



::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 / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्ट्रार डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /  
Appeal / File No.  
V2/3/GDM/2017

मूल आदेश सं /  
O.I.O. No.  
17/JC/2016

दिनांक /  
Date  
27-09-2016

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

**KCH-EXCUS-000-APP-191-2017-18**

आदेश का दिनांक /  
Date of Order: 21.02.2018

जारी करने की तारीख /  
Date of issue: 26.02.2018

Passed by **Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot**

अधिसूचना संख्या २६१७ दिनांक (टी.एन) शु.उ.के-२०१७/१० २०१७ के साथ पढे बोर्ड ऑफिस आदेश सं १६ दिनांक टी.एस-२०१७/०५.११ के अनुसरण में २०१७, श्री ललित प्रसाद, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क, राजकोट को वित्त अधिनियम १९९४ की धारा ८५ की १९४४ केन्द्रीय उत्पाद शुल्क अधिनियम, के अंतर्गत दर्ज ३५ धाराकी गई अपीलों 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, Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot 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 N.B. Security Service,, Plot No. 46, Geeta Society,,Ward - 9/B, Bharatnagar,,Gandhidham - Kutch,**

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 अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaūmali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

- 85
- (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, 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 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 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 is 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) 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.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) 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, बशर्त 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 नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी 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 परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ससद 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 प्रसस्करण 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 केंद्रीय उत्पाद शुल्क के फुट (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 ड्यूटी 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 संमयाविधि 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 केंद्रीय 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 केंद्रीय 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, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेटी कार्य से बचने के लिए यथास्थिति अपीलौय 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, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 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-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलौय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में 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.



**:: ORDER-IN-APPEAL ::**

Being aggrieved with Order-in-Original No. 17/JC/2016 dated 27.09.2016 (**hereinafter referred to as "impugned order"**) passed by the Joint Commissioner, Central Excise & Service Tax, Kutch Commissionerate, Gandhidham (**hereinafter referred to as "the Lower Adjudicating Authority"**), **M/s. N. B. Security Services**, Plot No: 46, Geeta Society, Ward 9B, Gandhidham (**hereinafter referred to as "the appellants"**) have filed the present appeal.

**2.1** Issue in brief is that on the basis of intelligence collected it was found that the appellant, who are registered as providers of various taxable services under the Finance Act, 1994 and the rules made thereunder, were providing the taxable services to their various customers, but were not paying the correct Service Tax to the government exchequer. Therefore, inquiry was initiated, which culminated into issuance of Show Cause Notice No. V.ST/AR-I/GDM/74/ADC/2015 dated 20.04.2015 wherein it was proposed to recover short-paid Service Tax for the period from October, 2009 to March, 2014 from the appellant under proviso to Section 73(1) of the Finance Act, 1994 along with interest. Also penalties under Section 70, 76, 77 and 78 *ibid* were proposed to be imposed.

**2.2** The said Show Cause Notice dated 20.04.2015 was adjudicated by the Lower Adjudicating Authority vide his impugned order wherein he confirmed the demand of Service Tax of Rs. 18,41,438/- along with interest, imposed equivalent penalty of Rs.18,41,438/- under Section 78 of the Finance Act, 1994 apart from imposing penalty under Section 70 & 77 *ibid*. However, no penalty under Section 76 *ibid* was imposed.

**3.** Being aggrieved with the impugned order, the appellant have preferred the present appeal, along with application seeking condonation of delay, wherein they stated that the value of taxable services has been reflected in their books of account, duly audited by independent auditor; that financial year wise outstanding Service Tax liability was also shown; that due to financial crunch they could not discharge their Service Tax liability; thus there was no suppression of facts; that short payment of



Service Tax of Rs. 18,41,438/- has been wrongly arrived since in the Financial Year 2010-11 and 2011-12 the demand has been raised by considering the income booked under Form 26AS instead of considering the income booked under audited books of accounts.

4. The Central Board of Excise and Customs vide Notification No. 26/2017-Cx(NT) dated 17.10.2017 read with Order No. 05/2017-Service Tax, dated 16.11.2017, has appointed undersigned as appellate authority under Section 35 of Central Excise Act, 1944 for the purpose of passing orders in this appeal.

5. Accordingly, personal hearing in the matter was held on 01.02.2018 which was attended by Shri Nirav Patel, Chartered Accountant on behalf of the appellant who made additional submission, which were taken on records.

6. In their additional submissions, filed during personal hearing, the appellant while carrying forward the argument of non invocation of extended period, on the grounds that the said outstanding Service Tax was being reflected in their books of account, placed reliance on the case law of **Punjab Laminates (P) Limited - 2006 (5) STT 432 (SC)** and other Supreme Court's judgment in the case of **Rajasthan Spinning & Weaving Mills, Pepsi Foods Limited, Indian Aluminum Company Limited** and contended that presence of mens rea is absolutely necessary ingredient for imposing penalty under Section 78 of the Finance Act, 1994 and that they were trying to pay the Service Tax as and when they could manage the funds. Therefore they requested to set aside the penalty under Section 78 *ibid*.

7.1 Subsequently, Shri Nirav Patel, Chartered Accountant and Authorized Representative of the appellant, vide his email dated 06.02.2018 filed further submissions wherein he stated that since the Service Tax has been demanded on the basis of amounts reflected in Form 26AS for the Financial Years 2009-10 and 2011-12 which is inclusive of Service Tax and the same is liable to be deducted for arriving at the Service Tax liability; they provided the following tabulation:



F.Y.	Service Value as per books of Account	Rate of ST	ST Payable	Total Bill Value	Service value as per department	Diff
	(a)	(b)	(c)=(a)*(b)	(d)	(e)	(f)=(e)-(d)
2009-10	7,121,461	10.30%	733,510	7,854,971	7,482,843	(372,128)
2011-12	14,275,257	10.30%	1,470,351	15,745,608	16,552,915	807,307

**7.2** They submitted that in the case of F.Y. 2009-10 negative difference of Rs. (3,72,128) reflects on account of bills raised but not reflected in 26AS which shows that they have offered income even though same is not reflected in 26AS and also raised service tax liability on the same; that in the F.Y. 2011-12 there is positive difference of Rs. 8,07,307/- in case of Regen Powertech Private Limited who has booked its expenditure in F.Y. 2011-12 even though bills of 8,00,000/- is raised in succeeding financial year; that therefore they requested to reduce service tax liability in the above referred financial years.

**7.3** Shri Nirav Patel, Chartered Accountant and Authorized Representative of the appellant vide his email dated 16.02.2018 while referring to earlier email date 06.02.2018 stated that there was a typographical error in the table as they have mentioned F. Y. 2009-10 instead of F. Y. 2010-11.

**Discussion and findings:**

**8.** I have gone through the entire case records and the submissions made orally, in writing as well as through email. I find that impugned order dated 27.09.2016 was served on the appellant on 05.10.2016 whereas they have filed appeal on 03.01.2017 thus delayed by 30 days. The appellant have sought the condonation of delay on the grounds that the appeal was required to be filed at Ahmedabad and as they are from Gandhidham therefore they were searching some professional based at Ahmedabad who can handle the matter. I find that they have made out genuine case for condonation of delay, therefore in exercise of powers vested in me vide proviso to Section 35 of the Central Excise Act, 1944, made applicable in Service Tax matters vide Section 83 of the Finance Act, 1994, I condone the delay of 30 days.

**9.** I also find that the appellant has already deposited an amount of Rs. 2,50,000/- during investigations, which have been

appropriated in the impugned order, therefore the same is in excess of mandatory 7.5% of the duty. Thus I find that there is sufficient compliance to requirement of Section 35F(i) of Central Excise Act, 1944, made applicable in Service Tax matters vide Section 83 of the Finance Act, 1994. Therefore, I proceed to decide the appeal on merits.

**10.** I find that appellant have agitated only imposition of penalty under Section 78 of the Finance Act, 1994 and the quantification of demand of Service Tax for the Financial Year 2010-11 & 2011-12.

**11.1** On the point of imposition of penalty under Section 78 of the Finance Act, 1994, the appellant have contended that since the amount of Service Tax was shown in their Balance Sheet therefore, there is no suppression of facts and hence no penalty is imposable. I find that appellant are registered as providers of taxable service for which they have registered themselves and have also undertook to abide by the provisions of the Finance Act, 1994 and the rules made thereunder. I find that Section 68 *ibid* clearly lays down onus on the appellant to pay the Service Tax at the rates and the period as may be prescribed. Rule 6 of Service Tax Rules, 1994 stipulates the frequency of payment of Service Tax. Rule 7 *ibid* stipulates the filing of return in the prescribed form. However, I find that the Noticee had neither deposited the due Service Tax in the manner prescribed in the statue nor they have filed ST-3 returns.

**11.2** Thus, merely mentioning the amount in the Balance Sheet and not intimating in any form as prescribed to the department, cannot absolve the appellant from the liability cast upon them in the Finance Act, 1994 and the Service Tax Rules, 1994. Thus, this act is nothing but willful suppression of facts and is in contravention of the provisions of the Finance Act, 1994 and Service Tax Rules, 1994. Therefore, I find that provision for demand under extended period is available in this case. Thus, all necessary ingredients required for extended limitation is clearly applicable in the case.

**11.3** I find that once extended period has been rightly invoked there is no escape for the appellant from the penalty under Section 78 of



the Finance Act, 1994. Therefore, I find no merit in the argument put forth by the appellant and hold that penalty is imposable on the appellants under the provisions of Section 78 *ibid*.

**12.** I find that another set of contention put forth by the appellant is that demand figures for the Financial Years 2010-11 & 2011-12 needs revision on the grounds that they are based on figures of Form 26AS which includes Service Tax component. Thus, cum-tax benefit be allowed to them. However, I find that except making this statement the appellant has not placed on records any evidence to prove that the receipts, received by them as reflected in Form 26AS, is inclusive of Service Tax. Thus, I find that cum tax benefit is not extendable in absence of any documentary evidence showing that the amount received is of inclusive of Service Tax. I find that my views are well supported by the decision of the Tribunal in the case of **Rudra Galaxy Channel Limited - 2015 (38) S. T. R. 445 (Tri. Mum)** wherein the ratio laid down by **Apex Court in the case of Amrit Agro Industries Limited - 2007 (210) ELT 183 (S.C.)** has been followed.

**13.** Accordingly, I find no reason to interfere with the impugned order and accordingly the appeal filed by the appellant is rejected in toto.

F. N. V.2/3/GDM/2017  
Place: Rajkot.  
Dated: 2.02.2018



**(LALIT PRASAD)**

COMMISSIONER, CGST & CEX, RAJKOT/  
COMMISSIONER (APPEALS-III),  
CGST & CEX, RAJKOT

**By Speed Post**

To,  
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Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Kutch.
- 3) The Commissioner, GST & Central Excise, Rajkot.
- 4) The Assistant Commissioner, GST & Central Excise, Division: Gandhidham Urban.
- 5) Guard File.