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



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या: Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक / Date
	V2/39/GDM/2016	09/ADC/2015-16	29.05.2015

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

KCH-EXCUS-000-APP-142-2017-18

आदेश का दिनांक / Date of Order:	21.12.2017	जारी करने की तारीख / Date of issue:	26.12.2017
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अगर आयुक्त, सहायक आयुक्त, उपआयुक्त, सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, राजकोट / जामनगर / गन्धीधाम, द्वारा उपरलिखित जारी मूल आदेश से तृप्ति /
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 Appellant & Respondent :-**
M/s. Pooja Pipes & Structural P. Ltd, 603, C Wing, Titanium City Center B/h, Indian Oil Pump, NR. Sachin Tower, Sattelite, Ahmedabad,

इस आदेश(अपील) से स्वयं को उचित विचारविहित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 अधीनस्थ न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत विचारविहित 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) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधीनस्थ 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 बतलाए गए अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधीनस्थ न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठ, द्वितीय तल, बहामनी भवन असाही 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) अधीनस्थ न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमसूची, 2001, के नियम 6 के अन्तर्गत निर्धारित किए गये फॉर्म EA-3 को धारा प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की ग्रास राशि और नगण्य राशि जुमाना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो कमतः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भ्रमण, संबंधित अधीनस्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वोच्च श्रेण के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भ्रमण, बैंक की उस शाखा में होना चाहिए जहां संबंधित अधीनस्थ 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) अधीनस्थ न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर विधिसूची, 1994, के नियम 5(1) के तहत निर्धारित फॉर्म ST-5 में धार प्रतियों में की जा सकती है एवं उसके साथ जिन आदेश के विरुद्ध अपील की गयी हो, उनकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रामाणिक होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की ग्रास राशि और नगण्य राशि जुमाना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो कमतः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भ्रमण, संबंधित अधीनस्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वोच्च श्रेण के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भ्रमण, बैंक की उस शाखा में होना चाहिए जहां संबंधित अधीनस्थ 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 ST-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 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/-.

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 ST-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 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) विल अपीलियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत टाउं की जरी अपील, सेवाकर निवन्धनावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकेगी एवं उसके साथ आवृत्त, केन्द्रीय उत्पाद शुल्क अध्याय आवृत्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा जारी आदेश की प्रतियाँ संलग्न करें (जसमें में एक प्रति प्रमाणित होनी चाहिए) और आवृत्त द्वारा सहायक आवृत्त अथवा उपयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील न्यायाधिकरण को आवेदन टाउं 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 of 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 अपीलिय प्रक्रिया (सेन्स्टैट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अपीलियम 1944 की धारा 35एफ के अंतर्गत, जो की विलीय अपीलियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलिय प्रक्रिया में अपील करने समय उत्पाद शुल्कांश का मास के 10 प्रतिशत (10%), जब मास एवं दुर्भेदा विवादित है, या दुर्भेदा, जब केवल दुर्भेदा विवादित है, का भुगतान किया जाए, बतर्ते कि इस धारा के अंतर्गत जस कि जसो वाली अपीलिय टैय एलि टस कोटि स्पष्ट हो अधिक न हो।

- (i) केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मास किए गए शुल्क" में निम्न शामिल है
- (ii) धारा 11 डी के अंतर्गत रकम
- (iii) सेन्स्टैट जस की नौ गई रकम एलि
- (iii) सेन्स्टैट जस निवन्धनावली के नियम 6 के अंतर्गत टैय रकम

- बतर्ते यह कि इस धारा के प्राधान विलीय (स. 2) अपीलियम 2014 के अंतर्ग से पूर्व किली अपीलिय प्रक्रिया के तहत विचारलयेन स्थगन जरी एव अपील को लागू नहीं होगी। /

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 प्रक्रिया निम्नलिखित प्रस्तावों में, केन्द्रीय उत्पाद शुल्क अपीलियम, 1994 की धारा 35EE के अधिन प्रावृत्त के अंतर्गत जस सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, विल संसाधन, एजन्स बिल्डिंग, 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 परिवहन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परिवहन के दौरान, या किसी भंडार गृह से 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 बचे माल पर जरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबैट) 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 or 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) सुविधित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छा के तहत इस अपीलियम एवं इसके विभिन्न प्रावृत्तों के तहत माल की गई है और ऐसे आदेश जो आवृत्त (अपील) के द्वारा विल अपीलियम (न. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लागू अथवा प्रत्येक पर या बाद में परित किए गये 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 फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) निवन्धनावली, 2001, के नियम 9 के अंतर्गत निर्दिष्ट है, इस आदेश के लभण के 3 मास 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 अपीलियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ-साथ 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। / 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 इन से किया जाना चाहिए। इस लभण के होते हुए भी की लिखा पटी रूप से बचने के लिए वचनलिखित अपीलिय 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) पचासशोधित न्यायालय शुल्क अपीलियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट जरी 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-1 in terms of the Court Fee Act, 1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलिय न्यायाधिकरण (कार्य विधि) निवन्धनावली, 1982 में लीखित एवं अन्य संबंधित मामलों की सम्बन्धित करने वाले नियमों की और भी ध्यान सम्बन्धित 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 अपीलिय प्रक्रिया को अपील टाउं करने से सम्बन्धित अध्याय, विस्तृत और नवीनतम प्रावृत्तों के लिए, अपीलिय विनियम 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 ::

M/s. Pooja Pipes & Structures Pvt. Ltd., Survey No. 963-1, Morbi Road, N.H. 8/A, Juna Katariya, Samakhiali (Kutch) (hereinafter referred to as 'the Appellant'), filed the present appeals against Order-In-Original No. 9/ADC/2016-16 dated 29.05.2015 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Central Excise, Gandhidham (hereinafter referred to as 'the lower adjudicating authority').

2. Briefly stated the facts of the case are that audit revealed that the appellant had not discharged service tax liability on services of "Erection Commissioning or Installation Service" and "Consulting Engineering Service" provided by them in respect of various fabrication and erection related activities, viz. piping work, structure work, foundation work etc. as per Section 65(39a) and 65(31) of the Finance Act, 1994. The appellant had raised Invoices, collected Service Tax of Rs. 11,23,909/- during the period of F. Y. 2009-10 & 2010-11 but had not paid during the prescribed time. The above facts led to issuance of Show Cause Notice No. V.ST/AR-GDM/ADC(PV)/120/2014-15 dated 24.09.2014, which was adjudicated by the lower adjudicating authority vide impugned order wherein he confirmed demand of Service Tax Rs. 11,23,909/-, Interest under Section 75 and imposed penalty under Section 77 & 78 of the Finance Act, 1994 (hereinafter referred as "the Act").

3. Being aggrieved by the impugned order, the appellant preferred the present appeal mainly on the following grounds:

- (i) Circular No. 137/167/2006-CX.4 dated 03.10.2007, proceedings including proceedings under Section 76, 77 and 78 are treated to have been concluded if the assessee has paid the tax within one month of issuance of show cause notice. Whereas, the appellant has paid the entire amount of Service Tax before issuance of Show Cause Notice.
- (ii) Reliance on the decision of Tridevaer Shipping P. Ltd reported as STO 2009 CESTAT 1506 (Tri. Bang.), that if the assessee cleared the Service Tax due along with interest on his own and even on the insistence of the department authority, then no penalty proceedings can be taken against them.
- (iii) There being no intention on part to evade the tax or no any such



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malafide intentions as well as there being voluntary and full co-operation on appellant's part.

4. Personal hearing in the matter was held wherein Shri Sunil H. Krishnani, Consultant reiterated grounds of appeal and submitted that entire Service Tax was paid by them before issue of show cause notice and they paid full interest now as per detailed submission; that no penalty is imposable on them as they submitted all details as asked for at the time of audit in 2011; that they had not suppressed any fact from the department and hence penalty under Section 78 of the Act is not imposable.

FINDINGS

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and records of the Personal hearing. The issue to be decided in the appeal is whether the appellant is liable to be imposed penalty under Section 77 and Section 78(1) of the Finance Act, 1994 or not.

6. I find that the appellant had provided taxable services "Erection Commissioning or Installation Service" and "Consulting Engineering Service" and had raised Invoices, collected Service Tax of Rs. 11,23,909/- during the period of F. Y. 2009-10 & 2010-11 but not paid in time but paid immediately on being pointed out by the audit team Service Tax of Rs. 11,23,973 vide different challans before issuance of show cause notice and same was appropriated in the impugned order.

6.1 I find that the appellant had not paid Service Tax due during relevant time though they have collected, liable to pay Interest under section 75 of Finance Act, 1994, which is fully paid as para supra. The appellant had also paid interest, as verified by the JRS, AR-V, Anjar-Bhachau vide letter F.No. AR-VI/GIM/FAR No. A/109/2011-12 dated 15.12.2017.

6.2 I find that the appellant failed to pay Service Tax on amount received against services provided under Section 68 of the Act and also did not assess service tax liabilities, failed to file correct returns within stipulated time under Section 70 of the Act. Hence, I uphold the penalty under Section 77 of the Act.

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6.3 I find that the appellant intentionally / knowingly not deposited / paid Service Tax collected / charged, sole intent to evade payment of government due and suppression of fact or fraud or collusion or willful mis-statement or contravention of the Act or Rule. The appellant was liable to penalty under Section 78 of the Act in addition to Service Tax and interest thereon.

6.4 I find that the appellant had accepted their Service Tax liability under reference and had paid the same during the course of investigation. Therefore, I do not find any dispute regarding liability of the appellant towards the said amount of Service Tax. Though the appellant has submitted that they had paid the Service Tax before issuance of the impugned show cause notice and contested the imposition of penalties by the adjudicating authority vide the impugned order, however, I find that as is evident from the impugned order and their submissions that the appellant has paid the amount only towards their said liability of Service Tax detected during the course of audit, however they did not make any amount of interest leviable thereon, whereas interest has been fully paid on 13.11.2017 as verified by the Jurisdictional Range Superintendent vide above mentioned letter dated 15.12.2017.

7. I find that the appellant has submitted that they had no intention to evade payment of service tax but financial position was difficult and going through a big problem. They have attempted to explain that in last few years they got stuck in huge burden of debts; that for making monthly payment of Salary and Wages to factory staff and labours, they had to borrow temporary loans from their friends and relatives as the Bank had stopped giving them any further loans. However, I find that this can't be a ground not to pay Service Tax as the appellant had collected Service Tax from their Customers but had not deposited with the Govt. and hence committed fraud months after months.

7.1 The provisions of Section 78 of the Act is reproduced, which are as under:-

SECTION [78. Penalty for failure to pay service tax for reasons of fraud, etc.] — (1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there under with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning



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with the 8th April, 2011 upto the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

Provided further that where service tax and interest is paid within a period of thirty days of —

- (i) the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;
- (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

Explanation. — For the purposes of this sub-section, "specified records" means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of accounts shall be considered as the specified records.

(Emphasis supplied)

7.2 It is also on record that the appellant has not paid service tax on their own even though collected from their customers. They paid Service Tax before issuance of show cause notice but they did so after department detected their non-payment after detailed inquiry in this regard. It is evident that the facts of collection of Service Tax and non-payment thereof were suppressed by the appellant with intent to evade payment of service tax. The lower adjudicating authority confirmed the demand along with interest and imposed equal penalty of Rs. 11,23,909/- under Section 78 of the Act in view of the above facts. The appellant paid service tax only after the department established collection of service tax by them from customers but not paying to the Government exchequer. The show cause notice has been issued proposing imposition of penalty under Section 78 of the Act because appellant failed to pay penalty @15% of service tax not paid before issuance of SCN. The appellant also did not pay penalty @15% of service tax evaded within 30 days from date of receipt of SCN and also did not pay @25% of service tax within a period of thirty days of the date of receipt of the order imposing equal penalty under Section 78 of the Act. Therefore, I am of view that imposition of penalty of Rs. 11,23,909/- equal to

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service tax determined under Section 78 of the Act by the lower adjudication authority is legal and proper. However, the lower adjudicating authority was required to give option to the appellant in the impugned order discussing clause (ii) of second proviso to Section 78 of the Act, that if the appellant pay interest and reduced penalty within 30 days from the receipt of the adjudication order then penalty would get reduced to 25% of service tax so determined. Having not been done so by the lower adjudicating authority, payment of full interest liability as well as reduced penalty of 25% of service tax can be availed by the appellant now within 30 days of receipt of this order, as per ratio of the judgment of the Hon'ble Supreme Court in the case of R. A. Shaikh Paper Mills P. Ltd. reported at 2016 (335) E.L.T. 203 (S.C.) read with CBEC Circular F. No. 208/07/2008 – CX – 6 dated 22.05.2008.

8. In view of above discussion and findings, I hold that the impugned order is correct to the extent of confirming demand of Service Tax alongwith interest and imposing equal mandatory penalty under Section 78 of the Act. However, appeal is allowed to the extent of 25% reduced penalty as held in para above.

९. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal filed by the appellant is disposed off in above terms.

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अधीक्षक (अपील)

(कुमार संतोष)
आयुक्त (अपील)

By Speed Post

To,

M/s. Pooja Pipes & Structures Pvt. Ltd., Survey No. 963-1, Morbi Road, N.H. 8/A, Juna Katariya, Samakhiyali (Kutch)

मेसर्स पूजा पाइप & स्ट्रक्चर प्रा. ली., सर्वे नं ९६३ - १, मोरबी रोड, एन एच - ८, जूना कटारिया, सामखियालि - कच्छ

Copy to :

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Gandhidham.
- 3) The Assistant Commissioner, GST & Central Excise, Anjar- Bhachau Division, Gandhidham.
- 4) Guard File.

