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

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O No.	दिनांक / Date
	V2/31/RAJ/2017	DC/JAM/ST/04/2016-17	30.11.2016

6640, 6657 to 6659 & 151, 152

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

ग अगर आयुक्त संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गंधीधाम द्वारा उपरोक्तित जारी मूल आदेश से नृजित: /

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. Jay Hind Buildcon Pvt. Ltd., G.K. Complex, Khodiyar Colony, Amra B.O., -
Jamnagar - 361 006,

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / परिचरण के समक्ष अपील द्वारा 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 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) परीक्षण मूल्यांकन से संबंधित 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 जानी चाहिए। /

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

(ii) उपरोक्त परिच्छेद 1(a) में बतलाए गए अपील के अलावा दोष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बकुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhumali Bhawan, Asawa 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) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित फीट एवं फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की रॉस, व्याज की रॉस और लगाया गया जुर्माना, रूप 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 की। निर्धारित शुल्क का भुगतान संबंधित अपील 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 अपील न्यायाधिकरण की शाखा स्थित है। अथवा 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) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत 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 जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न की (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की रॉस, व्याज की रॉस और लगाया गया जुर्माना, रूप 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 की। निर्धारित शुल्क का भुगतान संबंधित अपील 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 अपील न्यायाधिकरण की शाखा स्थित है। अथवा 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 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/-

:: 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").

2. 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").

3. 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.

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.T.-3 returns	Actual date of filing of S.T.-3 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

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:

7. 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.

8. I find that Show Cause Notice in this case was issued to the appellant on 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.

9. 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.

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

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

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 बिल्डकॉन प्राइवेट लिमिटेड, जी. के. कॉम्प्लेक्स, खोडियार कोलोनी, आमरा बी. ओ., जिल्ला: जामनगर - ३६१००६.
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Copy for 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 Assistant Commissioner, GST & Central Excise, Division, Jamnagar.
- 4) The Superintendent, GST & Central Excise, Range, Jamnagar.
- 5) Guard File.