



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 / 2<sup>nd</sup> 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 काइन संख्या Appeal File No.	मूल आदेश सं / OIO No.	दिनांक / Date
	V2/16/GDM/2017	11/ST/AC/2016-17	05.12.2016

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

**KCH-EXCUS-000-APP-198-2017-18**

आदेश का दिनांक / Date of Order:	<b>12.03.2018</b>	जारी करने की तारीख / Date of issue:	<b>14.03.2018</b>
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग) उपर अयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जमनगर / गंधीधाम। द्वारा उपरोक्तित जारी मूल आदेश से उत्पन्न।  
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 :-  
**1.M/s. Weighup Instrument, Plot No. 131, Shop No. 03,,Sector 1A,, Gandhidham.**

इस आदेश(आपील) से व्यभिक्त कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त अधिकारी / अधिकारण 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 अपीलार्थ न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अपिलेशन, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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) विशेष बेंच न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण की विशेष बेंच, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जाती 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 बयान गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामाली भवन असावा अहमदाबाद-380016 को की जाती चाहिए।  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलार्थ न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अन्तर्गत निर्धारित फिल सट्टे फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाता चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा उत्पाद की सीमा और न्यायालय तक उपरोक्त, रुपा 5 लाख या उससे कम, 5 लाख रुपा या 50 लाख रुपा तक अथवा 50 लाख रुपा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति जमाकरा करे। निर्धारित शुल्क का अग्रतान, संबंधित अपीलार्थ न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वोच्च बैंक के बैंक द्वारा जारी रेकॉग्निड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का अग्रतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलार्थ न्यायाधिकरण की शाखा स्थित है। अग्रतान आदेश (एट ओर) के लिए आठपान-पर के साथ 500/- रुपा 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/ruand 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/-

(iv) अपीलार्थ न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिन आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में अग्रतान को (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा उत्पाद की सीमा और न्यायालय तक उपरोक्त, रुपा 5 लाख या उससे कम, 5 लाख रुपा या 50 लाख रुपा तक अथवा 50 लाख रुपा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति जमाकरा करे। निर्धारित शुल्क का अग्रतान, संबंधित अपीलार्थ न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वोच्च बैंक के बैंक द्वारा जारी रेकॉग्निड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का अग्रतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलार्थ न्यायाधिकरण की शाखा स्थित है। अग्रतान आदेश (एट ओर) के लिए आठपान-पर के साथ 500/- रुपा 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 टर्न की गयी अपील, सेवाकर नियमावली, 1994 के नियम 9(2) एवं 9(2A) के तहत विधिवत पत्र ST-7 में की जा सकती एवं उसके साथ आवक, केन्द्रीय उत्पाद शुल्क अध्याय आवक (अपील), केन्द्रीय उत्पाद शुल्क अध्याय अधीन अपील की प्रतियां संलग्न कीं। (जहाँ से एक प्रति प्रमाणित होनी चाहिए) और अनुसूची द्वारा सहायक अनुसूची अध्याय उत्पाद शुल्क अध्याय अधीन अपील के अपीलीय न्यायाधिकारण को आवेदन टर्न करने का निर्देश देी जाने अपील 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 (सेलैट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35ए के अंतर्गत जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस अपील के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर जमा के 10 प्रतिशत (10%), जब साथ एवं जुर्मना विवादित है, या जुर्मना, जब केवल जुर्मना 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।**

- (i) **केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मांग किया गए शुल्क' में निम्न शामिल है**
  - (ii) धारा 11 डी के अंतर्गत रकम
  - (iii) सेलैट जमा की गयी गई राशि
  - (iv) सेलैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के फांलन वित्तीय (स. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारणीय स्थान नहीं एवं 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 Central Credit taken;
- (iii) amount payable under Rule 6 of the Central 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 अपील की पुनरीक्षण प्रक्रिया निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पारलक के अंतर्गत अर्ध अधि, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, पार्क स्ट्रीट, जीवन टैप अवन, संसद भवन, 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 अर्ध गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अर्ध गृह से दूसरे अर्ध गृह पारगमन के दौरान, या किसी अर्ध गृह में या अर्ध गृह में माल के प्रसंकरण के दौरान, किसी कारखाने या किसी अर्ध गृह से 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 विधिवत में प्रयुक्त कच्चे माल पर भरी 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 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) मुद्रित/अमुद्रित माल के उत्पाद शुल्क के भुगतान के लिए जो सुदृढ़ क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत लागू की गई है और ऐसे अपील जो आवक (अपील) के द्वारा वित्त अधिनियम (स. 2), 1998 की धारा 105 के द्वारा निर्यात की गई लॉजिस्टिक्स समर्थकियों पर वा बंद में प्रतिक्रिया की गई है। / 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. 105 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां पत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस अपील के संवेदन के 3 महीने के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल अपील व अपील अपील की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत विधिवत शुल्क की अदायगी के साथ-साथ के जी 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 is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस अपील में कई मूल अपीलों का समावेश है तो प्रत्येक मूल अपील के लिए शुल्क का भुगतान, उपरोक्त धारा में किया जाना चाहिए। इस लागू के होने पर भी की निर्यात पत्रों को अपने के लिए स्थानित अपीलीय न्यायाधिकारण 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scripps work if excising Rs. 1 lakh fee of Rs. 100/- for each

(E) प्रशासकीय न्यायालय शुल्क अधिनियम, 1975 के अनुसूची-1 के अनुसार मूल अपील एवं समस्त अपील की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क दिक्रि तला 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 न्यायाधिकारण (न्याय विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले नियमों की और 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 दायित्व करने से संबंधित विवरण और संबंधित प्रारूपों के लिए, अपीलीय वित्तीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) की देख लनी है। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

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

M/s. Weighup Instrument, Plot No. 131, Shop No. 03, Sector-1A, Gandhidham (hereinafter referred to as 'the appellant') holding Service Tax Registration No. AAAPW5331LSD001 has filed this appeal against Order-In-Original No. 11/ST/AC/2016-17 dated 05.12.2016 (hereinafter referred to as 'impugned order'), passed by the Assistant Commissioner, Service Tax Division, Gandhidham (hereinafter referred to as "the lower adjudicating authority").

2. The brief facts of the case are that the appellant having Service Tax Registration under the category of "Business Auxiliary Services, Technical Inspection and Certification Agency Services, Maintenance or Repair Service & Other taxable services – other than the 119 listed. During the course of audit, it was found that for the period from April, 2011 to December, 2012 the appellant has filed VCES declaration and paid Service Tax dues and obtained Service Tax registration on 24.12.2013. The appellant filed Service Tax return for the period from October-2012 to March, 2013 on 31.12.2013, which was due on 10.09.2013, for the period April, 2013 to September, 2013 on 16.12.2014, which was due on 25.10.2013. Even though the appellant filed Service Tax returns late, they did not pay late fee/ penalty as required under Section 70 of the Finance Act, 1994 (hereinafter referred to as 'the Act') stating that they have obtained Service Tax registration on 24.12.2013 only and had filed VCES and therefore, immunity from penalty for late filing of Service Tax returns is available to them as the last date of payment of 'tax dues' under VCES was 31.12.2014. (though the same was not available to them as per the provisions of VCES, 2013)

2.1 The audit also revealed that the appellant had provided services to SEZ units and claimed *ab-initio* exemption under Notification No. 40/2012-ST dated 20.06.2012 as amended / superseded vide Notification No. 12/2013-ST dated 01.07.2013 and Notification No. 7/2014-ST dated 11.07.2014; that appellant was required to follow the procedure prescribed under Notification No. 40/2012-ST dated 20.06.2012 for the period prior to 01.07.2013, which they failed to follow and A-1 declaration was not available. After 01.07.2013, the appellant was required to follow the procedure prescribed under Notification No. 12/2013-ST dated 01.07.2013 which also failed to follow since A-1 was not available. Therefore, it was alleged that the appellant was not eligible for *ab-initio* exemption from payment of Service Tax on the services provided to the SEZ and Service Tax of Rs. 22,247/- was required to be recovered from them along with interest under proviso to Section 73(1) and Section 75 of the Act, respectively.

3. Show Cause Notice No. VI(a)ST/08-03/C-III/2016-17 dated 28.06.2016 was issued to the appellant by the Assistant Commissioner, Central Excise, Audit-III, Rajkot wherein it was proposed to recover Service Tax of Rs. 22,247/- under Section 73(1) of the Act along with interest under Section 75 of the Act, late fee of Rs. 20,000/- on each S.T.-3 returns late filed. It was also proposed to impose penalty of under Section 77, 76 and 78 of the Act upon the appellant. The said Show Cause Notice was decided by the lower adjudicating authority vide the impugned order wherein he confirmed demand of Service Tax of Rs. 22,247/- under Section 73(1) of the Act along with interest under Section 75 of the Act. The lower adjudicating authority also imposed late fee of Rs. 40,000/- under Section 70 of the Act for late filing of two S.T.-3 returns but did not impose any penalty under Section 76 of the Act; that he imposed penalty of Rs. 5,000/- under Section 77 of the Act and a penalty of Rs. 22,247/- under Section 78 of the Act on the appellant.

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

(i) The lower adjudicating authority erred in denying the exemption from Service Tax in respect of services provided to SEZ when there is not dispute over the supply to SEZ. When the substantial condition regarding supply of service to SEZ is not disputed, denial of exemption for want of declaration in Form A-1 and A-2 is not justified and thus the impugned order is liable to be set aside.

(ii) The allegation of evasion of Service Tax can be made only if it is proved that the services were not provided to SEZ. Therefore, extended period of limitation is not invocable merely because declaration in Form A-1 and A-2, which were required to be arranged by the service recipient, were not available with them and therefore the entire demand is time barred.

(iii) Since the entire demand is not sustainable, demand of interest and levy of penalty ordered by the lower adjudicating authority is also not sustainable. The lower adjudicating authority erred in imposing late fee without giving due consideration to the submissions made by the appellant.

5. Personal hearing was attended by Shri Vikas Mehta, Consultant, wherein he reiterated the grounds of appeal and submitted that their services to SEZ were exempted ab-initio; that since services were exempted, demand can't



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survive; that demand is time barred also; that for demand of Rs. 22,967/- penalty of Rs. 20,000/- is very high; that they are very small service provider and penalty of this high amount will kill them; that he request to drop the penalty imposed on them or to reduce it to minimum and their appeal may be allowed.

5.1 The appellant made written submission stating that demand of Service Tax of Rs. 22,247/- is not tenable since the Show Cause Notice itself admits that service for which Service Tax is demanded was provided by the appellant to service recipients in Kandla Special Economic Zone and thus substantial requirement of Notification No. 12/2013-S.T. dated 01.07.2013 is duly satisfied; that the demand of Service Tax is made only on the ground that authorization issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise as the case may be, in Form A-2 that were produced by the appellant in respect of services provided by them to units located in KASEZ were for subsequent period; that substantive requirement of receipt of service by an unit located in a SEZ is duly satisfied by them and they relied upon decision reported as 1991 (55) E.L.T. 437 (SC); that since there is no dispute regarding receipt of service in Kandla SEZ and subsequent production of authorization in Form A-2, the substantive requirements of exemption Notification No. 12/2013-S.T. dated 01.07.2013 are duly satisfied and thus demand of Service Tax is not tenable; that when it is admitted in the Show Cause Notice itself that services were duly received in the SEZ, intent to evade payment of Service Tax gets automatically excluded and thus, invocation of extended period and imposition of penalty of Rs. 22,247/- is not tenable. In respect of levy of late fee under Section 70 of the Act, it was submitted that they obtained Service Tax registration on 24.12.2013 and filed application under VCES on 27.12.2013 and filed S.T.-3 return for the period from October, 2012 to March, 2013 on 31.12.2013 as against the due date of filing ST-3 return on 10.09.2013; that they could not have filed ST-3 return prior to taking registration and thus the allegation regarding late filing of return by 112 days is not correct and late fee of Rs. 20,000/- imposed may be quashed; that as per Question No. 2 of FAQ dated 08.08.2013 published by CBEC, declarant shall get immunity from payment of late fee/ penalty for delay in filing of return; that for late filing of return from April, 2013 to September, 2013 they were under a bona fide belief that no return is required to be filed when there was no tax liability as per the provisions of Rule 7C of the Service Tax Rules, 1994 and they prayed to waive the late fee.

**FINDINGS:**

6. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made during personal hearing. The issue to be decided in the present appeal is as to whether the appellant in the fact and circumstances of the case, is liable to pay Service Tax, interest, late fees and penalties for non-observance of procedures laid down under exemption Notification or not ?

7. I find that the appellant had obtained Service Tax registration on 24.12.2013 and filed VCES declaration on 27.12.2013 to pay due Service Tax for the period from April, 2011 to December, 2012, which was accepted by the Department. It is a fact that VCES, 2013 was introduced by the Govt. vide Notification No. 10/2013-S.T. dated 13.02.2013 and defaulters were required to make truthful declaration of all pending dues from 1<sup>st</sup> October, 2007 to 31<sup>st</sup> December, 2012. It is on record that the period of dispute involved in the present case is from October, 2012 to September, 2013. The appellant declared their Service Tax liability upto December, 2012 in their VCES declaration. For the liability starting from January, 2013 onwards, they filed S.T.-3 returns for the period from January-2013 to March, 2013 and from April to September, 2013 allegedly late by 112 days and 417 days respectively. The requirement of declarations in Form A-1 & A-2 is to be fulfilled by the appellant and they have fulfilled this requirement. Notification No. 40/2012 dated 20.06.2012 prescribes exemption by way of refund of service tax paid on the specified services received by SEZ units or the developer and used for the authorized operations and the person liable to pay Service Tax had option not to pay the Service Tax *ab initio*, subject to the conditions and procedures as prescribed under Notification No. 40/2012-ST. The exemption from payment of Service Tax can be claimed by units located in a Special Economic Zone i.e. SEZ Unit or Developer of SEZ and used for the authorized operations from the whole of the Service Tax, education cess and secondary and higher education cess leviable thereon by way of refund. The law provided remedy to either pay Service Tax and claim refund or not to pay Service Tax *ab-initio*, subject to the conditions and procedure as stated in para 3(I) to 3(IV). The exemption either by way of refund or *ab-initio* under Notification No. 42/2012-ST can be claimed by SEZ unit or Developer of SEZ unit only whereas appellant is neither SEZ unit nor Developer of SEZ. Therefore, the appellant was required to pay Service Tax and then claim refund by following the conditions and procedures as laid down under Notification No. 40/2012-ST dated 20.06.2012.

7.1 It is on record that the appellant filed Service Tax returns late and they also did not pay Service Tax claiming exemption under Notification No. 40/2012-ST, as amended, which was not applicable to them and Service Tax was payable by the

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 appellant. It is on record that the appellant had filed required Service Tax returns but had claimed exemption from payment of Service Tax wrongly; however, there is no suppression of fact etc. on their part. It was for the department to undertake scrutiny of such claims in time and deny the wrong exemption claimed by the appellant. In absence of any suppression of fact etc. with intent to evade payment of tax on part of the appellant, extended period cannot be invoked in this case. ST-3 returns were filed by the appellant on 31.12.2013 and 16.12.2014 whereas SCN demanding Service Tax for the period from January, 2013 was issued on 28.06.2016, which is time barred. Accordingly, I set aside the demand of service tax beyond normal period on the ground of limitation of time. However, Service Tax for normal period is payable only with interest as per Section 75 of the Act.

7.2 Since, there is no suppression of facts, on part of appellant, with intent to evade payment of duty, penalty under Section 78 of the Act is also set aside.

8. The appellant has vehemently argued that they have got Service Tax registration on 24.12.2013 and thus, late filing of return for the period from October, 2012 to March, 2013 is obvious and as per VCES scheme they got immunity from payment of late fee/ penalty for delay in filing of return. I find that the arguments advanced by the appellant are devoid of merits in as much as that VCES provisions were/are applicable for the period upto December, 2012 and not from January, 2013 and they have misconstrued the provisions of VCES, 2013. The relevant provision of VCES, 2013 is re-produced below for ready reference:

*Procedure for making declaration and payment of tax dues.*

**107.** (1) *Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.*

(2) *The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.*

(3) *The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent. of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.*

(4) *The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014:*

*Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.*

(5) *Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the*



provisions of the Chapter and accordingly, interest for delay in payment thereof shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-section (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4), the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

*Immunity from penalty, interest and other proceeding.*

**108.** (1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter.

(2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration.

*(Emphasis Supplied)*

8.1 In view of the above provisions, it can be seen that the appellant got immunity from late fee under VCES, 2013 is limited to the period of scheme i.e. upto December, 2012. In the instant case, the lower adjudicating has imposed late fee under Section 70 of the Act read with Rule 7C of the Rules, which is reproduced as under: -

**7C. Amount to be paid for delay in furnishing the prescribed return. -**

(1) 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 of-

- (i) fifteen days from the date prescribed for submission of such return, an amount of five hundred rupees;
- (ii) beyond fifteen days but not later than thirty days from the date prescribed for submission of such return, an amount of one thousand rupees; and
- (iii) beyond thirty days from the date prescribed for submission of such return an amount of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return:

*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 Act:*

*Provided further that where the assessee has paid the amount as prescribed under this rule for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded.*

*Provided also that where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty.*

8.2 I find that the appellant filed ST-3 return for the period from January, 2013 to March, 2013 on 31.12.2013. It is a fact that due date was extended by the Central



Government to 10.09.2013 vide Order No. 4/2013-ST dated 30.08.2013. Further, the appellant had got immunity from filling return for the period upto December, 2012. Hence, penalty can't be imposed for not filing return for the period from October, 2012 to December, 2012. ST-3 Return covering period from January, 2013 to March, 2013 was required to be filed on or before 10.09.2013 but was actually filed on 31.12.2013, therefore, the appellant is required to pay late fee under Section 70 of the Act read with Rule 7C of the Rules, which is worked out to be Rs. 9,200/-. Hence, I reduce the quantum of late fee for filing of said ST-3 return to Rs. 9,200/- as there is delay of 112 days only and penalty of Rs. 20,000/- imposed by the lower adjudicating authority is set aside.

8.3 As far as filing of ST-3 Return for period from April-2013 to September-2013 is concerned, the return for this period was filed on 16.12.2014 as against the due date of 25.10.2013 i.e. delay of more than a year. The appellant's contention that they had under bona fide belief that no return was required to be filed when there was no tax liability is not correct. I find that the appellant had liability of payment of Service Tax as the exemption from payment of service tax was available to them by way of refund only. However, the appellant did not pay service tax and is now trying to justify non-filing of return for the period from April, 2013 to September, 2013 on this ground. In terms of proviso to Rule 7C of the Service Tax Rules, the appellant is liable to pay late fee of Rs. 20,000/- for late filing of this return and I hold so.

9. In view of above facts, I modify the impugned order as stated in Para 7, 7.1, 7.2 and Para 8.2 of this order.

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

9.1. The appeal filed by the appellant is disposed off in above terms.

*(Handwritten Signature)*  
(कुमार संतोष)  
आयुक्त (अपील्स)

By Regd. Post AD

To,

M/s. Weighup Instrument,  
Plot No. 131, Shop No. 03, Sector-1A,  
Gandhidham

मे. वेअप इन्स्ट्रुमेंट्स,  
प्लॉट संख्या १३१, शॉप नंबर ०३, सेक्टर-१ए,  
गांधीधाम.

**Copy for information and necessary action to:**

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad zone, Ahmedabad
- 2) The Commissioner, GST & Central Excise, Kutch Commissionerate, Gandhidham.
- 3) The Assistant Commissioner, GST & Central Excise Division, Gandhidham.
- 4) Guard File.