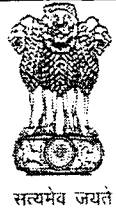




::प्रधानआयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::  
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



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

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

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date:
	V2/178, 179 & 180/BVR/2018-19	AC/JND/14/2018 AC/JND/11/2018 AC/JND/13/2018	9.7.2018 29.6.2018 9.7.2018

ख अपीलआदेशसंख्या(Order-In-Appeal No.):

**BHV-EXCUS-000-APP-127-TO-129-2019**

आदेश का दिनांक / 24.05.2019 जारी करने की तारीख / 29.05.2019  
Date of Order: Date of issue:

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,  
राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से सृजित: /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,  
Rajkot/Jamnagar/Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellants & Respondent :-

1. Shri Lakhbhai Virambhai Rathod At: Amardad. Tal: Ranavav Dist: Porbandar
2. M/s Kara Manda & Co., Village: Barvan Nes, Taluka: Ranavav, District: Porbandar.
3. Shri Kama Lala Parmar, Village: Barvan Nes, Taluka: Ranavav, District: Porbandar.

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय 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:-

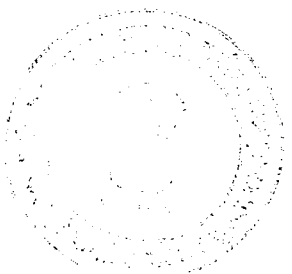
(i) वर्गीकरण, मूल्य, कर्तव्य, मन्वन्धित मशीन, माल, सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को जानना चाहिए।/  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi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

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये 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 रेखांकित 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 (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र 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 करें (उत्तम में एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये 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 रेखांकित 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 (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 fee 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) वित्त 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 प्रपत्र S.T.-7 में की जा सकेगी एवं उक्त माध्य आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक 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 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 Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेन्स्टैट) 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 इन धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" से निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेन्स्टैट जमा की ली गई गलत राशि  
(iii) सेन्स्टैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्ते यह कि इस धारा के प्रावधान विनियम (सं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी 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 कोपत्तरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपत्रक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, मंदर मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /  
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to subsection (1) of Section-35B ibid:
- (i) यदि माल के किसी तुकसान के मामले में, जहां तुकसान किसी माल को किसी कारखाने में 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 प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के तुकसान के मामले में। /  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिट्रेट) 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 ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं० 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाचिके 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 प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के मंत्रपत्र 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 माध्य 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 OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /  
जहां 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 कोई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य में बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding 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) यथामंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I 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 संबन्धित 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 में संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) का 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](http://www.cbec.gov.in).



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

The appeals listed below have been filed against Orders-in-Original as detailed below (hereinafter referred to as “*impugned orders*”) passed by the Asst. Commissioner, Central Goods & Service Tax, Junagadh Division, Bhavnagar Commissionerate (*hereinafter referred to as ‘lower adjudicating authority’*).

Sl. No.	Appeal No.	Order-in-Original No. & Date	Name and Address of the Appellant
1.	V2/178/BVR/2018-19	AC/JND/14/2018 dated 9.7.2018	Shri Lakhbhai Virambhai Rathod Village : Amardad, Taluka : Ranavav, District : Porbandar.
2.	V2/179/BVR/2018-19	AC/JND/11/2018 dated 29.6.2018	M/s Kara Manda & Co. Village : Barvan Nes, Taluka : Ranavav, District : Porbandar.
3.	V2/180/BVR/2018-19	AC/JND/13/2018 dated 9.7.2018	Shri Kama Lala Parmar Village : Barvan Nes, Taluka : Ranavav, District : Porbandar.

1.1 Since issue involved in above three appeals is common, all appeals are taken up together for decision vide this common order.

2. The brief facts of the case are that the Appellants were holding service tax registration under the category of ‘Business Auxiliary Service’; that the Appellants were providing taxable services to M/s Saurashtra Cement Ltd but evading payment of service tax, detailed inquiry was initiated by the Commissionerate. On scrutiny of documents of the Appellants as well as service recipient, it was found that the Appellants availed abatement @67% on gross value of the services while discharging service tax in terms of Notification No. 1/2006-ST dated 1.3.2006, but value of Cement and Steel supplied free of cost by their service recipients was not included in assessable value and hence, it appeared to the Commissionerate that the Appellants had wrongly availed abatement under Notification No. 1/2006-ST dated 1.3.2006.

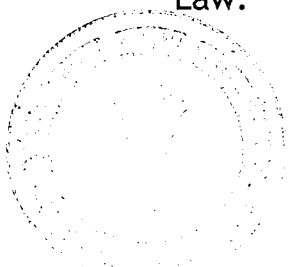
2.1 Show Cause Notice No. V/15-6/Dem-ST/Hq/2012-13 dated 17.4.2013 was issued to Appellant No. 1 calling them to show cause as to why abatement @ 67% availed under Notification No. 1/2006-ST dated 1.3.2006 should not be denied and why service tax of Rs. 22,31,969/- for the period

2007-08 to 2011-12 should not be demanded and 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 76,77, 77(1)(a), 77(1)(b), 77(1)(c)(ii) and 78 of the Act.

2.2 The Show Cause Notice was adjudicated vide the impugned order listed at Sl. No. 1 of table above, which dropped the proceedings in respect of service tax demanded for contravention of provisions of Notification No. 1/2006-ST dated 1.3.2006 and resultant demand of interest under Section 75 as well as penalty imposed under Sections 76 and 78 of the Act proposed vide the SCNs. However, the impugned order imposed penalty under Section 77(1)(a) of the Act for failure to amend Service Tax registration @Rs. 200 for every day during which such failure continued starting with the first day after due date, till the date of actual compliance and also imposed penalty of Rs. 5,000/- under Section 77(1)(b) of the Act for failure to maintain and preserve records required under the Law.

2.3 Show Cause Notice No. V/15-7/Dem-ST/Hq/2013-14 dated 16.4.2013 was issued to Appellant No. 2 calling them to show cause as to why abatement @ 67% availed under Notification No. 1/2006-ST dated 1.3.2006 should not be denied and why service tax of Rs. 6,63,443/- should not be demanded and recovered from them under Section 73(1) of the Act along with interest under Section 75 and also proposing imposition of penalty under Sections 76,77, 77(1)(a), 77(1)(b), 77(1)(c)(ii) and 78 of the Act.

2.4 The Show Cause Notice was adjudicated vide the impugned order listed at Sl. No. 2 of table above, which confirmed demand of service tax of Rs. 8,267/- and ordered for its recovery under Section 73(2) of the Act along with interest under Section 75 and imposed penalty of Rs. 4,134/- under Section 78 of the Act. However, the impugned order imposed penalty under Section 77(1)(a) of the Act for failure to amend Service Tax registration @Rs. 200 for every day during which such failure continues starting with the first day after due date, till the date of actual compliance and also imposed penalty of Rs. 5,000/- under Section 77(1)(b) of the Act for failure to maintain and preserve records required under the Law.



2.5 Show Cause Notice No. V/15-5/Dem-ST/Hq/2013-14 dated 16.4.2013 was issued to Appellant No. 3 calling them to show cause as to why abatement @ 67% availed under Notification No. 1/2006-ST dated 1.3.2006 should not be denied and why service tax of Rs. 12,21,850/- should not be demanded and recovered under Section 73(1) of the Act along with interest under Section 75 and also proposed imposition of penalty under Sections 76,77, 77(1)(a), 77(1)(b), 77(1)(c) and 78 of the Act.

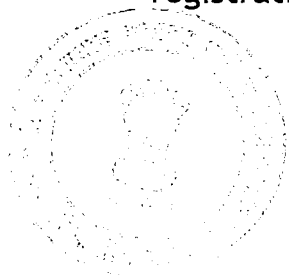
2.6 The Show Cause Notice was adjudicated vide the impugned order listed at Sr. No. 3 of table above, which dropped the proceedings in respect of service tax demanded for contravention of provisions of Notification No. 1/2006-ST dated 1.3.2006 and resultant demand of interest under Section 75 and penalty under Sections 76 and 78 of the Act. However, the impugned order imposed penalty under Section 77(1)(a) of the Act for failure to amend Service Tax registration @Rs. 200 for every day during which such failure continues starting with the first day after due date, till the date of actual compliance and also imposed penalty of Rs. 5,000/- under Section 77(1)(b) of the Act for failure to maintain and preserve records required under the Law.

3. Being aggrieved with the impugned orders, Appellants No. 1 to 3 have preferred these appeals, *inter-alia*, on the following grounds:-

(i) The impugned order passed by the adjudicating authority is not proper to the extent of penalty imposed under Sections 77(1)(a) and 77(1)(b) of the Act.

(ii) For imposing penalty under Section 77(1)(a), the adjudicating authority gave findings that the Appellants obtained registration in 2004 under the category of 'BAS' and filed returns /paid service tax regularly but registration certificate was amended only in the year 2011. There is no provision to impose penalty for any amendment in registration certificate.

(iii) In plethora of judgements, it has been held that penalty cannot be imposed on the grounds of procedural irregularities. Mere failure to amend registration certificate does not amount to default, when the Appellant



*[Handwritten signature]*

had timely discharged service tax as held in the case of SRF Ltd-2016 (41) STR 123.

(iv) There is no malafide intention on part of the Appellants and hence this is a fit case of invocation of Section 80 of the Act to waive penalty imposed under Sections 77(1)(a) and 77(1)(b) of the Act and Appellants relied upon case law of Busy Bee - 2015 (37) STR 932.

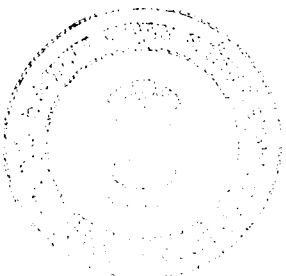
4. In Personal Hearing, Shri Rushil Upadhyay, C.A. appeared on behalf of all Appellants No. 1 to 3 and reiterated the grounds of all three appeals and submitted that they have paid service tax correctly and in time; that they had taken registration under 'Business Auxiliary Service' instead of 'Construction Service'; that Service Tax law does not say imposition of penalty under Section 77(1)(a) of the Act for different Service Tax registration but for not taking registration; that they now do not contest penalty imposed under Section 77(1)(b) of the Act; that Section 80 can be invoked in these appeals and lenient view may be taken in these cases also, as per Hon'ble CESTAT's decisions.

**Findings:-**

5. I find that Appellants No. 1 to 3 have deposited amount @7.5% of tax or penalty in dispute as submitted by them in Appeal Memoranda and hence, have complied with the provisions of Section 35F of the Act.

5.1 I have carefully gone through the facts of the case, the impugned orders, the appeal memoranda and written as well as oral submissions made by the Appellants. The issue to be decided in all three appeals is whether the impugned orders, in the facts of each case, imposing penalties under Section 77(1)(a) and Section 77(1)(b) of the Act on Appellants No. 1 to 3 are correct, legal and proper or not.

6. I find that appeal proceedings in all three appeals are on penalties imposed under Section 77(1)(a) and Section 77(1)(b) of the Act. The Appellants have not pressed for penalty imposed under Section 77(1)(b) of the Act. The Appellant No. 2 has not contested confirmation of service tax demand of Rs. 8,267/- and imposition of penalty of Rs. 4,134/- under Section 78 of the Act and therefore, in appeal proceedings, only



*[Handwritten signature]*

correctness of imposition of penalties under Section 77(1)(a) and Section 77(1)(b) of the Act is to be decided.

7. Regarding penalty imposed under Section 77(1)(a) of the Act, the lower adjudicating authority gave following findings:

“ ... Regarding penal action under the provisions of Section 77(1)(a) of the Act, I find that initially the Noticee had obtained Service Tax Registration No. BVN/STAX/JND/XX/2/BAS/128/04-05 dated 30.11.2004 under the category of ‘Business Auxiliary Service’. Subsequently, on revision of filing ST 1, they were issued registration certificate no. ACXPR8158BST001 on 12.5.2011, for the service provide under the category of Construction Service in respect of Commercial or Industrial Building and Civil Structure & Manpower Recruitment Agency. I also find from the challans produced by the Noticee that they have paid Service Tax under accounting heads of ‘Business Auxiliary Service’ during the period covered under Show Cause Notice, despite the fact that they had ample time to amend their type of services in their Registration Certificate. In view of the above, I find that there is clear violation of Section 69 of the Act read with Rule 4 of the Rules and therefore, I hold that penalty under Section 77(1)(a) of the Act would be imposable on the Noticee.”

7.1 The Appellants have contested that penalty under Section 77(1)(a) of the Act cannot be imposed on the ground of mere failure to amend registration certificate, which is procedural irregularities and it does not amount to default, especially when the Appellants had timely discharged service tax and relied upon case law of SRF Ltd-2016 (41) STR 123.

7.2 I find it is pertinent to examine the provisions of Section 77(1)(a) of the Act, which are reproduced as under:

“(a) who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to a penalty which may extend to ten thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;”

7.3 I find that provisions of Section 77(1)(a) of the Act *supra* envisage imposition of penalty for failure to take registration. On going through the records, I find that the Appellants were registered with Service Tax under the category of ‘Business Auxiliary Service’ and paying service tax, though they were required to get themselves registered under ‘Commercial or

Industrial Construction Service' as held in the impugned orders. I find that investigation carried out against Appellants No. 1 & 3 did not find any non-payment/ short payment of service tax. In respect of Appellant No. 2, there was short payment of service tax of Rs. 8,267/- against total Service Tax payable of Rs. 16,02,076/- during the period from 2007-08 to 2011-12, which has also been paid by Appellant No. 2, after issuance of impugned order. Considering the facts of the case, I am of the opinion that imposition of penalty under Section 77(1)(a) of the Act for obtaining registration under wrong category is not warranted, particularly when there is no dispute about payment of service tax by the Appellants. I, therefore, set aside penalty imposed upon Appellants No. 1 to 3 under Section 77(1)(a) of the Act.

7.4 I rely on the order passed by the Hon'ble CESTAT, Chennai in the case of SRF Ltd 2016 reported as (41) S.T.R. 123 (Tri. - Chennai), wherein it has been held that,

"4. No doubt registration is a paraphernalia to bring the assessee into the fold of law. The assessee was already brought into the fold of law from 1-3-2005. So it cannot be said that it is an unregistered assessee. Only there was an absence of endorsement of the new activity in the registration certificate. That does not amount to default when the assessee consciously discharged tax liability. It does not appear from the conduct of the assessee that it is required to be dealt with coercively under law for the non-endorsement of the different activity which was carried out subsequently.

5. Considering the registration status of the assessee and no deliberate default to cause evasion to Revenue, the penalty imposed under Section 77 is waived and appeal is allowed."

8. As far as penalty of Rs. 5,000/- imposed on each of three Appellants under Section 77(1)(b) of the Act is concerned, the Appellants did not contest this penalty during personal hearing and hence, I do not further examine this aspect.

9. In view of above, I set aside penalty imposed under Section 77(1)(a) of the Act and uphold the impugned orders in respect of other aspects.

9.1 अपीलकर्ताओं द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

9.1 The appeals filed by the Appellants are disposed off as above.

सत्यापित,

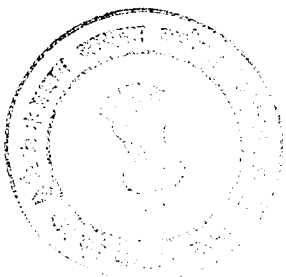


विपुल शाह  
अधीक्षक (अपील्स)

  
(कुमार संतोष)

प्रधान आयुक्त (अपील्स)

Page 8 of 9





By R.P.A.D.

To,

सेवा में,

1. Shri Lakhabhai Virambhai Rathod Village : Amardad, Taluka : Ranavav, District : Porbandar.	श्री लाखाभाई विरमभाइ राठोड अमरदद, तालुका : राणावाव, जिल्ला : पोरबंदर ।
2. M/s Kara Manda & Co. Village : Barvan Nes, Taluka : Ranavav, District : Porbandar.	मे. कारा मांडा एंड कंपनी बरवाण नेस, तालुका : राणावाव, जिल्ला : पोरबंदर ।
3. Shri Kama Lala Parmar Village : Barvan Nes, Taluka : Ranavav, District : Porbandar.	श्री कामा लाला परमार बरवाण नेस, तालुका : राणावाव, जिल्ला : पोरबंदर ।

प्रति:-

- 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 एवं केन्द्रीय उत्पाद शुल्क, जूनागढ़ मण्डल, भावनगर आयुक्तालय को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।