



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

द्वितीय तल, जी एम टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001



सत्यमेव जयते

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

रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /
Appeal / File No.

V2/543/BVR/2017

मूल आदेश सं /
O.I.O. No.

02/STAX/Garg Casteels Ltd./17-18

दिनांक /
Date

16.01.2018

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

BHV-EXCUS-000-APP-42-2019

आदेश का दिनांक /
Date of Order:

18.02.2019

जारी करने की तारीख /
Date of issue:

19.02.2019

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अथवा आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मुक्ति: /
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 Garg Casteels(P)Ltd., Survey No. 43/1, Vadia,Taluka- Sihor-364240, Bhavnagar.

इस आदेश(अपील) से व्यक्ति कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) मीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं विन अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले मीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बतलाए गए अपीलों के अलावा शेष सभी अपीलों मीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (निम्न) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन अमावा अहमदाबाद- 360016 का की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुमाना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम में किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी ग्वारंटी बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्ट ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपय का निर्धारित शुल्क जमा करना होगा।/
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील विन अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के अंतर्गत प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी है, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और उनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुमाना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम में किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी ग्वारंटी बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्ट ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपय 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/-.

- (i) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रथम S.T.-7 में की जा सकती है एवं उनके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा महायुक्त आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub-section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in 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 (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विनियम अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दम करीब रूप में अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इन धारा के प्रावधान विनियम (सं. 2) अधिनियम 2014 के अंग्रेज में पूर्व किमी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। /
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश को पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, विन मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ममद मार्ग, नई दिल्ली-110001, का 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, जहाँ नुकसान किमी माल को किमी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंकरण के दौरान, किमी कारखाने या किमी भंडार गृह में माल के नुकसान के मामले में। /
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किमी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त बच्चे माल 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 माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्यूटी क्रेडिट इन अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई लागू अथवा समायोजित पर या बाद में पारित किए गए हैं। /
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियाँ प्रथम संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ 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 Chailan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय 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.I.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 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय 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 Garg Casteels Pvt Ltd, Sihor (*hereinafter referred to as "Appellant"*) filed Appeal No. V2/543/BVR/2017 against Order-in-Original No. 2/STAX/GargCasteels/17-18 dated 16.1.2018 (*hereinafter referred to as 'impugned order'*) passed by the Asst. Commissioner, Central Goods & Service Tax, Bhavnagar, Bhavnagar Commissionerate (*hereinafter referred to as 'lower adjudicating authority'*).

2. The brief facts of the case are that the Appellant was holding Service Tax Registration No. AAACG7839AST001 under the categories of 'Transport of Goods by Road Service', 'Manpower Recruitment Service' and 'Business Auxiliary Service'. The audit of the records of the Appellant revealed that the Appellant had availed services of 'Manpower Supply Service', 'Security Service' and service received from outside India during the period from July, 2012 to March, 2015 for which the Appellant was liable to pay service tax being recipient of service in terms of Notification No. 30/2012-ST dated 20.6.2012, however, the Appellant was not paying Service Tax.

2.1 Show Cause Notice No. V/ADJ-208/STAX/DIV/2015-16 dated 10.3.2016 was issued to the Appellant calling them to show cause as to why Service Tax of Rs. 2,28,710/- should not be recovered from them under Section 73(1) of the Finance Act, 1994 (*hereinafter referred to as 'Act'*) along with interest under Section 75 and also proposing imposition of penalty under Sections 77 and 78 of the Act.

2.2 The Show Cause Notice was adjudicated vide the impugned order which confirmed demand of Service Tax of Rs. 2,28,710/- under Section 73(1) and ordered for its recovery along with interest under Section 75 of the Act and imposed penalty of Rs. 2,28,710/- under Section 78 of the Act and Rs. 10,000/- each under Section 77(2) and Section 77(1)(c) of the Act.

3. Being aggrieved with the impugned order, the Appellant has preferred appeal, *inter-alia*, on the following grounds:-

(i) The adjudicating authority has wrongly confirmed the demand without verifying the facts of the case. On receipt of Audit report dated 1.5.2014, the Appellant vide letter dated 21.7.2014 informed to the jurisdictional Range Superintendent that the Auditor has wrongly calculated service tax of Rs. 1,86,308/- on 'Man power Supply Agency Service' by including the period from April, 2012 to June, 2012 whereas applicable rate of service tax was effective from 1.7.2012 and that they had already paid Service Tax of Rs. 173,676/- along

with interest of Rs. 7,188/- and penalty of Rs. 7,188/- on 24.7.2014. The adjudicating authority failed to observe that recipient of Manpower supply service was liable to pay 100% of service tax w.e.f. 1.7.2012 vide Notification No. 30/2012-ST dated 20.6.2012. Prior to that, the recipient of service was liable to pay 75% of service tax and remaining 25% service tax was to be paid by provider of service in terms of Notification No. 15/2012-ST dated 17.3.12. Since the Appellant had paid Service Tax along with interest and penalty on 24.7.2014 i.e. before issuance of SCN on 14.3.2016, SCN was not required to be issued as per settled law.

(ii) Regarding Security Service, the Appellant had already paid 100% of service tax to the service provider- M/s Ganesh Security Service, Surat. Since, service tax has already been collected from the Appellant and deposited to the Department by the service provider, payment of service tax again as recipient of service would amount to double taxation and submitted sample copies of invoices issued by the service provider.

(iii) Regarding services received from outside India, it was reimbursement of travelling expenses and out of pocket expenses and there was no provider of taxable service involved. The Department has not proved that any service has been provided to the Appellant and hence the Appellant is not liable to pay service tax of Rs. 24,017/- on import of services.

(iv) They have already paid service tax of Rs. 173,676/- in respect of 'Manpower Supply Agency Service' as pointed out by the Audit and informed to the Department however, the adjudicating authority has confirmed service tax demand of Rs. 1,86,308/-. The Appellant had paid Service Tax, along with interest and penalty on 24.7.2014 i.e. before issuance of SCN on 14.3.2016. Therefore, no SCN should have been issued to them and relied upon Board's Circular No. 137/67/2006-CX.4 dated 3.10.2007 and following case laws:

- 1) Jay Shipping- 2010 (20) STR 774
- 2) Amiras Enterprises - 2010 (20) STR 631
- 3) Star Agency System-2010 (20) STR 479

(v) The Adjudicating authority has erred in invoking extended period of limitation as all transactions are recorded in their books of accounts and there is no suppression of facts by the Appellant with intent to evade payment of service tax and hence confirmation of demand and imposition of penalty under Section 78 are not sustainable and the impugned order is liable to be set aside.

4. Notices were served to the Appellant for Personal Hearing scheduled on 30.11.2018 and 17.1.2019. The Appellant vide letter dated 16.1.2019



communicated inability to attend Personal Hearing and requested to grant another date. Accordingly, Personal Hearing was fixed on 5.2.2019. The Appellant did not appear for Personal Hearing but submitted written submission vide letter dated 4.2.2019 reiterating the grounds of Appeal Memorandum.

Findings:-

5. I have carefully gone through the facts of the case, the impugned order, the Appeal Memorandum and written submission. The issue to be decided in this appeal is whether the Appellant is liable to pay Service Tax under categories of 'Manpower Supply Service', 'Security Service' and service received from outside India, as recipient of services or not.

6. I find that the lower adjudicating authority has held the Appellant liable to pay service tax of Rs. 1,86,308/- under the category of 'Manpower Supply Service', being recipient of service during the period from July,2012 to January, 2014, in terms of Notification No. 30/2012-ST dated 20.6.2012. I find that the Appellant has not disputed about receipt of said service or their liability to pay service tax on reverse charge mechanism. However, the Appellant has contested that the adjudicating authority has wrongly confirmed the demand without verifying the facts of the case; that the Department wrongly calculated service tax of Rs. 1,86,308/- on 'Man power Supply Agency Service'; that the Department calculated 100% of service tax for the period from April, 2012 to June, 2012 whereas recipient of Manpower Supply Service was liable to pay 100% of service tax w.e.f. 1.7.2012 vide Notification No. 30/2012-ST dated 20.6.2012 and prior to that, recipient of Manpower Supply service was liable to pay only 75% of service tax and remaining 25% of service tax was to be paid by service provider in terms of Notification No. 15/2012-ST dated 17.3.2012; that they had already paid applicable Service Tax of Rs. 1,73,676/- along with interest of Rs. 7,188/- and penalty of Rs. 7,188/- on 24.7.2014.

6.1 I find that recipient of 'Manpower Supply Service' was liable to pay service tax in terms of Notification No. 15/2012-ST dated 17.3.2012 as under:

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving service
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75 %

6.2 I find that the above notification was superseded by Notification No. 30/2012-ST dated 20.6.2012, which remained effective till 30.6.2017, *inter-alia*,

providing that,

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving service
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75 %

6.3 In view of above provisions, it is clear that recipient of 'Manpower Supply Service' was liable to pay 75% of service tax during the period from April, 2012 to June, 2012 under Notification No. 15/2012-ST dated 17.3.2012 and from 1.7.2012 onwards under Notification No. 30/2012-ST dated 20.6.2012. I also find that period involved in respect of demand of service tax on 'Manpower Supply Service' was from 1.7.2012 to 31.1.2014 and demand was calculated @75% of service tax under Notification No. 30/2012-ST dated 20.6.2012 as detailed in Para 2 of the SCN. Hence, the contention of the Appellant is factually incorrect and I have no option but to discard the same and uphold confirmation of service tax demand of Rs. 1,86,308/-.

6.4 I find that the lower adjudicating authority has held the Appellant liable to pay service tax of Rs. 18,385/- under the category of 'Security Service', being recipient of service during the period from July, 2012 to March, 2015, in terms of Notification No. 30/2012-ST dated 20.6.2012. I find that the Appellant has pleaded that they have already paid 100% of service tax to the service provider- M/s Ganesh Security Service, Surat and since, service tax has already been collected from the Appellant and deposited to the Department by the service provider, payment of service tax again as recipient of service would amount to double taxation and submitted sample copy of invoices issued by the service provider. I find that recipient of 'Security Service' is liable to pay service tax in terms of Notification No. 30/2012-ST dated 20.6.2012. On verifying invoice No. 15 dated 15.4.2014 and invoice No. 17 dated 13.5.2014 issued by Ganesh Security Service submitted by the Appellant, I find that the service provider has charged service tax @3.09% i.e. 25% of service tax payable. I also find that there is endorsement of "pay reverse charge tax" in invoice No. 17 dated 13.5.2014. So, the plea of the Appellant that they had made payment of 100% of service tax to the service provider is factually incorrect as reflected in the above mentioned invoices submitted by the Appellant. It is also misleading and the Appellant is trying to get benefit by misleading this office on facts. I, therefore, uphold confirmation of service tax demand of Rs. 18,385/-.

6.5 I find that the lower adjudicating authority has held the Appellant liable

to pay service tax of Rs. 24,017/- in respect of services received from outside India in terms of Section 66A of the Act. The Appellant has contested that it was reimbursement of travelling expenses and out of pocket expenses and there was no provider of taxable service involved; that the Department has not proved that any service has been provided to the Appellant and hence, they are not liable to pay service tax of Rs. 24,017/- on import of services. I find that the Appellant made payment of Rs. 1,83,740/- to David Wright Consultancy and Rs. 10,570,- to Mr. Guenter Lorenze as detailed in Table A of Para 2 of the impugned order for which the Appellant is liable to pay service tax on reverse charge basis in terms of Section 66A of the Act. I, therefore, uphold service tax demand of Rs. 24,017/- also.

7. The Appellant contended that they had paid Service Tax of Rs. 1,73,676/- along with interest of Rs. 7,188/- and penalty of Rs. 7,188/- on 24.7.2014 i.e. before issuance of SCN on 14.3.2016 and hence, no SCN should have been issued to them and relied upon Board's letter No. 137/67/2006-CX.4 dated 3.10.2007. I find that the Appellant was required to pay total service tax of Rs. 2,28,710/-. However, they paid only Rs. 1,73,676/-, which is much less than their service tax liability. I have also examined Board's instructions issued from letter No. 137/67/2006-CX.4 dated 3.10.2007, wherein it has been clarified that if taxpayer pays service tax liability along with interest and applicable penalty within one month from the date of issue of SCN, then the proceedings need to be concluded under the Finance Act, 1994. Since, the Appellant has not paid entire Service Tax, interest and penalty amount, the Appellant was/is not eligible for waiver of SCN and the SCN issued is correct, legal and proper.

8. The Appellant has contested invocation of extended period of limitation only on the ground that the transactions were recorded in their books of accounts and there is no suppression of facts by the Appellant with intent to evade payment of service tax and hence confirmation of demand and imposition of penalty under Section 78 are not sustainable. I find that information reflected in books of accounts have never been submitted by the Appellant along with their letter or in Service Tax Return to the jurisdictional Service Tax authorities. It cannot be considered to have been submitted unless the same has been brought to the notice of the proper officer of Department. It is on record that non-payment of service tax was revealed only during audit of the records of the Appellant by the Department. Had there been no audit of Appellant's records, the non-payment of service tax by the Appellant would have gone unnoticed and hence, ingredients for invoking extended period under Section 73(1) of the Act very much exist in the present case. Hence, I hold that the demand is not barred

by limitation. I rely on the order passed by the Hon'ble CESTAT, Chennai in the case of Six Sigma Soft Solutions (P) Ltd. reported as 2018 (18) G.S.T.L. 448 (Tri. - Chennai), wherein it has been held that,

“6.5 Ld. Advocate has been at pains to point out that there was no *mala fide* intention on the part of the appellant. He has contended [that] they were under the impression that the said activities would come within the scope of IT services, hence not taxable. For this reason, Ld. Advocate has contended that extended period of time would not be invocable. However, we find that the adjudicating authority has addressed this aspect in para-10 of the impugned order, where it has been brought to the fold that appellant had not at all disclosed the receipt of income in respect of the activities done by them in respect of services provided by them in their ST-3 returns.

6.6 The facts came to light only when the department conducted scrutiny of the annual reports, possibly during audit. In such circumstances, the department is fully justified in invoking the extended period of limitation of five years.”


(Emphasis supplied)

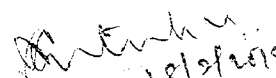
8.1 Regarding imposition of penalty under Section 78 of the Act, I find that the Appellant has suppressed the facts and also attempted to mislead this Appellate Authority during appeal proceedings and hence, penalty under Section 78 of the Act is mandatory as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.) that once there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold the penalty imposed on the Appellant under Section 78 of the Act. However, imposition of penalty equal to Service Tax is not correct, legal and proper and in view of proviso to Section 78 of the Act, penalty @50% of Service Tax evaded is only imposable as the transactions have been reflected in the books of account of the Appellant. Therefore, I reduce penalty to Rs. 1,14,355/- under Section 78 of the Act.

9. In view of above, I uphold confirmation of demand of Rs. 2,28,710/- but reduce penalty to Rs. 1,14,355/- under Section 78 of the Act and uphold penalty of Rs. 10,000/- each imposed under Section 77(1)(a) and Section 77(2) of the Act.

9.1 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 as above.

सत्यापित,

 दिपंक शर्मा
 अपीलकर्ता


 (कुमार संतोष)
 प्रधान आयुक्त (अपील्स)

By R.P.A.D.

To,
M/s Garg Casteels Pvt Ltd,
Survey No. 43/1, Vadia,
Sihor - 364240,
District Bhavnagar.

प्रति,
गर्ग केस्टिल्स प्रा. लि.
सर्वे नंबर 43/1,
वडिया, सिहोर,
जिल्ला भावनगर।

प्रतिलिपि :-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर, भावनगर मण्डल-1 को तुरंत आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।