



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

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक / Date
	V2/242/RAJ/2016	05/ADC/PV/2016-17	30.08.2016

Handwritten notes: 6373 & 6374, 6575, 45 & 49

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

RAJ-EXCUS-000-APP-138-2017-18

आदेश का दिनांक / Date of Order: 11.12.2017 जारी करने की तारीख / Date of issue: 12.12.2017

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित / Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त, सहायक आयुक्त, उपायुक्त, सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क, सेवाकर, राजकोट / जामनगर / गांधीधाम 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 Appellants & Respondent :- M/s. Meghraj Enterprise "Siddhi Vinayak", K.P.T. Jetty Road, VadinarDist : Jamnagar-361280

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त अधिकारी / अधिकार के समक्ष अपील टाया 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 अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत निम्नलिखित तरह 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 में सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, 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 बताए गए अपीलों के अलावा सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिक, द्वितीय तल, बहमाली भवन अशांत उद्यमसंगठन, 2nd फ्लोर को की जाती चाहिए। / To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhamali Bhawan, Aarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) विधिसूची, 2001, के नियम 6 के अन्तर्गत निर्धारित किन्हीं नए फॉर्म EA-3 को चार प्रतियों में दते किताब जमा चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, जहां की सीमा और जहां का नया अंश, तथा 5 लाख या उससे कम, 5 लाख तथा 50 लाख तथा 50 लाख तथा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये तथा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति मांगना करे। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किन्हीं भी सर्वोच्च बैंक के बैंक द्वारा जारी चेक/ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। अथवा आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होता है। / 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/-

(iii) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर विधिसूची, 1994, के नियम 9(1) के अन्तर्गत निर्धारित फॉर्म S.T-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की जाती है उसकी प्रति साथ में संलग्न करे (इनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा, जहां की सीमा और जहां का नया अंश, तथा 5 लाख या उससे कम, 5 लाख तथा 50 लाख तथा 50 लाख तथा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये तथा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति मांगना करे। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किन्हीं भी सर्वोच्च बैंक के बैंक द्वारा जारी चेक/ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। अथवा आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होता है। / 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/-

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) विल अपीलियम, 1994 की धारा 86 की उप-खंड (2) एवं (2A) के अंतर्गत दायी की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म ST-7 में की जा सकती एवं उसके साथ अनुबन्ध, केन्द्रीय उत्पाद शुल्क अध्या अध्यापन (अपील), केन्द्रीय उत्पाद शुल्क द्वारा जारी आदेश की प्रतिलिपि संलग्न की (उपरोक्त से एक प्रति प्रामाणिक होनी चाहिए) और अनुबन्ध द्वारा संलग्न अध्या अध्यापन, केन्द्रीय उत्पाद शुल्क सेवाकर को अपील न्यायाधिकरण को संबोधित दायी 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 अपील न्यायाधिकरण (सेवटेड) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की विलीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील न्यायाधिकरण में अपील करते समय उत्पाद शुल्क सेवा कर साथ के 10 प्रतिशत (10%) जब्त साथ एवं जुर्माना विवादित है, का जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलित टैक्स रशि टैक्स कराई रूप में अधिक न हो। / केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'जब्त किए गए शुल्क' में विभक्त करण है।

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेवटेड जमा की गयी गई राशि
- (iii) सेवटेड जमा नियमवली के नियम 6 के अंतर्गत टैक्स

- बशर्त कि इस धारा के प्रावधान विलीय (सं 2) अधिनियम 2014 के अंतर्गत में पूर्व किसी अपील न्यायाधिकरण के अथवा विचारणीय स्थिति अर्थात् 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 lie 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 आदेश की पुनरीक्षण याचिका निम्नलिखित मामले में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रावधान के अंतर्गत अपील, भारत सरकार, पुनरीक्षण आवेदन इकाई, विल सरकार, राजस्व विभाग, जॉर्ज मॉडियन जीवन डीप बिल्डिंग, पार्लामेंट स्ट्रीट, न्यू देहली-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.

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 जाल के किसी नुकसान के मामले में, जहां नुकसान किसी जाल 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 जाल के प्रसरण के दौरान, किसी कारखाने या किसी भंडार गृह में भारत 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 जाल के विनिर्माण में प्रयुक्त करने जाल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of 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 जाल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) अतिरिक्त उत्पाद के उत्पादन शुल्क के अंतर्गत के लिए जो हवाई क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और एते आदेश जो अनुबन्ध (अपील) के द्वारा विल अधिनियम (सं 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा संशोधन पर या बाद में जारी किया गयी 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. 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) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशोधन 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 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 O/O 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 is 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 दूध में किया जाना चाहिए। इस (सं) के होते हुए भी की निम्न परी कराये से बचने के लिए संशोधनित अपील न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना है। / In case, if the order covers various numbers of order- in Original fee for each O/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 existing Rs. 1 lakh fee of Rs. 100/- for each.

(E) संशोधनित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं संशोधन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट चिप 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 अपील न्यायाधिकरण (सेवटेड) नियमवली, 1982 में वर्णित एवं अन्य संबंधित मामलों को अभिहित करने वाले विषयों की और भी ध्यान आकर्षित किया जाना 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 अपील न्यायाधिकरण को अपील दायी करने में संबंधित संपर्क, विस्तृत और अधिकतम प्रावधानों के लिए, अपील न्यायाधिकरण 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. Meghraj Enterprise, "Siddhi Vinayak", K.P.T Jetty Road, Vadinar, Taluka: Lalpur, Dist. Jamnagar (Gujarat) 361 280 (*hereinafter referred to as 'the appellant'*) has filed the present appeal against Order-In-Original No. 05/ADC/PV/2016-17 dated 30.08.2016 (*hereinafter referred to as 'the impugned order'*), passed by the Additional Commissioner, Central Excise & Service Tax, Rajkot (*hereinafter referred to as "the lower adjudicating authority"*).

02. Briefly stated the facts of the case are that the appellant collected the service tax but failed to deposit the same to the Government exchequer and therefore Show Cause Notice No. V.ST/AR-JAM/262/Commr/2013 dated 22.10.2013 covering period o 2013-14 to 2015-16 was therefore issued to the appellant. Vide the impugned order, demand of Service Tax of Rs. 15,56,565/- under Section 73(1) of the Finance Act, 1994 (*hereinafter referred to as "the Act"*); interest under Section 75 of the Act; penalty of Rs. 80,000/- under Rule 7C(1) of the Service Tax Rules, 1994 read with Section 70 of the Act; and penalty of Rs.7,78,283/- under Section 78(1) of the Act was imposed by the lower adjudicating authority, however, the demand of Service Tax of Rs. 68,743/- as well as proposal for imposing penalty under Sections 76 and Section 77 of the Act was dropped.

3. Being aggrieved with the impugned order, the appellant preferred appeal on the grounds, *inter alia*, that the Show Cause Notice is time-barred; that the appellant had already been issued Show Cause Notice dated 22.10.2013 demanding Service Tax on the taxable service provided by the appellant during the period from 2007 to 2013; that the impugned order demanding Service Tax beyond one year is bad in law and hence, liable to be set aside; that in the following case laws it has held that the extended period of limitation cannot be invoked for issuing Show Cause Notice pertaining to subsequent period :-

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|-------|------------------------------------|-----------------------------------|
| (i) | M/s. Nizam Sugar Factory | 2008 (9) S.T.R. 314 (S.C.); |
| (ii) | M/s. ECE Industries Ltd. | 2004 (164) E.L.T. 236 (S.C.); |
| (iii) | M/s. Gujarat Ambuja Exports Ltd. | 2012 (26) E.L.T. 165 (Guj.); |
| (iv) | M/s. Bhawana Motors | 2012 (28) S.T.R. 268 (Tri.-Del.); |
| (v) | M/s. Cairn Energy (I) Pvt. Ltd., | 2008 (11) S.T.R. 632 (Tri.-Bang); |
| (vi) | M/s. Ghataprabha S. S. Niyamit, | 2007(8)S.T.R.545(Tri.-Bang.); & |
| (vii) | M/s. Emerson Climate Tech (I) Ltd. | 2009(16)S.T.R782(Commr. Appl). |

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3.1 The appellant also contended that lower adjudicating authority has recorded in para 22.3.2 of the impugned order that all the details of transactions were duly recorded in the books of accounts and the Service Tax has been shown and therefore allegation of suppression cannot sustain.

4. Personal hearing in the matter was attended by Shri Vikas Mehta, Consultant wherein he reiterated the grounds made in the appeal and submitted that the Show Cause Notice is time-barred having been issued on extended time period on ground of suppression of facts etc. whereas this is second Show Cause Notice and first Show Cause Notice on this issue was also issued invoking extended time limit; that on query as to why they had not submitted statutory returns even after due date he expressed his inability to explain delay in filing returns, but stated that Service Tax collected has been paid later on; on query that depositing of tax subsequently and not filing returns for, years after year are two different things, he explained that they were unable to handle things properly at that time but service tax applicable has been paid; that he requested to waive interest and penalty imposed on them as per case laws cited in appeal memorandum. Personal hearing notice was also sent to the Department, however, none appeared from department side.

FINDINGS :-

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum, and oral as well as written submissions made during personal hearing.

5.1 The issues to be decided in the present appeal is as to whether :-

- (i) the demand of Service Tax confirmed by invoking the extended period of limitation is correct or not;
- (ii) penalty under Section 78 is imposable or not; and
- (iii) penalty under Section 77 is imposable or not.

AC/MD

6. The demand in this appeal pertains to Service Tax collected, but not deposited by the appellant. The appellant has accepted demand of Service Tax and also paid voluntarily without protest. However, they are challenging the Show Cause Notice on ground of that Show Cause Notice for the previous period has already been issued and confirmed and therefore, the issue was in knowledge of the Department, and hence suppression of facts cannot be invoked now.

6.1 I find that the various case laws cited by the appellant are not applicable in instant case, as facts in those cases and the one on hand are different, in as much as the assessee has collected Service Tax but failed to deposit the same to the Government exchequer. The appellant has been found doing this unlawfully second time. Service Tax, on both the occasions, was deposited by the appellant only after initiation of the coercive proceedings by the Department and therefore, plea of the appellant that the demand is time-barred is legally not tenable as this is nothing but a fraud committed by the appellant.

6.2 I also find that the appellant had admittedly not filed statutory Service Tax returns during the relevant period and therefore the fact of non-filing of returns coupled with unlawful retention of Service Tax already collected but not deposited in the Government exchequer is a serious offence on the part of the appellant. The contention of the appellant that the Department was in knowledge of the non-payment of Service Tax, cannot be accepted when they failed to file Service Tax Returns and attempted not to let department know anything about them since under no circumstances Service Tax collected can be allowed to be pocketed by the appellant.

6.3 In this regard, the Hon'ble Gujarat High Court in the case of M/s. IWI CROGENIC VAPORIZATION SYSTEM (I) P. LTD. reported as 2017 (47) S.T.R. 209 (Guj.) has, *inter alia*, held as under :-

"5. It can thus be seen that the Tribunal came to the factual finding that the assessee had recovered Service Tax from service recipients. The assessee was also registered with the Central Excise Department for providing several services including the service in question on which service tax was required to be paid on reverse charge basis. It was held that having collected such tax from the service recipients and having been registered in respect of such service, the assessee was required to pay Service Tax to the Excise Department. The assessee had not filed requisite periodical returns and the fact of non payment of Service Tax came to light of the Department only as a result of special investigation. The Tribunal also noted that assessee had not pleaded any case of financial hardship.

6. Under the circumstances, the Tribunal correctly rejected the assessee's request for deleting the penalty. The question whether any Service Tax was not paid on account of fraud, wilful

misstatement, collusion, suppression of facts or contravention of the provisions with intention to evade payment of Service Tax is essentially a question of fact. The Tribunal having noticed the admitted facts and having come to the conclusion regarding such element of mens rea, we do not find any question of law arising.

7. Section 80 of the Act provides that notwithstanding anything contained in Section 76, Section 77 or Section 78, no penalty would be imposable when the assessee proves that there was reasonable cause for the failure to pay the tax. In the present case, assessee could not demonstrate the reasonable cause for not paying the tax. As noted by the Tribunal, case of financial hardship was not even pleaded."

[Emphasis supplied]


6.4 The facts and circumstances of this case are not simple, as the appellant is trying to make it now as the appellant had collected Service Tax from service recipients, but had illegally retained the same by not depositing into the Government exchequer and deposited only when department pointed it out to them. Therefore, invocation of the extended period of demand of Service Tax, and also imposition of penalty under Section 78 of the Act are very much in order, legal and proper.

6.5 As regards imposition of late fee under Section 70 read with Rule 7(C) of the Rules for delay in filing of returns, I find that the appellant has not contested allegation and in fact has accepted non filing of returns by due dates and delaying it by months and months. I, therefore, uphold imposition of late fee also by the impugned order.

7. In view of above, I uphold the impugned order and reject the appeal.

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

7.1 The appeal filed by the appellant is disposed of in above terms.


(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Meghraj Enterprise, "Siddhi Vinayak", K.P.T Jetty Road, Vadinar, Dist. Jamnagar (Gujarat) 361 280.

मे. मेघराज एंटरप्राइज़, सिद्धि विनायक,
KPT जेटी रोड, वाडिनर,
जिल्ला: जामनगर - ३६१२८०.

Copy of information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Rajkot.
- 3) The Additional Commissioner, GST & Central Excise, Rajkot,
- 4) The Assistant Commissioner, GST & Central Excise, Division, Jamnagar.
- 5) Guard File.