invoking the extended period of five years. Further, all these acts of contravention of the provisions of Section 67, 68 and 75 of the Act and Rule 5 of the Rules appeared to be punishable under the provisions of Section 77 and 78 of the Act.

7. This Notice was then adjudicated vide OIO No. AC/JND/28/2017 dated 31.03.2017. The observations of the adjudicating authority in the instant case are described as follows:

- (a) The contention of the appellant that they the rate of service tax on the value of Rs.55,35,001/- and Rs.7,44,453/- of the 26AS belonging to March-2009 is not tenable in the absence of sufficient proof and concluded that charging rate @ 12.36% is proper.
- (b) Invoices as discussed for the year 2009-10 are not pertaining to the work orders and work orders do not establish that the construction services provided is for infrastructure facility and a civic amenity provided by State in public interest. Further, there is no sufficient evidence to prove that it is not an activity carried out in commercial interest as contended by the appellant.
- (c) The adjudicating authority didn't agree with the claim of appellant that the service provided during the period 2010-11 is not the activity of commerce or industry. Further, the 26AS statement shows that L&T ECC has awarded work contract, but no documentary evidence for the same. Also, a copy of measurement sheet with Punj Lloyed Ltd., is not a proper document for exemption.
- (d) The appellant has not made any substantial contention for the period 2011-12 and 2012-13.
- (e) The appellant is not entitled for availment of abatement as per notification no. 01/2006-ST dated 01.03.2006 as the service provided as per invoices are nothing but "maintenance or repair" and above notification does not apply to the said service. Further, the appellant failed to maintained proper record to claim benefit under the said notification. Thus, by contradictory statement they have suppressed the value of taxable services by wrong availment of benefit of 67% under the said notification.
- (f) The adjudicating authority has found that it is appropriate to impose penalty under section 78 of the Act on the appellant as they have short paid service tax Rs.25,94,633/- along with interest for wrong availment of the abatement of the notification.

- (g) The appellant was required to pay the interest applicable on late payment of service tax for particular quarters during the period from 2008-09 to 2012-13, which work out to Rs.8,682/- and for that the appellant has no dispute.
- (h) The appellant was required to pay the late fee comes to Rs.2,500/- towards late submission of ST-3 Returns as prescribed under Rule 7 of the Service Tax Rules, 1994.
- (i) The adjudicating authority noticed that the appellant failed to maintain proper document during the period from F. Y. 2009-10 to 2011-12 and not a single invoice for the F. Y. 2008-09. All these contraventions lead to imposition of penalty under section 77 (1) (b) of the Finance Act, 1994.
- (j) The adjudicating authority has noticed that the appellant failed to produce required documents to prove their claim even after sufficient time was given. Further, he has admitted that he is not having all the copies of the documents / work orders except available during audit and search.
- (k) The contention of the appellant that they providing the material to the various companies, which is purely sales and liable to State Value Added Tax, but it is also not proved from any angle as they failed to produce evidence for the same. It is further noticed that the income shown in the Form 26AS of the income tax is received under section 194C of the Income Tax Act, 1961, which define that "carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person".

8. The impugned order confirmed:

- (i) Demand of the short paid of Service Sax amounting to Rs.25,94,633/- along with Education Cess and Secondary & Higher Secondary Education cess (as calculated in Table-D in para-2 of SCN) under Section 73(2) of the Finance Act, 1994.
- (ii) Ordered to pay interest at the appropriate rate on the said amount of Service tax under section 75 of the Finance Act, 1994 as amended;
- (iii) Confirm the interest amount of Rs.8,682/- short paid on late payment of Service Tax during various quarters of F. Y. 2008-09 to 2012-13 under Section 75 of the Finance Act, 1994.
- (iv) Order to recover late fee of Rs.2,500/- upon the appellant under Rule 7© of the Service Tax Rules, 1994 as amended for late filing of ST-3 returns as discussed in the order in original.
- (v) Imposed penalty of Rs.10,000/- upon them under Section 77(1) (b) of the Finance Act, 1994 as amended as discussed in order in original.
- (vi) Imposed penalty of Rs.12,97,317/- upon them under Section 78 (1) of the Finance Act, 1994 as amended for non-payment of Service Tax by suppressing the facts with intent to evade payment of Service Tax.

9. Being aggrieved with the impugned order, the appellant have filed the appeal on the following grounds by stating that the authority has erred in passing the order and submitted that relief claimed be allowed and OIO should be modified accordingly.

- That the order passed is vitiated as learned authority viz. Assistant Commissioner, Junagadh has no jurisdiction to make or confirm any demand of service tax, interest or penalty in respect of consideration received for jurisdiction outside jurisdiction territory of Assistant Commissioner, Junagadh. In this regard, request to rely on latest judgement 2017(5)TMI 1457 –CESTAT Bangalore – Service Tax in respect of M/s. Maa Communications Bozell Ltd., Versus CST, Bangalore.
- The appellant reiterated their submission in reply to SCN.
- That in addition to providing services, the appellant involved in business of contract for providing material to the various Companies which purely seems to be sales and liable to State Value Added Tax and on the said contract for supplying of material, there is no portion of providing any services for completion of the said contract.

- that the SCN and OIO itself confirmed that invoices stating that Civil Work and Service tax amount charged on the 33% value shown against the same. However, in absence of descriptive invoices, as alleged, have confirmed the service tax on Maintenance or repair service instead of in actual construction service.
- that they are providing construction services which are for infrastructure facility and a civic amenities, and it is not activity of commerce or industry, hence not considered as commercial or industrial construction. The appellant has worked for M/s. L&T ECC Division, M/s. Gammon India and M/s. Punj Lloyd.
- that the authority denies to consider the work order No. E48 issued by M/s. L&T ECC Div. vide which specifically mentioned that total work order amount incl. amendment if any +VAT +Service Tax + Cess if any.
- That the impugned authority denies believing on Amount of work order on which VAT has been paid.
- that regarding dispute in rate of Service Tax for f. Y. 2008-09, the learned authority denies to believe 26AS statement of income tax.
- That the authority has not taken into consideration the payment made for late filing fees and for F.Y. 2012-13, three challans aggregating to amount of Rs.3,06,228/- were not considered in SCN amount paid for service tax.
- That on the basis of above grounds, there is no evasion of any amount of service tax payment, so there is no question of payment of interest, penalty, as there is no suppressing the facts.

10. The appeal was filed before the Commissioner (Appeals), Rajkot. The undersigned has been nominated as Commissioner (Appeals) / Appellate Authority as regards to the case of appellant vide Board's Order No. 05/2017-Service Tax dated 16.11.2017 issued by the Under Secretary (Service Tax), G.O.I, M.O.F, Deptt of Revenue, CBEC, Service Tax Wing on the basis of Board's Circular No. 208/6/2017-Service Tax dated 17.10.2017.

11. Personal hearing was held on 08.03.2018 and on behalf of the appellant Shri Mahesh D. Ladumor, Tax Return Preparer (TRP) attended the hearing and reiterated the grounds of appeal.

12. I agree with the view of the adjudicating authority for not considering the contention of the appellant ^{and that} it is not an activity of commerce or industry as they have failed to prove / establish as there is no sufficient documentary evidence.

13. I also agree with the view of the adjudicating authority with regard to the contention of the appellant for change in rate of service tax for the F. Y. 2008-09 on the value of an amount of Rs.55,35,001/- and Rs.7,44,453/- of the 26AS which belongs to March-2009, as not tenable and conclude that charging rate @ 12.36% is proper. It is also observed that the documents furnished by the appellant are not tallying with the Table-A of the SCN and work order numbers are different, hence, contention of the appellant is untenable.

14. I agree with regard to view of the adjudicating authority that the Invoices as discussed for the year 2009-10 are not pertaining to the work orders. Further, the work orders do not establish that the construction services provided are for infrastructure facility or a civic amenities provided by State in public interest. Further, there is no sufficient evidence to prove that it is not an activity carried out in commercial interest as contended by the appellant.

15. I also agree with the observation of the adjudicating authority that services provided during the period 2010-11 is not the activity of commerce or industry and hence not considered as commercial or industrial construction services. Further, no documentary evidence is linked that has been submitted by the appellant. Copy of the joint measurement sheet furnished is also not a proper admissible document for exemption of service tax.

16. I find that with regard to the period 2011-12 and 2012-13, the appellant has not made any substantial contention.



17. With regard to availment of the benefit of notification no. 01/2006-ST dated 01.03.2006-ST dated 01.03.2006, I find that observation of the adjudicating authority is correct, as the appellant has not fulfilled the condition to avail the benefit of said notification that the assessee is required to pay the service tax only on 33% of the value of gross amount charged for providing construction service as discussed above. The appellant had not maintained proper record of invoices issued by them against the services provided. The appellant is unable to produce genuine invoices and documents to claim benefit under notification No. 01/2006-ST dated 01.03.2006 and by giving contradicting statements, they have suppressed the value of taxable services by wrongly availing benefit of abatement of 67% on gross amount charged under said notification by declaring maintenance or repair service.

18. The citation 2017 (5) TMI 1457 – CESTAT Bangalore – Service Tax (M/s. MAA Communications Bozell Ltd., Versus CST, Bangalore) quoted by the appellant is not applicable in this case as the appellant had provided services to the private organization i.e. M/s. L&T ECC Division and M/s. Gammon India and M/s. Punj Lloyd and no documentary evidence linked with had been submitted for considering the admissibility for exemption of service tax.

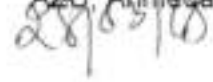
19. In view of the above discussion and findings, I hereby uphold the impugned order and disallow the appeal filed by the appellant.

20. The appeal filed by the appellant stands disposed off in above terms.


(Dr. Balbir Singh)

Additional Director-General (DGTS),

AZU, Ahmedabad.



Date : /03/2018

F.No. V2/229/BVR/2017

BY RPAD.

To,

M/s. Shradha Enterprise,
(Proprietor Chetenbhai C. Shiyal)
Opp. Mehta Hospital, Tower Chowk,
Jafrabad – 365 540,
Dist. : Amreli

Copy to :

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone;
2. The Commissioner, CGST & Central Excise, Rajkot/ Commissioner (Appeals), Rajkot;
3. The Deputy/Assistant Commissioner, Division-II, Bhavnagar
4. The Additional/Joint Commissioner, Systems, CGST, Bhavnagar;
5. Guard File.

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Name of the Party: Shraddha Enterprises (Prop. Chetanbhai C. Shiyal), Jafrabad.

Name of Authorized Representative: Sh. Mahesh Ladumor

Date of Hearing: 08.03.2018

Gist of Hearing

We reiterated the whole submission in reply to SCN before the Office of the Assistant Commissioner, Central Excise, Junagadh. We are providing services for civil work which is classified under civil construction services and on which abatement is available.

However, the Authority denies accepting the same in absence of invoices. However the fact is that our whole invoices files for each and every year under question were ceased by the Department under Punchnama dated 06.09.2013. Herewith, we are submitting copy of that Punchnama for your kind reference which clearly shows that all files are with Central Excise, Bhavnagar.

We have asked to provide a copy of it for our defense. However, authority has not provided the same. So, we have submitted several computer prints before Office of the Assistant Commissioner, Junagadh along with the copy of the work order to prove that we have provided services for civil construction and we are eligible to avail abatement.

Further, we are also having a contract for supplying the material only (no service part) and on which VAT is applicable at the rate of 5%. We have submitted copy of the Challan for VAT payment. Even though we have to pay Service Tax on that contract of supplying of the material, then we have to pay at the rate of 3.24% instead of VAT at 5%.

We have also submitted herewith work order for contract of supplying the material. We are also engaged in providing construction services which is for infrastructure facility and a civic amenities, it is not activity of commerce or industry and hence not considered as a commercial or industrial construction, hence Service Tax is not applicable and for such kind of services, we have submitted copy of work order for M/s L&T ECC Division, M/s Punj Lloyd and M/s Gammon India. We have also submitted copy of several CESTAT judgments for same service recipients and same kind of services and even in the copy of contract of L&T ECC Division, it is clearly stated that VAT & Service tax applicable is zero.

We also strongly contend the imposition of penalty.



B. Shetty
08/03/18