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	<p>::आयुक्त (अपील) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,</p>	 सत्यमेव जयते
	<p>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</p>	

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/119/BVR/2016	08/AC/STAX/DIV/2016-17	22.07.2016

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

BHV-EXCUS-000-APP-035-2017-18

आदेश का दिनांक / Date of Order:	18.09.2017	जारी करने की तारीख / Date of issue:	19.09.2017
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**कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

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 :-**
Mavji Ratanshi Motivaras., Proprietor of M/s Shree Satyaprakash Fabrication., Kanaiya", Station Plot, Nr.Post Office., Behind Amin Mosaic Tiles.,RANAVAV-2 Dist. Porbandar

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 न 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 अपीलों 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) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, व्याज 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 सलग्न 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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में सलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, व्याज 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 सलग्न 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) एव (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 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 करे (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपील 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि टस करोड़ रूपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (स. 2) अधिनियम 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एव 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 में, केन्द्रीय 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 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 छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ब्यूटी ब्रेडीट 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 समायाचिधि 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 संश्लेषण 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 पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। /
In case, if the order covers various numbers of order- in Original, fee for each O.I.O should be paid in the aforesaid manner, 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 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 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER-IN-APPEAL ::

Shri Mavji Ratanshi Motivaras, a Proprietor of M/s Shree Satyaprakash Fabrication and M/s Shree Chamunda Fabrication, Kanaiya, Station plot, Near Post Office, Behind Amin Mosaic Tiles, Ranavav-2, Porbandar (Gujarat) (hereinafter referred to as "the appellant") has filed appeal against Order-in-Original No. 8/AC/STAX/DIV/2016-17 dated 22.07.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Service Tax Division, Bhavnagar (hereinafter referred to as "the lower adjudicating authority").

2. The facts of the case are that on the basis of intelligence gathered by the Anti Evasion Section, Central Excise and Service Tax, H.Q., Bhavnagar that some service providers have provided taxable services to M/s Saurashtra Cement Ltd, Ranavav, Porbandar but these service providers have not paid Service Tax at the appropriate rate. Accordingly, information was sought from the appellant through Summons. The appellants vide their letter dated 28.01.2013 stated that they have provided services of Manpower Supply Agency service and Maintenance/Repair & fabrication services to M/s Saurashtra Cement Ltd, Ranavav, Porbandar during the period from 2007-08 to 2011-12, through the proprietorship concerns, namely, M/s. Shree Satyaprakash Fabrication and M/s. Shree Chamunda Fabrication and submitted the requisite information on 28.01.2013; that the information submitted by the appellant revealed that as per their Income Tax Returns, they received income of Rs. 1,42,71,487/- during FY 2007-08 to 2011-12 towards provision of services, however they have paid service tax on taxable value of Rs. 1,00,51,313/- only and hence they have short-paid service of Rs. 4,73,940. Show Cause Notice F. No. V/15-139/ST/DIV/12-13 dated 15.4.2013 was issued to the appellant proposing recovery of service tax amounting to Rs. 4,73,940/- under proviso to Section 73(1) of the Act along with interest under Section 75 of the Act and for imposition of penalty under Section 70, 76, 77, 77(1)(a), 77(1)(b), 77(1)(C)(ii), 77(1)(C)(iii)& 78 of the Act. The proposals made in SCN were decided by the lower adjudicating authority vide impugned order wherein demand of service tax has been confirmed under proviso to Section 73(1) of the Finance Act, 1994; recovery of interest under Section 75 of the Act and imposed penalty under Section 76, 77, 77(1)(a), 77(1)(b), 77(1)(C)(ii), 77(1)(C)(iii)& 78 of the Act.

3. Being aggrieved by the impugned order, the appellant filed the present appeal, *inter alia*, on the grounds that,

(i) The impugned order passed by the adjudicating authority is bad in law, unjust and illegal as the impugned order has been passed ex-parte without intimation of personal hearing. The adjudicating authority should have granted sufficient time for filing defense reply or to attend personal hearing. The present adjudicating authority may not have been an adjudicating authority on the dates when the intimation of personal

hearing had been issued. Therefore, principle of natural justice is violated.

(ii) The appellant was possessing Service Tax Registration for both units and was providing repairing work of plant and machinery to the said manufacturer being used for manufacturing excisable goods. The cost incurred is nothing but in or in relation to carrying out manufacturing activities. The department had not denied that whatever value was shown/declared by the said manufacturer which reported to have been paid to the appellant had not been included in sale price of the excisable goods viz. Cement manufactured. Therefore, the appellant was not required to obtain Service Tax registration and was not required to pay service tax. However, due to ignorance of law, the appellant has paid service tax in good faith.

(iii) The amount shown in Form 26AS was not taxable value, but this amount was shown by the Chartered Accountant in the respective Profit & Loss account on the basis of the invoices issued during the respective financial year. Such payments have not been received during that particular month/year, therefore the service tax confirmed is not proper and legal. The adjudicating authority was required to establish that amount shown in Form 26AS had been actually received during the respective financial year. The adjudicating authority has not interpreted Rule 4A of Service Tax Rules, 1994 prevailing at the material time. Thus, it is clearly seen that the issue involved in the present case is to be termed as 'interpretation of law', hence no penalty to be imposed.

(iv) The transactions were duly recorded in Books and Accounts maintained by the appellant. Therefore, it is not true that the appellant had suppressed the facts and circumstances with intent to evade payment of service tax. Therefore, extended period cannot be invoked and SCN is time barred. The appellant relied on following case laws in support of their contentions:-

- Parmarth Iron Pvt Ltd – 2010 (260) E.L.T. 514 (Allahabad)
- Gujarat Intelligence Security - 2010 (19) S.T.R. 207
- Rameshchandra C. Patel – 2012 (25) STR 471 (Tri. Ahmd.)
- Hari Om Udhog – 2015 (329) ELT 221 (Tri.-Del.)
- Arora Auromatics – 2014 (310) ELT 429 (All.)
- Reckitt Benckiser (I) Ltd - 2002 (150) ELT 315 (Tri.-Chennai)

4. Personal hearing in the matter was attended to by Shri N.K. Maru, Consultant and Shri Mavjibhai R. Motivars, Proprietor. Shri N.K. Maru reiterated the grounds of appeal and made written submission to say that service tax of Rs. 10.93 lakhs have been paid by the appellant as admitted in Para 6.4 of the impugned order; that the appellant was not fully aware of the provisions of law and hence could not appear before the lower adjudicating authority; that they have now approached Consultant and they may be given opportunity to explain the details; that the case may be remanded to meet the ends of justice; that during the period involved service tax was

payable not on invoice value but only after actual receipt of payment and there was time lag in payment received by them; that the case needs to be remanded back for reconciliation of these details.

FINDINGS:

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submissions of the appellant. The limited issue to be decided in the present appeal is whether the impugned order confirming short-payment of service tax on the basis of income received as declared in Income Tax Return for the years 2007-08 to 2011-12, is proper or otherwise.

6. I find that the appellant has vehemently contended that the principles of natural justice has not been followed. I find that the case has been decided by the lower adjudicating authority without any defence reply of the appellant and without granting fair opportunities of personal hearing to the appellant. The appellant has also argued that they have not received any notice of personal hearing. There is nothing on record in the impugned order to negate these contentions. I do not find any indication in the impugned order that notices of personal hearing were sent to the appellant and received by them. I find that it is basic principle of law that nobody should be condemned without hearing and affording reasonable opportunities to put forth his defence. The conclusions of the adjudicating authority are bound to be guided by the allegations made in the show cause notice, as admittedly there is no rebuttal by the noticee.

6.1 The appellant has now submitted that during the material time, liability of payment of service tax was with reference to the payments received and not with reference to the invoices issued by the service providers for provisions of services. I find that the appellant appears to have not co-operated during investigation and not honored the summons issued by the investigating officer. Therefore, I direct the appellant to submit all relevant documents evidencing receipt of payments by them during the material time so that the adjudicating authority can arrive at the fair conclusion to pass speaking and reasoned order as per the provisions contained in the Finance Act and Rules there under.

6.2 In view of the above facts, I set aside the impugned order and remand the matter back to the lower adjudicating authority with direction to pass speaking and reasoned order offering fair opportunities to the appellant. I also direct the appellant to submit all relevant documents with their written submission to the lower adjudicating authority within 2 months from the date of receipt of this order.

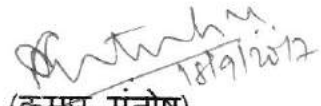
6.3 The Commissioner (Appeals) has power to remand as decided by the Hon'ble CESTAT in the case of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported as

2012(284) ELT 97 (Tri-Del). I also rely upon decision of the Hon'ble Tribunal in the case of CCE, Meerut-II Vs. Honda Seil Power Products Ltd. reported in 2013 (287) ELT 353 (Tri-Del) wherein the similar views have been expressed in respect of inherent power of Commissioner (Appeals) to remand a case under the provisions of Section 35A of the Act. The Hon'ble Gujarat High Court in Tax Appeal No. 276 of 2014 in respect of Associated Hotels Ltd. has also held that even after the amendment in Section 35A(3) of the Central Excise Act, 1944 after 11.05.2011, the Commissioner (Appeals) would retain the power to remand.

7. In view of the above facts, I set aside the impugned order and allow the appeal by way of remand with direction to the appellant to submit all relevant documents and written submissions within 2 month of receipt of this order.

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

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


 (कुमार संतोष)
 आयुक्त (अपील्स)

By Speed Post

To,

Shri Mavji Ratanshi Motivaras – Proprietor, M/s Shree Satyaprakash Fabrication & M/s Shree Chamunda Fabrication, Kanaiya, Station plot, Near Post Office, Behind Amin Mosaic Tiles, Ranavav-2, Porbandar	श्री मावजी रतनशी मोतिवारस - प्रोप्राईटर, मे. श्री सत्यप्रकाश फब्रीकेशन एवं मे. श्री चामुंडा फब्रीकेशन, कनइया, स्टेशन प्लॉट, पोस्ट ऑफिस नजदीक, अमीन मोसेक टाइल्स के पीछे, रानावाव - २, पोरबंदर
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Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
- 3) The Assistant Commissioner, GST & Central Excise Division, Junagadh.
- 4) Guard File.

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


 (कमर संतोष)
 आयुक्त (अपील्स)

By Speed Post

To,

Shri Mavji Ratanshi Motivaras – Proprietor, M/s Shree Satyaprakash Fabrication & M/s Shree Chamunda Fabrication, Kanaiya, Station plot, Near Post Office, Behind Amin Mosaic Tiles, Ranavav-2, Porbandar	श्री मावजी रतनशी मोतिवारस - प्रोप्राईटर, मे. श्री सत्यप्रकाश फब्रीकेशन एवं मे. श्री चामुंडा फब्रीकेशन, कनइया, स्टेशन प्लॉट, पोस्ट ऑफिस नजदीक, अमीन मोसेक टाइल्स के पीछे, रानावाव - २, पोरबंदर
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