



भारतीय न्यायिक प्रणाली के अंतर्गत राजस्व वसूली के लिए
 AND THE PRINCIPAL COMMISSIONER PROCEEDINGS AND APPELLATE OFFICE



देशीय न्याय, नई दिल्ली कक्ष 20TH फ्लोर, G18 - भारतीय
 राजस्व वसूली प्राधिकरण : Range Courts Range Road
आपला संख्या / Order No. 31/2019

सर्विस नंबर : 01/2019-2020-2021-2022 ई. केंद्र के लिए इलेक्ट्रॉनिक आदेश, 2019

संश्लेषण में शामिल प्रमुख तिथियाँ

विवरण (Particulars)	दिनांक (Date)	वर्ष (Year)
V1200G-DM-2017	04.07.2018	05.12.2017
V1200G-DM-2017	07.07.2018	04.12.2017
V1200G-DM-2017	08.07.2018	05.12.2017
V2200G-DM-2017	20.07.2018	05.12.2017
V2300G-DM-2018-19	25.07.2018	01.12.2018
V2300G-DM-2018-19	4.08.2018	02.12.2018
V2400G-DM-2018-19	28.08.2018	02.12.2018

आदेश जारी करने का तिथि (Date of Order) - 31.01.2019

आदेश नंबर : NCCN-I, SUTIS-000-APP-019-T/1-025-2019

आदेश जारी करने की तिथि (Date of Order)

31.01.2019

आदेश जारी करने का तिथि (Date of Order)

06.02.2019

प्रमुख अधिकारी, प्रमुख अधिकारी (संश्लेषण), राजस्व वसूली प्राधिकरण
 Principal Commissioner, Principal Commissioner (Appeals), Rajkot

आदेश का उद्देश्य : यह आदेश राजस्व वसूली प्राधिकरण द्वारा जारी किया गया है, जो कि राजस्व वसूली प्राधिकरण के अंतर्गत प्रमुख अधिकारी (संश्लेषण) द्वारा जारी किया गया है।
 The object of this order is to direct the Principal Commissioner (Appeals) to direct the officers to collect the tax dues as per the order of the Appellate Officer.

- 1. श्री/श्रीमती राजेश कुमार/श्रीमती राजेश देवी, दिल्ली, प्रमुख अधिकारी (संश्लेषण), राजकोट।
- 2. श्री/श्रीमती राजेश कुमार/श्रीमती राजेश देवी, दिल्ली, प्रमुख अधिकारी (संश्लेषण), राजकोट।
- 3. श्री/श्रीमती राजेश कुमार/श्रीमती राजेश देवी, दिल्ली, प्रमुख अधिकारी (संश्लेषण), राजकोट।
- 4. श्री/श्रीमती राजेश कुमार/श्रीमती राजेश देवी, दिल्ली, प्रमुख अधिकारी (संश्लेषण), राजकोट।
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11 The first of the 1950s was a period of rapid growth in the American economy, and the Federal Reserve was established in 1914 to manage the money supply and maintain the stability of the financial system. The Federal Reserve Act of 1913 established the Federal Reserve System, which is the central bank of the United States. The Federal Reserve is composed of 12 regional banks and the Federal Reserve Board in Washington, D.C. The Federal Reserve's primary goal is to promote maximum employment, stable prices, and moderate long-term interest rates.

12 The Federal Reserve's role in the economy is crucial, as it controls the money supply and sets the discount rate. The Federal Reserve also provides financial services to the government and the public. The Federal Reserve's actions can have a significant impact on the economy, as changes in the money supply and interest rates can affect inflation and economic growth.

13 The Federal Reserve's role in the economy is also to provide a safe and sound financial system. The Federal Reserve is responsible for supervising and regulating the banking system to ensure the safety and soundness of the financial system. The Federal Reserve also provides financial services to the government and the public, such as clearing checks and processing payments.

14 The Federal Reserve's role in the economy is also to provide a stable and predictable monetary policy. The Federal Reserve is responsible for setting the target for the growth rate of the money supply and adjusting the discount rate to achieve this target. The Federal Reserve's actions can have a significant impact on the economy, as changes in the money supply and interest rates can affect inflation and economic growth.

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ORDER IN APPEALS

The present seven appeals have been filed by the Appellants (herein after referred to as 'Appellant No.1 to Appellant No.7') as detailed in the Table below against Orders in Original No. (hereinafter referred to as 'the impugned orders') shown against each appellant, passed by the Assistant Commissioner of Central GST Rural/Urban Division, Gandhidham (Kutch) (hereinafter referred to as 'the lower adjudicating authorities').

Sr. No.	Appell. No.	Appellant No.	Name of the Appellant (S/Str)	Order in Original No. & Date	Passed by	Service Tax Involved (Rs.)
1	V2/243/GDM/2017	Appellant No.1	Juglasingh Hadwatsingh Sardha Yadav Nagar P.S., Gandhidham Gandhidham -Kutch.	6/AO/2017- 16 dated 3.12.2017	Asst. Commr. CGST Rural Division, Gandhidham.	23,11,095
2	V2/285/GDW/2017	Appellant No. 2	Shireen Gonaram Vindri, Indira Nagar, Mini Bihar, Gandhidham	7/AO/2017 16 dated 20.12.2017	Asst. Commr. CGST Rural Division, Gandhidham	35,82,436
3	V2/285/GDM/2017	Appellant No. 3	Ramaram Kelaaram Sarsa, Blum Area Railway Colony, New Kardis, Kutch.	8/AO/2017 16 dated 29.12.2017	Asst. Commr., CGST Rural Division, Gandhidham	28,74,257
4	V2/267/GDW/2017	Appellant No. 4	Chacharam Karaman Siyag, Suri Area Rs. Way Colony New Kardis, Kutch.	5/AO/2017- 16 dated 20.12.2017	Asst. Commr. CGST Rural Division, Gandhidham	28,55,781
5	V2/303/GDM/2018-19	Appellant No. 5	Bhagwati Racharans, Sardha, House No. 153, Maneshwari Nagar, Gandhidham - 370 201	2/CGST/AO/2 216-19 dated 25/12/2018	Asst. Commr. CGST Urban Division, Gandhidham	10,92,178
6	V2/57/GDM/2018-19	Appellant No. 6	Varshada J. Rahod House No. 47,	1/CGST/AO/2 216-19 dated 25/12/2018	Asst. Commr., CGST Urban Division, Gandhidham	27,39,000

			Divisional Office Gadhankh P.O. Model, W.P. PAFK-280 Faisalabad.			
7	VZ:40/GDM:2018- 18	Appeal No. 7	T. A. Khatun (Respondent) Finance Division PAFK, Model P.O., W.P. Faisalabad Punjab Pakistan Phone No. 379 291	T. A. Khatun (Appellant) dated 28/3/18	Asst. Commr. CGOI Lower Division Gadhankh	17,92,857

2. The brief facts of the case are as follows: Authority of documents of M/s Mandeshwar Logistics revealed that the respondent had provided cargo forwarding services during F.Y. 2012-13 to 2016-17 and collected service tax from the service receiver but had not credited the service tax into Government account. Statement of the appellants were reviewed wherein they admitted that they had collected service tax and deposited service tax along with interest during F.Y. 2015-16 & F.Y. 2016-17 and also paid late fee for delayed filing of ST-3 returns. Show Cause Notices were issued to the appellants regarding recovery of Service Tax under provision Section 73(1), of the Finance Act 1884 (hereinafter referred to as 'the Act') along with interest under Section 76 of the Act, imposition of penalty under Section 78 of the Act and recovery of late fee under Section 79 of the Act read with Rule 70 of Service Tax Rules 1874 for its use to file ST-3 returns and appropriation of service tax, interest and late fee paid by the appellants. The lower adjudicating authority also pronounced orders for recovery of Service Tax along with interest imposed penalty equal to service tax under section 78 of the Act and ordered to recover applicable late fee for failure to file ST-3 returns on time and appropriate service tax, interest and late fee paid by the appellants.

3. Being aggrieved with the impugned orders appellants preferred the present appeals stating that the findings of the lower adjudicating authorities are not justified and bad in law and the orders have wrongly recovered service tax along with interest and wrongly ordered for recovery of late fee under Section 79 of the Act and wrongly imposed penalty under Section 78 of the Act.

4. Personal hearing in the matter was attended by Shri Abhisek Doshi, Chartered Accountant on behalf of all those appellants who reiterated the grounds of appeals and submitted written submissions to say that the issue has been permitted by their common Accountant who get money from them but did not pay to the Government account, that when they have to raise they filed FIR with the Police and they started paying service tax before inquiry was started by CGOI and

they have paid entire service tax that on FIR lodged by them, Police investigated the case and also lodged charge sheet in the Court of Law; that the Accountant is still in judicial custody behind bar even after so many months; that they plead only non-imposition of penalty under Section 78 of the Act as fraud has been committed by the Accountant and not by them as, has been held by the Hon'ble CESTAT in the cases of Hemang Enterprises reported as 2015 TIOU 2184 CESTAT-MUM, Canara Enterprises reported as 2015 TIOU 650 CESTAT-MUM, Sari Sari Enterprises reported as 2015 TIOU 1586 CESTAT-MUM; that they requested to set aside penalty imposed and save them from double jeopardy/double tax.

FINDINGS:

5. I have carefully gone through the facts of the case, impugned orders, grounds of appeals and the submissions made during personal hearing. The issue to be decided in the present case is as to whether penalty equal to service tax involved, imposed upon the appellants under Section 78 of the Act is warranted.

6. I find that the appellants have not contested demand of service tax and interest thereon and late fee for delayed filing of ST-3 returns under Section 70 of the Act read with Rule 70 of Service Tax Rules, 1994 during personal hearing as these were due to be paid by the appellants having not paid the service tax in time. Hence, the impugned orders confirming demand of service tax along with interest and for recovery of late fee for late filing of ST-3 returns are upheld and appropriation of amounts deposited by the appellants vide the impugned orders is also confirmed.

7. Regarding imposition of penalty under Section 78 of the Act, the appellants have contended that the fraud has in fact been committed by their common Accountant who got money from them, but did not pay to the Government account; that they filed FIR with the Police when they came to know and they started paying service tax on their own before inquiry was started by DDO and now they have paid entire service tax; that on FIR lodged by them, Police have investigated the case and also filed charge sheet against their common chartered accountant, in the Court of Law, that the said Accountant is still in judicial custody behind bar even after so many months and submitted copy of FIR filed by them against the Accountant with the police. I find that the appellants in their respective statements have deposed that the said common accountant has collected cheques from them for depositing service tax into Government account but has not deposited the service tax into Government account, and had transfered/withdrawn the amount of cheque in his personal account and had shown the services as exercised and the amount of cheque as exercised amounts in their Books of Accounts and ST-3 returns, however, the appellants have paid service tax when they came to know this fraud and have also continued paying interest. I find that all these 7 appellants have honestly contended

that their common accountant has been paying from their such as the accounts it received cheques for deposits etc. in the said common bank account. However, the accountant did not deposit these in the Government account. There is no evidence on record to prove culpability of the appellant the consultant. I also find that the police have lodged F.I.R. against the appellants against their common Accountant and the evidence on record does not include payment with the consultant in the F.I.R. and the Court is exercising its view of the fact and charge sheet has also been filed in the Sessions Court for the District Court against the said Accountant. I further find that the appellants had paid the service tax before inquiry was initiated by DDO/Deputy Commissioner in the facts of these cases. I find no mala fide intention or bona fide nature of the appellants to evade payment of service tax and therefore, penalty under Section 73 of the Act is not imposable on the appellants. The cases were raised only by the appellants are plausible in the facts of the present cases and the facts clearly show that the accountant has defrauded the appellants.

2. I find that the Hon'ble CESTAT, Mumbai in the case of *Manoj Enterprises* reported as 2015 (10) STR 751 (T) is applicable in this case as under:

"The present Revenue's case is only for imposition of penalty under Section 73 and restoration of the penalty of Rs. 20,000/- imposed by the original authority which was set aside by the Commissioner (Appeals) in Rs. 500/- From the crime proceedings, I observed that appellants have been making submission before the Assessing Authority and before the Commissioner (Appeals), that they did not have any intention to evade service tax as they have been making their payment to their consultant who was assigned the job of computing the service tax and depositing in the bank and also filing the return periodically. However, consultant has not depositing cash given to him as service tax in the bank and consultant defrauded the respondent when the return came to the notice, the department has initiated proceedings of Commissioner in respect of dropping penalties recorded as charge as under.

I find that the appellants have stated that they had deposited the consultant Shri Anil Kumar to receive the collections, payment of service tax and submission to return etc. and they were paying cash to the consultant for the payment of service tax and the impugned case is outcome of investigations conducted by the Department at the end of the last assessment. I find that no contrary evidence has been brought in the investigations in this regard to prove that the amount was not being used by the appellants to the consultant for the payment of service tax to the department or the appellants were collusion with his consultant. The show cause notice states that the department has filed F.I.R. with the police authorities for his fraud, set on the part of the consultant. The appellants have not been named in the F.I.R. along with the consultant. The Id. Assessing Authority has not accepted the plea of the Appellants regarding payment of amount of service tax to consultant and their bona fide belief that the consultant has deposited the amount on the grounds that they have not maintaining the authority of such payment from the consultant's service is. Subsequently, in view of the these facts that there is no evidence on record to prove collusion of the appellant with the consultant and the fact that the appellants are not made party in the F.I.R. filed against the consultant and it is the consultant's fault. The charges of

(Signature)

fraud or collusion or willful misstatement or suppression of facts with intent to evade payment of duty do not stand against the appellants. Accordingly the appellants are not liable to any penalty under Section 78 of the Act. Further, in view of the said facts an extremely lenient view is called for while imposing the penalty under Section 77 of the Act for not filing the returns as the appellants had entrusted the said job to the consultant, who was found to be involved in a fraud and there is no evidence contrary to the appellants' claim of their collusion with the consultant.

From the above findings of the ld. Commissioner (Appeals) where it can be seen that the same is discussed in details that regarding the fraud committed by the consultant with the appellant for not depositing service tax in the Government's account for which File proceedings also initiated against consultant by the Department which clearly shows that it is not the appellant who has committed an offence of non payment of service tax, it is the consultant who has defrauded them therefore there is reasonable cause for waiver of penalty under Section 78. Accordingly, ld. Commissioner (Appeals) has correctly set aside the penalty imposed under Section 78. As regard the reduction of penalty under Section 77 from Rs. 20,000/- to Rs. 500/-. On the same fact ld. Commissioner (Appeals) has exercised his discretion in reducing penalty from Rs. 20,000/- to Rs. 500/-. In my view there is no reason to interfere to the findings of the ld. Commissioner (Appeals), who has reduced penalty by proper application of mind therefore uphold the impugned order and dismiss the appeal of the Revenue. CD is also disposed of accordingly.

(Emphasis supplied)

In view of above, uphold the impugned orders confirming demand of service tax along with interest and imposition of late fee for delayed filing of ST-3 returns, however, waive penalty imposed on the appellants under Section 78 of the Act and allow appeals filed by the appellants to the extent of non imposition of penalty imposed on them.

१. अपीलकर्ताओं द्वारा तर्क की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

२. The appeals filed by the appellants are disposed of in above terms.

प्रधान आयुक्त (अपील)

By Speed Post

To	
1	Shri Jograj Singh Haswatsingh Sodha, Yashwanagar P.S., Dandhikaram, Gandhinagar-Kutch.
2	Shri Shriram Anandram Vankari, Indra Nagar, Mithi Road, Gandhinagar.
3	Shri Ramaram Kesharam Sarai, Sujam Area, Railway Colony New Kandi Kutch
4	Shri Chakraseni Kesharam Rajwaj, Sujam Area, Railway Colony,

श्री श्री राजसिंह हजवातसिंह सोडा, याशवानगर पोस्ट, जनसुख, संधिया, संधियाम (कच्छ)
श्री श्रीराम सोनारम विजयनंद, इंदिरा नगर, मीठी रोड, गंधीनगर
श्री रामराम केशव राम सरय, सुजम एरिया, रेलवे कॉलोनी, न्यू कंड़ी कच्छ
श्री चक्रवर्तु केशव राम राजवाज, सुजम एरिया, रेलवे कॉलोनी,

	New Kandla, Gand.	સાચી શિક્ષણ સંસ્થા
5	Shri B. Jagannath Reddy (P) & Co., House No. 155, Main Road, Gandhiana, Gandhiana - 370 201.	સાચી શિક્ષણ સંસ્થા સાચી શિક્ષણ સંસ્થા સાચી શિક્ષણ સંસ્થા
6	Shri Narsimha Reddy (P) House No. 47, D. Nagar, New Sudaola, Gandhiana - 370 201.	સાચી શિક્ષણ સંસ્થા સાચી શિક્ષણ સંસ્થા સાચી શિક્ષણ સંસ્થા
7	Shri Parmanand G. (P) (P) & Co., House No. 566, Rajy Nagar, Gandhiana, Gandhiana - 370 201.	સાચી શિક્ષણ સંસ્થા સાચી શિક્ષણ સંસ્થા સાચી શિક્ષણ સંસ્થા

Copy to:

- 1) The Principal Chief Commissioner (GSE) Centre, Gandhiana Zone, Ahmedabad for Mtd. No. 15/1860
- 2) The Commissioner (GSE) & Control Office, Gandhiana, Gandhiana, Gandhiana (Kulch) for necessary action
- 3) The Deputy Assistant Commissioner, Gandhiana, Gandhiana, Gandhiana for necessary action
- 4) The Deputy Assistant Commissioner, Gandhiana, Gandhiana, Gandhiana for necessary action
- 5) Guard File.
- 5) F.No. V2/255/GDM/2017
- 6) F.No. V2/267/GDM/2017
- 12) F.No. V2/37-GDM/2018-19

F.No. V2/255/GDM/2017
F.No. V2/267/GDM/2017
F.No. V2/37-GDM/2018-19