



::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 / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील / फाइलसंख्या/
Appeal / File No.
V2/103 /BVR/2018-19

मूल आदेश सं /
O.I.O. No.
BHV-EXCUS-000-JC-59-2017-18

दिनांक/
Date:
12/3/2018

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

BHV-EXCUS-000-APP-175-2019

आदेश का दिनांक /
Date of Order: 21.06.2019

जारी करने की तारीख /
Date of issue:

21.06.2019

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 मूलित: /
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 :-
Shiv Pooja Construction At :- Gadhada, Post :- Trapaj, Tal: Talaja, Dist:- Bhavnagar-364140

इस आदेश(अपील) में ब्याथेत कोई ब्याक्ति निम्नलिखित तरीक म उपयुक्त प्राधिकारी / प्राधिकरण क 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) वर्गीकरणमूल्यांकनसेसम्बन्धितसभीमामलेसीमाशुल्क, केन्द्रीय उत्पादनशुल्कएवंसेवाकर अपीलीयन्यायाधिकरणकीविशेषपीठ, वेस्टब्लॉकनं2, आर.के.पुरम, नईदिल्ली, कोकीजानीचाहिए।/
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 सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन अमरावा अहमदाबाद- 380016 के अंतर्गत जा सकती है।
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 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, रुपए 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 करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय 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 अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन 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 dutydemand/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 any 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 सकेगी एवं उसके साथ जिन आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से 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, रुपए 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 करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय 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 अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन 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/



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, मेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं इसके 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 महासूचक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/मेवाकर, 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) मीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर अपीलीय प्राधिकरण (मेन्टेड) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत मेवाकर का भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/मेवाकर का मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, वशत कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित दायें गशि दम् करोड़ रूप में अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं मेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) मेनवेट जमा की ली गई गलत गशि
(iii) मेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- वशत यह कि इस धारा के प्रावधान, दिन्वीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान 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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, मसद 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 sub-section (1) of Section-35B ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान 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 नुकसान के मामले में। /
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे 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 इच्छी क्रेडिट दम् अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1993 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि 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, 1993.
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन 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 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।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 दम् से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढी कार्य से 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 existing Rs. 1 lakh fee of Rs. 100/- for each.
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुमूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट 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) मीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर 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 संबन्धित 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 Shiv Pooja Construction, District Bhavnagar holding Service Tax registration No. AIJPG8711HST001 (*hereinafter referred to as "Appellant"*) filed Appeal No. V2/103/BVR/2018-19 against Order-in-Original No. BHV-EXCUS-000-JC-59-2017-18 dated 12.3.2018 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central Goods & Service Tax, Bhavnagar (*hereinafter referred to as 'lower adjudicating authority'*).

2. The brief facts of the case are that the Appellant was engaged in providing 'Construction Service', 'Manpower Recruitment / Supply Agency Service' and 'Construction of Residential Complex Service'. The Appellant availed 'Voluntary Compliance Encouragement Scheme, 2013' (*hereinafter referred to as "VCES"*) and filed VCES-1 on 30.12.2013 declaring tax dues of Rs. 53,07,119/- for the period from 2008-09 to 2012-13, which was accepted by the designated authority and VCES-2 was issued on 30.12.2013. The Appellant paid service tax of Rs. 26,53,560/- on 31.12.2013 and was required to pay remaining 50% i.e. Rs. 26,53,560/- by 30th June, 2014 as per Section 107(4) of the Finance Act, 2013, however, the Appellant could pay only Rs. 26,25,627 till 30.6.2014. The Appellant failed to pay balance amount, along with interest, by 31.12.2014 in terms of proviso to Section 107(4) of the Act. The Appellant could pay balance amount of Rs. 27,932/- along with interest of Rs. 71,252/- on 25.4.2015 and thereby failed to adhere to the timeline prescribed in VCES.

2.1 Show Cause Notice No. V/15-189/Dem-ST/Hq/2014-15 dated 2.12.2015 was issued to the Appellant calling them to show cause as to why immunity provided under Section 108(1) of the Finance Act, 2013 should not be withdrawn and why interest should not be demanded and recovered under Section 75 of the Finance Act, 1994 (*hereinafter referred to as "Act"*) on service tax declared under VCES and why penalty should not be imposed upon them under Sections 76,77 and 78 *ibid*.

2.2 The Show Cause Notice was adjudicated vide the impugned order, which denied the immunity provided under Section 108(1) of the Finance Act, 2013 on the ground that the Appellant failed to adhere to the timeline provided under VCES. The impugned order ordered to recover interest on Rs. 53,07,120/- under Section 75 of the Act from the due date till date of payment and imposed penalty under Section 76 of the Act and also imposed penalty of Rs. 10,000/- under Section 77 of the Act.





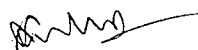
3. Being aggrieved with the impugned order, the Appellant has preferred appeal, *inter-alia*, on the following grounds:-

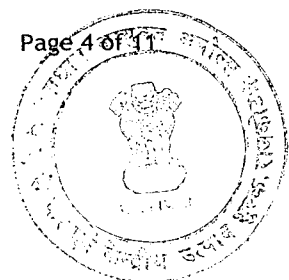
(i) The Appellant filed VCES declaration for the period from 2008-09 to 2012-13 declaring their tax dues of Rs. 53,07,119/-; that the Appellant paid service tax of Rs. 26,53,570, being 50% of total dues declared in VCES by 31.12.2013; that as per Section 107 (4) of the Finance Act, 2013, 50% of tax dues declared in VCES was required to be paid by 30.6.2014, which can be extended by 31.12.2014 with interest; that the Appellant could pay service tax of Rs. 26,25,627/- only upto 30.6.2014 and there was short payment of service tax of Rs. 27,922/-; that the Appellant also paid balance amount of Rs. 27,922/- on 25.4.2015 and thus, the withdrawal of VCES declaration and immunity on the basis of default in making payment of minor amount of service tax dues of Rs. 27,922/- within stipulated time period is not sustainable in the interest of justice.

(ii) The penalty under Section 76 and Section 77 of the Act is not imposable as there was no short payment of service tax and as per merits of the case, the Appellant is not liable for payment of service tax; that for imposing penalty, there should be intention to evade payment of service tax; that the penal provisions are only a tool to safeguard against contravention of the rules; that there was no intention to evade payment of service tax and hence, no penalty is imposable and relied upon case law of Hindustan Steel Ltd -AIR 1970 (SC) 253 and Pushpam Pharmaceuticals Company - 1995 (78) ELT 401.

(iii) The Appellant submits that Section 80 of the Act provides that no penalty shall be imposed under Sections 76,77 and 78 of the Act, if it is proved that failure was caused due to reasonable belief; that there was bonafide belief on the part of the Appellant that the activities carried out by them are not taxable and therefore, there was reasonable cause for failure on the part of the Appellant to pay service tax and hence, penalty imposed under Section 76 and Section 77 may be set aside and relied upon case laws of (i) ETA Engineering Ltd-2004 (174) ELT 19 (ii) Fyingman Air Courier Pvt Ltd-2004 (170) ELT 417 and (iii) Star Neon Singh - 2002 (141) ELT 770.

4. Personal Hearing Notices were sent to the Appellant on 11.3.2019, 28.3.2019, 11.4.2019, 6.5.2019 for hearing scheduled on 19.3.2019, 9.4.2019,25.4.2019 and 22.5.2019. The Appellant vide letter dated 23.5.2019 made written submission and requested to consider written submission in lieu of Personal Hearing and to decide the case on merits. In written submission, the





Appellant has reiterated the grounds of appeal contained in Appeal Memorandum. No one appeared from the Department on any date despite PH notices sent to the Commissionerate.

Findings:-

5. I have carefully gone through the facts of the case, the impugned order, the grounds of appeal and written submissions made by the Appellant. The issue to be decided in the present appeal is whether the impugned order denying immunity under Section 108(1) of the Finance Act, 2013 and making order for recovery of interest under Section 75 of the Act and imposing penalty under Section 77 and Section 78 of the Act is correct, legal and proper or not ?

6. On going through the case records, I find that the Appellant availed Voluntary Compliance Encouragement Scheme, 2013 and filed VCES-1 on 30.12.2013 declaring service tax dues of Rs. 53,07,119/-; that the Appellant paid service tax of Rs. 26,53,560/- on 31.12.2013, Rs. 26,25,627 till 30.6.2014 and balance amount of Rs. 27,922/- along with interest of Rs. 71,252/- on 25.4.2015. The impugned order denied the immunity provided under Section 108(1) of the Finance Act, 2013 on the ground that the Appellant did not pay entire service tax dues by 31.12.2014 and thereby failed to adhere to the timeline prescribed in VCES. The Appellant has pleaded that out of service tax dues of Rs. 53,07,119/- declared by them under VCES, they paid service tax of Rs. 52,79,197/- till 31.12.2014 and there was minor short payment of service tax of only Rs. 27,922/-, which was also paid along with interest on 25.4.2015 and hence, the adjudicating authority erred in withdrawing VCES declaration and denying immunity provided under section 108(1) *ibid*.

7. I find it is pertinent to examine provisions contained in the Finance Act, 2013 relating to time limit prescribed for making payment of service tax dues under VCES, as under:

“107. Procedure for making declaration and payment of tax dues. — (1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.

(2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.

(3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent. of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

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(4) The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014 :

Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

....”

8. I find that the Appellant was required to pay 50% of service tax dues by 31.12.2013 and balance 50% amount by 30.6.2014 without interest and latest by 31.12.2014 along with interest as per proviso to Section 107(4) *supra*. In the present appeal, it is on record that the Appellant paid service tax of Rs. 52,79,197/- only till 31.12.2014 out of declared service tax dues of Rs. 53,07,119/- and paid remaining service tax of Rs. 27,932/- on 25.4.2015 i.e. after 31.12.2014 prescribed in Section 107(4) of the Finance Act, 2013. It is evident that the Appellant paid entire declared service tax dues after delay of almost four months from due date of 31.12.2014 and thereby, failed to adhere to the time line prescribed under Section 107(4) *supra*. I also find that there is no provision under VCES, 2013 for relaxation of timeline for payment of second installment beyond 31.12.2014. The Appellant is, therefore, not eligible to get benefit of the VCES, 2013 and impugned order has correctly rejected the VCES declaration filed by the Appellant and denied immunity provided under Section 108 of the Finance Act, 2013.

8.1 In this regard, I rely on the decision rendered by the Hon'ble Bombay High Court in the case of Transmedia Software Ltd. - 2018 (18) G.S.T.L. 35 (Bom.), wherein it has been held that,

“26. Before us, we do not think that the situation is identical. The petitioners knew their tax liability in advance. They knew that there was already relaxation/extension granted. Those who have not cleared the tax liability by the end of June, 2014 got one more opportunity and they had to make the payment on or before 31st December, 2014. The petitioners were desirous of obtaining benefit and concession under the STVCE Scheme. They were bound by the stipulations thereof. They knew the liability had to be cleared by 31st December, 2014. They made some payment after availing of the relaxation and by further relaxation, which was available till 31st December, 2014, they definitely could have made the deposit. How there could be a miscommunication is, therefore, not clear at all. The reason now assigned and in the memo of the petition is clearly an afterthought. We are in respectful agreement with the High Court of Jharkhand that when this is the nature of the





stipulations in the scheme, any view taken contrary to the same would be rewriting the scheme itself or prescribing conditions which are not specifically imposed.”

(Emphasis supplied)

8.2 I also rely on the judgement of the Hon'ble High Court of Jharkhand in the case of Manpreet Engineering & Const. Co. reported as 2016 (44) S.T.R. 384 (Jhar.), wherein it has been held that,

“(VI) These aspects of the matter have been properly appreciated by the Assistant Commissioner, Central Excise and Service Tax, Division-IV, Jamshedpur while passing the order dated 7th April, 2014. It ought to be kept in mind that whenever such voluntary disclosure Scheme is floated, further leniency should not be given by the court to the declarant apart from what has been provided under the scheme, otherwise, there will be no end of liberal approach. Moreover, payment of tax has a direct nexus with the budget of the country. There are fixed dates for payment of taxes. Realisation of taxes after due date is a matter of policy decision of the Union of India. Hence this court will not extend the period for the payment of tax dues unless the scheme in question gives that liberty to the declarant.

As stated hereinabove, in the facts of the present case, so far as the payment of first installment is concerned, which was minimum 50% of the tax dues so declared was to be paid on or before 31st December, 2013 and there is no provision under the VCES, 2013 for relaxation in the payment of first installment. So far as second installment is concerned, it was to be paid on or before 30th June, 2014. However, there is slight leniency in the payment of second installment, viz. if the second installment is not paid before 30th June, 2014, the declarant can make the payment on or before 31st December, 2014, but, with interest. Thus, this petitioner-declarant has committed a breach of Section 107(3) of the VCES, 2013 in making the payment of first installment and hence, he is not entitled to get the benefits provided under this scheme.

(Emphasis supplied)

8.3 I also rely on the order passed by the Hon'ble CESTAT, Mumbai in the case of Global Networking Recourses reported as 2016 (44) S.T.R. 94 (Tri. - Mumbai), wherein it has been held that,

“7. I find that the fact of the case is not under dispute. The appellant admittedly have not paid 50% of the total dues declared by them of Rs. 3,18,160/- on or before 31-12-2013. Though they have shown reason for non-payment of balance amount of Rs. 18,160/- on 31-12-2013 which was subsequently made on 2-1-2014. Even if the reason given is accepted there is no

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provision in the scheme to condone the delay in payment, therefore time line prescribed under the scheme cannot be extended in absence of any provision for condoning the delay. The Hon'ble High Court of Gujarat on identical issue categorically held that time line provided under the scheme under Section 107 cannot be extended."

(Emphasis supplied)

8.4 Since the Appellant made themselves not eligible for benefit of VCES, 2013, the Appellant is required to pay interest on delayed payment of service tax from due date to actual date of payment in terms of Section 75 of the Act. I, therefore, uphold impugned order for recovery of interest under Section 75 of the Act.

9. Regarding penalty imposed under Section 76 of the Act, the Appellant has contended that for imposing penalty under Section 76, there should be intention to evade payment of service tax; that there was no intention to evade payment of service tax and hence, no penalty is imposable under Section 76 of the Act; that there was bonafide belief on the part of the Appellant that the activities carried out by them are not taxable and therefore, there was reasonable cause for failure on the part of the Appellant to pay service tax and hence, penalty imposed under Sections 76 needs to be set aside. I find that failure to pay service tax would attract the provisions of Section 76 of the Act and for invoking these provisions, it is not mandatory that the elements of suppression/intention to evade payment of duty should exist. It is on record that the Appellant did not pay the payable service tax during the period from 2008-09 to 2012-13 and hence, they are liable to penalty under Section 76 of the Act even if there is not suppression of facts. For invocation of provisions of Section 80 of the Act, there should be reasonable cause for failure to pay service tax. The reason putforth by the Appellant for failure to pay service tax appears to be vague and not bonafide. I find that one can have *bona fide* belief due to decisions of the Hon'ble High Court/CESTAT holding that service tax was not payable or any instructions / Circular issued by CBIC on the subject matter. However, the appellant has not given any reason / justification as to why they were holding such belief. I, therefore, hold that there was no reasonable cause on part of the Appellant for failure to pay service tax and hence, there is no justification for invoking the provisions of Section 80 of the Act. I rely upon the order passed by the Hon'ble CESTAT, Kolkatta in the case of Gurdian Leisure Planners Pvt. Ltd. reported as 2007 (211) E.L.T. 229 (Tri. - Kolkata), wherein it has been held that,





“6. It was found that there were delay of certain number of days in depositing the tax due as found by the learned Adjudicating Officer and such delay ranged from 23 days to 296 days for the impugned period from October 2001 to September 2002 and remained undisputed throughout. Nor also any reasonable cause was shown by the assessee before the forums below as well as before Tribunal to consider the issue in the light of provisions contained in Section 80 of the Act. Such Section required proof of existence of reasonable cause for the failure under Section 76 of the Act. Except the plea that they had to spend substantial amount on account of advertisement and other expenses with a view to attract travel loving people that they had made a substantial loss in the accounting year ending 31-3-2003 for which they had to pass through acute financial crisis, there was no other reason that was advanced by the Assessee. Authorities below did not make any finding whether the assessee had collected any service tax from its service takers during the impugned period to determine Assessable Value of taxable service in terms of provision contained in Section 67 of the Act.

7. Penalty is a preventive as well as deterrent measure to defeat recurrence of breach of law and also to discourage non-compliance to the law of any wilful breach. Penalty prescribed by Section 76 is levy on service tax on the consideration received in relation to Tour Operator Service which came into force from 1997 and well known to tour operators. The decisions on which the Ld. Commissioner (Appeals) relied upon relates to the matter of Central Excise and mere payment of service tax before issue of show cause notice does not alter commission of breach of law on the date of commissioning of the offence. Casual plea of the assessee that they spent substantial money on advertisement and other expenses to attract travel loving people does not appear to be reasonable cause to exonerate from penalty. Of course, just because penalty is prescribed that should not mechanically be levied following Apex Court's decision in the case of *Hindustan Steel Ltd. v. State of Orissa* reported in 1978 (2) E.L.T. (J159) (S.C.) = AIR 1970 S.C. 253. Section 80 of the Act having made provision for excuse from levy of penalty under section 76 if the assessee proves that there was a reasonable cause for failure under that section no other criteria is mandate of Law to exonerate from penalty. No reasonable cause being patent from the record towards failure to deposit the tax due, duly, except the casual approach of aforesaid, the Id. Commissioner (Appeals) was not justified to set aside the penalty levied under section 76 of the Act.

.....




9. It is relevant to state that the decision on which the learned Commissioner (Appeals) relied relates to provision under Central Excise Act, 1944 while present appeal is under Finance Act, 1994 which is self contained code. Provisions of section 76 of Finance Act 94 has fastened liability to mandatory penalty in addition to the tax payable and there is no exception provided except cases covered by Section 80 of the Act. Provisions contained in 11AC of the Central Excise Act and Rule 173Q of the Central Excise Rules 1944 called for pay". This provided discretion whether to levy or not depending on the facts and circumstances of the case, while section 76 of the Finance Act has fastened liability subject to Section 80 of the Act even to excuse in justified cases and findings."

(Emphasis supplied)

9.1 In view of above, I uphold the penalty imposed by the impugned order on the Appellant under Section 76 of the Act.

10. Regarding penalty imposed under Section 77 of the Act, I find that the impugned order has imposed penalty of Rs. 10,000/- under Section 77 on the ground of delay in making payment of service tax dues by the Appellant. I find that the Appellant was out of VCES due to non payment of full service tax on or before 31.12.2014 as declared in VCES application dated 30.12.2013 and hence, normal Sections will apply. Thus, there is no infirmity in the impugned order for imposing penalty of Rs. 10,000/- for delayed payment of service tax dues under Section 77 of the Act.

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

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

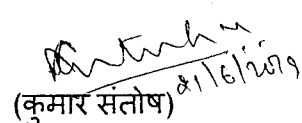
12. The appeal filed by the Appellant is disposed off as above.

सत्यापित,



विपुल शाह

अधीक्षक (अपील्स)


(कुमार संतोष) 21/6/2019

प्रधान आयुक्त (अपील्स)

By R.P.A.D.

To, M/s Shiv Pooja Construction, At : Gadhada, Post Trapaj, Taluka : Talaja, District Bhavnagar.	सेवा में, मे. शिव पूजा कन्स्ट्रक्शन, गढडा, पोस्ट त्रापज, तालुका : तलाजा, जिल्ला : भावनगर।
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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) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- ✓ 4) गार्ड फ़ाइल।

