



::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 Bhavası, रेस कोर्स रिंग रोड, / Race Course Ring Road,



राजकोट / Rajkot - 360 001

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रजिस्टई डाक ए. डी. द्वारा :-क अपीत / भाइत संस्ता। Appeal / File No. V2/31/RAJ/2017 (61/01)

मूल आदेश सं / OLO No. दिनाम /

Date

DC/JAM/ST/04/2016-17

30.11.2016

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

RAJ-EXCUS-000-APP-160-2017-18

आदेश का दिनांक / Date of Order:

03.01.2018

जारी करने की तारीख / Date of issue:

08.01.2018

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

मा आप्रका संदुक्त अप्रकार अप्रदुक्ता अस्रदक्त अप्रुक्त, केन्द्रीय उत्पाद शुन्का संसाकर, राजकोट / जामस्यर / संधीधासः द्वारा उपरविधित जारी सूत्र आदेश से मृजितः /

Arising out of above mentioned OiO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax.
Rejkot / Jamnager / Gendhidham

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent -M/s. Jay Hind Buildcon Pvt. Ltd.,, G.K. Complex, Khodiyar Colony, Amra B.O.,-,Jamnagar - 361 006,

इस आदेश(अपीस) से व्यक्ति कोई व्यक्ति निम्मविधित तरीके में उपयुक्त प्राधिकारी / प्राधिकाण के समक्ष अपीस 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 शुरूक केन्द्रीय उत्पाद शुरूक एवं सेवाकर अपीयीय स्थायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुरूक अधिनियम ,1944 की घारा 358 के अंतर्गत एवं विरत अधिनियम, 1994 की घारा 86 के अंतर्गत निरूतिविधिक्त मध्य की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 358 of CEA, 1944 / Under Section 66 of the Finance Act, 1994 an appeal lies to:-

वर्गीकरण मूल्यांकन से सम्बर्गियार सभी मामले सीमा शुनक, केन्द्रीय उत्पादन शुन्क एवं लेवांकन अपीतीय न्यायाधिकरण की दिशंक पीठ, देनट वर्गक म
 अतः के पुरम, मई दिल्ले, को की मानी चाहिए ।!

The special bench of Customs, Excise & Service Tax Appellete Tribunal of West Block No. 2, R.K. Puram, New Delhi in all martiers relating to classification and valuation.

(ii) उपरोक्त परिच्छेट 1(a) में बलाए गए अपीलों के अलाता शेष सभी अपीलें सीला चुनक, केंद्रीय उत्पाद बुनक एवं मेवाकर अपीलीय ल्यावाधिकरण (सिस्टेट) की परिचल क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली मधन असावी अहमदाबाद- ४८००१६ को की जाती चाहिए ४

To the West regional bunch of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2'd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380(16 in case of appeals other than as mentioned in para-1(a) above

(iii) अपीतीय न्यायाधिकरण के समक अपील प्रस्तुन करने के लिए केन्द्रीय उत्पाद शूनक (अपीत) नियमाध्यी, 2001, के नियम 6 के अंतर्गत नियाधित किए गये प्रयह EA-3 को चार प्रतियों में दर्ज किया जाना प्राकृत । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शूनक की मीन ज्याज की मीन और तथाया गया जुमीना रूपण 5 लाख या उसमें कम 5 लाख रूपण तक अथवा 50 लाख रूपण तक अथवा 50 लाख रूपण से अपिक है तो जमक 1,000/रूपये, 5,000/- रुपये अपवा 10,000/- रुपये कर नियाधित जमा शूनक की पति ससम्ब को। जिसीहत शूनक का मुनतान जबीचत प्रपीतीय न्यायाधिकरण की शाखा के शहायक जिल्ला में होना प्राहिए जहां संबंधित अपीनीय न्यायाधिकरण की शाखा नियात है। स्थानन आदेश (स्टे और) के लिए आवेदन-यन के साथ 50.0/- रूपण का नियासित शूनक जमा करता होता।

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, 3001 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 demandrinterest/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 शमक अधील, विला अधिनियम, 1994 की धात 88(1) के अंतरील सेवाकर नियमवालें, 1994, के लियम 9(1) के लंदन नियमित प्रपत्न 5.1.5 में का पतियों में की जा सकेनी एवं उसके माथ जिस आदेश के विरुद्ध अधील की सबी हो, उसकी पति साथ में शंतरन कर (उनमें से एक पति प्रमाणित होनी वाहिए) और इसमें से कम से कम एक पति के साथ, जहां सैवाकर की माँग आज की माँग और लगाना गाय जुम्होंना, स्पष्ट 5 लाख का उत्तरी कम, 5 लाख क्या पा 30 लाख स्पण तक अधात 50 लाख रुपए से अधिक है तो कमका 1,000/- रुपये, 5,000/- रूपये अगावा 10,000/- रुपये का लियोदित जान कुनक की पति संलगन कर शिर्मित शुक्त का मुख्याल, मंबियन जानी पति संलगन कर शिर्मित अपीलीय अपीलीय क्यायाधिकरण की शिर्मित वैक शुक्त दुवारा किया आजो प्रतिए । सब्दित हुप्तर का मुनताल, वैक की उस शाखा में होता शाहिए जहां सब्बित स्पानीय स्यावाधिकरण की शाखा विचल है । स्थान आदेश (स्टे ऑवेट) के लिए आवेदन-पत्र के साथ 500/- रुपय का निधारित कुनक जाने काम होगा ।/

The appeal under sub-section (1) of Section 86 of the Finance Act. 1994, to the Appellate Tribunal Shall be filled 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 Lakits or lens, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakits but not exceeding Rs. Fifty Lakits, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakits 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.5004-.

- वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) 🛎 जंतर्गत दर्ज की गरी अधील, शेवाकर नियमवाली, 1994, के विधम 9(2) एवं 9(2A) के तहत निर्धारित प्रपंत S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुक्त अथवा आयुक्त (अपीक्ष), केन्द्रीय उत्पाद शुक्क द्वारा परित आदेश की प्रतियों संसरन करें (उसमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा महारक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुक्तर सेवाकर, को अपीसीय त्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने दाने आदेश की प्रति मी साथ में संसरन करनी होगी । 7 The appeal under sub-section (2) and (2A) of the section 85 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 Exciser Service Tax so file the appeal before the Appellate Tribunal
- तीमा शुन्क, केन्द्रीय उत्पाद शुन्क एवं सेवाकर अधीनीय प्राधिकरण (सेस्टेट) के प्रति अधीनी के मामाने में केन्द्रीय उत्पाद शुन्क अधिनियम 1944 की धारा 35एन के अनर्गत, जो की विन्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी जानू की नई है, इस आदेश के पति अधीनीय प्राधिकरण में अधीन करने समय उत्पाद शुन्क/सेवा कर मान के 10 पतिशत (10%), जब मान एवं जुर्जाना विवादित है, या जुर्जाना, जब केवल जुर्जाना (11) विवादित है, वा मुगतान किया जाए, बशरों कि इस धारा के अंतरीत जना कि जाने वाली अपेक्षित देव राशि दस करोड़ स्वए से अधिक न हो।

केन्द्रीय उत्पाद बान्क एवं सेवाकर के अंतर्गत 'सांग किए गए बुन्क' से जिस्स शासित है. प्रया 11 वीं के अंतर्गत रक्त्य

शेसबेट जमा की हो गई शकत शक्ति

सेनवेट जमा नियमावानी के जियम 6 के अंतर्गत देव राम्या

- बधर्त यह कि इस धारा के प्राथमान विल्लीय (स. 2) अधिनियम 2014 के आग्रम से पूर्व किशी अधीनीय प्राधिकारी के समक्ष विचाराधील स्थरान अर्जी एवं अपील को लागू नहीं होगे।/

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 be before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or ponalty, 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 :

amount determined under Section 11 D;

amount of erroneous Cenvat Credit taken;

(60) 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.

भारत सरकार को पूनरीक्षण आवेदन : (C)

Revision application to Government of India: इस आदेश की कुरीक्षण याचिका जिल्लामिकित मामलो में, कैटीय उत्पाद शुल्क अधिजियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अयर प्रथित, मारत संस्कार, पुनरीक्षण आवेदन ईकाई, विरल मंत्रालय, राजस्व विभाग, धीकी मंजिल, जीवन दीप मवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना वाहिए। /

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:

- यदि मान के किसी नुकसान के सामने में, जहां नुकसान किसी मान को किसी कारखाने से अंडार शृह के पारसमन के दौरान या किसी अन्य कारखाने या पिर किसी एक अंडार गृह से दूसरे अंडार शृह पारसमन के दौरान, या किसी अंडार गृह में या अंडारण में मान के प्रतंस्करण के दौरान, किसी कारखाने या किसी अहार गृह में मान के मुकसान के मामले में। (0) 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
- आहत के बाहर कितों राष्ट्र का बीच की नियोज कर रहे माल के विभिन्नीण में प्रयुक्त करवें माल पर मरी गई केन्द्रीय उत्पद बुक्क के छुट (रिबेट) के मामले में, जो माहत के बाहर किसी राष्ट्र या क्षेत्र को निर्याज की नयी 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 (ii)the manufacture of the goods which are exported to any country or territory outside India.
- यदि उत्पाद शुस्क का भुगानान किए बिना भारत के बहर, नेपाल या भूटान को माल निर्याल किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty (10)
- सुनिधित उत्पाद के उत्पादन शुल्क के मुनतान के लिए जो हुयूटी केवीट इस अधिनिधम एवं इसके विविद्यन व्यवधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के दुशरा वित्त अधिनिधम (ल. 2), 1998 की धारा 109 के दुवारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं।) (iv) 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.
- उपरोक्त आवेदन की दो प्रतिश पण्ड संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपीक्ष) नियमावली, 2001. के नियम 9 के अतर्गत विनिर्देश्ट है, इस आदेश के अपेश्या के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपीन आदेश की दो प्रतिया संतरण की जानी चाहिए। ताथ है कर्मीय उत्पाद शुल्क अपिनियम, 1944 की धारा 35-EE के तहल निर्धारित शुल्क की अदायनी के शास्य के तीर पर 18-6 की प्रति (v) संसम्ब की जानी चाहिए। ई 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.
- पुनरीक्षण आवेदन के साथ निरन्तिखित निर्पारित शुल्क की अदायरी की जानी पाहिए । जहाँ संतरन रकम एक लाइ क्यों या उससे कज हो तो क्यार्थ 200/ का भुगतान किया. जाए और पदि संतरन रकम एक लाख क्यां से ज्यादा हो ती रूपये 1000 र का भुगतान किया जाएँ । (vi) The revision application shall be accompanied by a fee of Rs. 2007 where the amount involved in Rupees One Lac or less and Rs. 10007 where the amount involved is more than Rupees One Lac.
- यदि इस आदेश में नई मूल आदेशों का लगारेश है तो प्रत्येक मूल आदेश के लिए शुल्क का मुगलान, उपयोक्त देन से किया जाना चाहिये। इस तक्य के होते हुए की की तिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीकीय स्थापिकरण की एक अपील या केदीय सरकार को एक आवेदन किया जाता है। / in case, if the order covers various numbers of order- in Original, fee for each O.L.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lash fee of Rs. 100/- for each. (D)
- वधारणीपित स्वायानय शुम्क अधिनियम, 1975, के अनुसूधी। के अनुसार सूत्र आदेश एवं स्थान आदेश की प्रति पर निर्धापित 6.50 रूपये का स्थापातय शुम्क टिकिट जेंग होना याहिए। / One copy of application or O.1.O. as the case may be, and the order of the adjudicating authority shall been a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended. (E)
- গ্ৰীমা যুদক, ৰাম্ট্ৰীয় সুনাহ সুনক গ্ৰা নিবাৰত স্বাধীনীয় ন্যায়ায়িকতে (কাঠ প্ৰিয়ি) সিয়মাৱনী, 1982 ম গ্ৰামীন গ্ৰা সন্ম নৰন্মিত সামানী কা মন্মিনিত কাঠ বান নিবাৰ কাঁ और भी আন সাৰাধিত কিয়া জাত है। / Amention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982. (F)
- ५९६६ अभीलंक प्राचिकारी को अभील दाक्षित करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रकारणी के लिए, अभीलायी विमानीय वैबसाइट (G) 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. Jay Hind Buildcom Pvt. Ltd., G. K. Complex, Khodiyar Colony, Amra B. O., Jamnagar- 361 006 holding Service Tax Registration No. AABCJ9032BSD001 (hereinafter referred to as 'the appellant') has filed the present appeal against the Order-In-Original No. DC/JAM/ST/04/2016-17 dated 30.11.2016 (hereinafter referred to as 'the impugned order'), passed by the Deputy Commissioner, Central Excise, Jamnagar (hereinafter referred to as "the lower adjudicating authority").

- The appellant is engaged in providing taxable services like "Supply of Tangible Goods service", "Commercial/ Industrial Construction Service", "Site Formation, Clearance and Excavation Service", "Transport of Goods by Road Service" falling under Section 65(105) (zzzzj), (zzq), (zzza) & (zzp) respectively of the Finance Act, 1994 (hereinafter referred to as "the Act").
- The brief facts of the case are that the appellant was providing taxable services to various customers and collecting Service Tax from their service recipients, but they were not depositing the collected Service Tax into the government exchequer in time/properly. A team of officers of the Central Excise & Service Tax, Hqrs. Preventive, Rajkot, initiated an inquiry and a statement of Shri Davubhai Babubhai Ravaliya, Director of the appellant was recorded on 01.09.2015 wherein he deposed that they had not paid/ short paid Service Tax of Rs. 38,89,266/- for the financial year 2014-15 and not filed ST-3 returns for the year 2014-15; that accepting their Service Tax liability, he tendered post dated cheques of Rs. 40,00,000/-. Another statement recorded on 17.08.2016 stated that they were providing taxable as well as exempted services by way of construction of canal, dam, other irrigation work to M/s. Sardar Sarovar Narmada Nigam Limited (SSNNL) as a sub-contractor; they were also engaged in supply/sale of material/goods; that they had short paid Service Tax of Rs. 40,65,565/- including cess for the period from 2011-12 to 2014-15, though they had collected the Service Tax; that they had filed ST-3 returns for the period from April, 2013 to September, 2013 by showing NIL taxable service value and for the period from October, 2013 to March, 2014 by showing lump sum taxable service value; that they had filed ST-3 returns for the Financial Year 2014-15 belatedly during the course of investigation and by showing lump sum taxable value.

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3.1 The verification of the records/documents produced by Shri Davubhai

Babubhai Ravaliya, Director of the appellant, revealed that construction services provided by way of canal, dam or other irrigation works provided to M/s. SSNNL was falling under exempted services for the period from 01.07.2012 to 29.01.2014 (both days inclusive) by way of Notification No. 25/2012-S.T. dated 20.06.2012, 02/2014-S.T. dated 30.04.2014 and Finance Bill, 2016. The investigation carried out reconciliation of the Service Tax liability of the appellant from the year 2011-12 to 2014-15 based on audit reports, Form 26AS and copies of invoices, work orders, S.T.-3 returns for the period from 2013-14 to 2014-15, copies of income ledgers etc. which revealed that the appellant failed to discharge their Service Tax liability of Rs. 40,65,565/- for the period from 2011-12 to 2014-15. Thus, the appellant had evaded Service Tax of Rs. 40,65,565/- during the year 2011-12 to 2014-15. The appellant had late filed following S.T.-3 returns:

Period	Due date for filing of S.T3 returns	Actual date of filing of S.T3 returns	No. of days delayed
October-2013 to March-2014	25.04.2014	23.01.2015	273
April-2014 to September-2014	14.11.2014	11.12.2015	392
October-2014 to March-2015	25.04.2015	11.12.2015	230

Further, with effect from 01.07.2012 all the services, other than those mentioned in the negative list were taxable as envisaged under clause (44) of Section 65B inserted in Finance Act, 2012.

4. Show Cause Notice No.V.ST/AR-I/JMR/ADC(PAV)/70/2016-17 dated 31.08.2016 was issued to the appellant (i) demanding Service Tax of Rs. 40,65,565/- under Section 73(1) of the Act alongwith interest under Section 75 of the Act, and Rs. 40,00,000/- paid by them, should not be appropriated against their total Service Tax liability, (ii) proposing to impose penalty under Section 77(1) of the Act for failure to amend the Service Tax registration, to impose penalty under Section 77(2) of the Act for their failure to file S.T.-3 returns for the period from April, 2011 to March, 2013 & and also failure to file correct S.T.-3 return for the period from April, 2013 to March, 2015 (iii) to recover late fee for delay in filing of S.T.-3 returns for the period from 2011-12 to 2014-15 (except for the period from April, 2013 to September, 2013) under Section 70 of the Act read with Rule 7C of the Service Tax Rules, 1994 (iv) to impose penalty under Section 78 of the Act for suppressing the value of taxable services provided by them with intent to evade payment of Service Tax (v) to

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impose penalty upon Shri Davubhai Babubhai Ravaliya, Director of the appellant under Section 78A of the Act.

- 4.1 The Show Cause Notice was decided vide the impugned order wherein the lower adjudicating authority confirmed the demand of Service Tax of Rs. 40,65,565/- under Section 73(1) of the Act alongwith interest under Section 75 of the Act and appropriated Rs. 40,00,000/- paid by appellant. Imposed penalty of Rs. 5,000/- under Section 77(1) of the Act and penalty of Rs. 10,000/- under Section 77(2) of the Act and late fee of Rs. 80,000/- upon the appellant. He also imposed penalty of Rs. 40,65,565/- under Section 78 of the Act by giving an option of payment of penalty equivalent to 25% of the demand confirmed under Section 73(1), if they pay the remaining Service Tax liability along with interest and penalty payable therein within 30 days from the date of receipt of the impugned order.
- 5. Being aggrieved with the impugned order, the appellant preferred this appeal inter-alia, on the grounds that the lower adjudicating authority erred by not giving due consideration to the documentary evidence produced by them that demand of Service Tax of Rs. 65,565/- is not sustainable; that the lower adjudicating authority erred in failing to give due consideration to the fact that once outstanding Service Tax liability was duly recorded in the books of accounts that were already tendered by them before the audit team and while taking note of non-payment, the Final Audit Report has not attributed any mala fide on their part and the lower adjudicating authority is not justified in imposing mandatory penalty under the provisions of Section 78(1) of the Act; that the lower adjudicating authority failed to appreciate that in the facts and circumstances when entire Service Tax liability is discharged alongwith interest, no Show Cause Notice proposing mandatory penalty ought to have been issued, disregarding the bona fides of appellant, as duly noted in the Final Audit Report.
- 6. Personal hearing in the matter was attended by Shri Vikas Mehta, consultant who reiterated the grounds of appeal and submitted that Rs. 40 lakhs were paid by them before issue of Show Cause Notice; that there was no intent to evade payment of Service Tax and hence imposition of penalty under Section 78 is very harsh; that all transactions were shown in their records and hence it is a fit case to invoke Section 80 of the Act as held by Hon'ble CESTAT in the case of Shlok Media Pvt. Ltd. reported as 2016 (45) S.T.R. 128 (Tri-

Mumbai) & Fortune Network Pvt. Ltd. reported as 2015 (39) S.T.R. 689 (Tri.-Ahmd.).

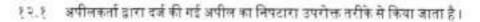
FINDINGS:

- 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 in the given facts of the case the appellant is liable to pay Service Tax or not and whether penalties imposed are appropriate or not.
- I find that Show Cause Notice in this case was issued to the appellant on 8. 31.08.2016 and the appellant had paid Rs. 40,00,000/- during the course of investigation as against demand of Rs. 40,65,565/-. I also find that they have never challenged the taxability of the services provided by them and therefore, paid the same through post dated cheques, encashed subsequently. Thus, the taxability of services provided by them is not in question and hence the demand confirmed by the lower adjudicating authority in impugned order is upheld.
- I find that appellant has accepted their Service Tax liability and paid through post dated cheques, however, they have contested the taxable value in the case of M/s. Kalpataru Power Transmission as mentioned in Annexure-B to Show Cause Notice is Rs. 9,19,796/- out of which value of Rs. 6,45,075/- is claimed for sale of material on which VAT had been charged and paid and therefore, it is claimed that such value does not attract service tax liability. The appellant had provided copy of un-signed computerized print out of tax invoice No. JBPL/MIP/2013/01 dated 05.06.2013 issued in favour of M/s. Kalpataru Power Transmission Ltd. (Infra Div.) wherein the value of material purchased has been shown as Rs. 9,84,270/- and VAT @4% of Rs. 39,370.80 and additional VAT @1% of Rs. 9,842.70 has been shown. The appellant has produced copy of unsigned and unauthenticated ledger account in respect of M/s. Kalpataru Power Transmission Ltd for the year 2013-2014 which shows Invoice no. 1 dated 05.06.2013 having value of Rs. 9,84,270/- and output VAT @4% + add output VAT @1% has been shown as Rs. 39,370.80 and Rs. 9,842.70 respectively. There is no mention of service tax paid on this invoice. However, in ledger account, invoice No. 31 dated 05.06.2013 for Rs. 2,34,780/- plus service Tax of Rs. 29,018.81 and invoice No. 32 dated 05.06.2013 for Rs.

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39,941.19 plus service tax of Rs. 4,936.73 have been mentioned. Thus, the appellant claim that Rs. 6,45,075/- is for material supply on which VAT had been paid and hence not liable to Service Tax is contradicted by the ledger account. Further the documents submitted by them are un-signed and unauthenticated and hence not reliable. Therefore, I uphold the impugned order to this extent.

- 9.1 The appellant has also contested value of service in respect of services provided to M/s. Punj Lloyd mentioned as Rs. 70,43,789/- in Annexure-B to Show Cause Notice, against actual value of service at Rs. 70,15,251/-. However, they again submitted un-signed and unauthenticated copy of account ledger and did not submit copies of invoices. Therefore, I have no option but to hold that the lower adjudicating authority has rightly denied the benefit to them and I uphold the impugned order in this regard also.
- 10. The appellant has not produced any documents evidencing payment of Service Tax of remaining amount after deducting Rs. 40,00,000/- paid by them during the course of investigation. They have failed to produce documentary evidences towards their interest liability. Therefore, the argument made by the appellant that no Show Cause Notice should have been issued to them since they have discharged Service Tax liability alongwith interest, is devoid of any merit.
- 11. It is on record that the appellant has collected Service Tax from their customers but failed to deposit in government account and also did not file S.T.-3 returns. The findings recorded by the lower adjudicating authority at Para 33 has categorically and at length discussed the material facts. Therefore, the lower adjudicating authority has rightly imposed mandatory equal penalty under Section 78 of the Act. I find that the lower adjudicating authority has extended benefit of reduced penalty to the appellant in the impugned order. The penalties imposed under Section 77(1), 77(2) of the Act and late fee imposed under Rule 7C of Service Tax Rules, 1994 are required to be upheld in absence of any contrary evidences produced by the appellant.
- In view of above, I uphold the impugned order and reject the appeal.



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

(कुमार संतोष) आयुक्त (अपील्स)

By R.P.A.D.

To.

M/s. Jay Hind Buildcom Pvt. Ltd., G. K. Complex, Khodiyar Colony, Amra B. O., Jamnagar- 361 006 मे. जय हिन्द बिल्डकोन प्राइवेट लिमिटेड, जी. के. कॉम्प्लेक्स, खोडियार कोलोनी, आमरा बी. ओ., जिल्ला: जामनगर – ३६१००६,

Copy for information and necessary action to:

- The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
- The Commissioner, GST & Central Excise, Rajkot.
- The Assistant Commissioner, GST & Central Excise, Division, Jamnagar.
- The Superintendent, GST & Central Excise, Range, Jamnagar.
- 5) Guard File.