



::प्रधानआयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और 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

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल नम्बर/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/13 /GDM/2018-19.	27/JC/2017-18	28-02-2018

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

**KCH-EXCUS-000-APP-075-2019**

आदेश का दिनांक / Date of Order:	10.07.2019	जारी करने की तारीख / Date of issue:	10.07.2019
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श्री कुमार संतोष, प्रधानआयुक्त (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 एवं सेवाकर, 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 Appellant/Respondent :-

**R.Pooja Enterprise, Plot No. 25, Shakti Nagar, Mirza Corner, Mundra, (K)**

इस आदेश (अपील) से न्यायत काई व्यक्ति निम्नलिखित तरिके में उपयुक्त प्राधिकारी / प्राधिकरण को समझ 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) सामान्य उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण के प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का 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 मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन 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 बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठ, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- ३८००१६ को की जानी 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 समझ 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 मांग, ब्याज की मांग और लगाया गया जमाना, 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 रजिस्ट्रार 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 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 समझ अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस 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 मांग, ब्याज की मांग और लगाया गया जमाना, 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 रजिस्ट्रार 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 is 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 नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसमें साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रस्तावित 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 of 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 (सेन्ट्रल) 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 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 अत्यधिक देय राशि दस करोड़ रुपये से अधिक न हो।**
  - (i) **केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है**
  - (ii) **धारा 11 डी के अंतर्गत रकम**
  - (iii) **सेनवेट जमा की ली गई गलत राशि**
  - (iv) **सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम**

**- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विवादाधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे। /**

**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 कोपुनरीक्षण आवेदन : Revision application to Government of India:**  
**इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामला नं., 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, संसद 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 (रिवेट) 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 (नं. 2), 1998 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, 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 संप्रषण 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 साध्य 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 कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग में किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी 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 filed 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 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) **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) 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](http://www.cbec.gov.in).**



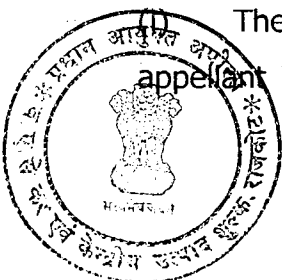
**ORDER-IN-APPEAL**

M/s. R. Pooja Enterprise, Plot No. 25, Shakti Nagar, Mirza Corner, Mundra (Kachchh) holding Service Tax Registration No. AAMPY2227KST001 (hereinafter referred to as 'the appellant') has filed present appeal against the Order-in-Original No. 27/JC/2017-18 dated 28.02.2018 (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, Central Goods & Service Tax, Gandhidham (hereinafter referred to as 'the lower adjudicating authority').

2. The brief facts of the case are that the appellant was engaged in providing taxable services namely, manpower recruitment or supply agency service; cargo handling service and commercial or industrial construction service. An investigation was initiated against them, which revealed that they were indulging in evasion of service tax by way of not paying/short paying service tax on the amount received as income by them for the services provided to their customers; that the appellant short paid service tax of Rs. 62,72,667/- during the period from October, 2008 to March, 2013 under the said services; that they had not correctly assessed service tax liabilities and also not filed correct returns under Section 70 of the Finance Act, 1994 (hereinafter referred to as "the Act") and also had not disclosed the material facts to the department, in any manner at any time before and thus, the appellant had contravened the provisions of the Act and the Service Tax Rules, 1994 (hereinafter referred to as "the Rules"). The above allegations were made in Show Cause Notice No. V.ST/ST-AR-I-Gandhidham/15/COMMR. /2014-15 dated 10.04.2014, which was adjudicated vide the impugned order, which confirmed demand of service tax of Rs. 62,72,667/- under Section 73(1) of the Act along with interest under Section 75 of the Act; appropriated Rs. 9,16,639/- paid as service tax during investigation and Rs. 99,472/- paid as interest; confirmed liability of interest on delayed payment of service tax of Rs. 10,63,381/- under Section 75 of the Act and appropriated Rs. 1,30,747/- already paid as interest; imposed penalty of Rs. 10,00,000/- under Section 77 and penalty of Rs. 62,72,667/- under Section 78 of the Act on the appellant with benefit of reduced penalty.

3. Being aggrieved by the impugned order, the appellant has preferred the present appeal, *inter alias*, on the following grounds:

The lower adjudicating authority has nowhere disputed the fact that appellant had provided services to SEZ units and provided service of loading &



unloading of agricultural produce, which are exempted from service tax; that the impugned order is liable to be set aside.

(ii) Imposition of penalty Rs. 10,00,000/- under Section 77 of the Act is without authority of law and hence, liable to set aside.

(iii) The appellant has already paid service tax payable along with interest and therefore, the appellant is not liable to penalty under Section 78 of the Act.

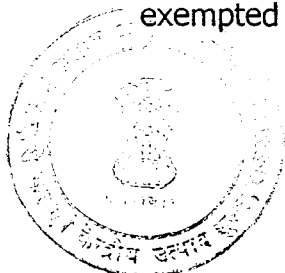
4. Personal hearing was granted to the appellant on 18.03.2019, 02.04.2019, 15/17.04.2019, 23.05.2019 but no one appeared on behalf of the appellant on any of the above given dates. No one appeared from the department also on any date.

**Findings:**

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and the grounds of appeal detailed by the appellant. I find that Rs. 9,16,639/- of service tax paid by the appellant has been appropriated in the impugned order, which is sufficient to comply with the provisions of Section 35F of the Act. The issue to be decided in the present appeal is whether, in the given facts of case, the appellant is liable to pay service tax under Section 73(1) of the Act interest under Section 75 of the Act and penalty is required to be imposed on the appellant under Section 77 & 78 of the Act.

6. I find that the impugned SCN has alleged that the appellant had provided taxable services of "Manpower Recruitment or Supply Agency", "Cargo Handling" and "Commercial or Industrial Construction" to their various customers, namely M/s. Swaminarayan Vijay Carry Transport Pvt. Ltd., Bhuj; M/s. Adani Port & SEZ Ltd., Mundra; M/s. Gujarat Adani Institute of Medical Service, Bhuj; M/s. Alstrom Fiber Composites India Pvt. Ltd. and M/s. Suraj Impex etc. during the period from October, 2008 to March, 2013 and had collected service tax from their customers but did not deposit the collected service tax to the account of government.

7. The appellant has contended that the lower adjudicating authority has nowhere disputed the fact that appellant had provided service to SEZ units and provided loading & unloading services of agricultural produce, which are exempted from service tax; that they already discharged their service tax liability



along with interest. I find that Notification No. 9/2009-ST dated 03.03.2009 prevailing at the period under dispute granted exemption to the taxable services if provided in relation to the authorized operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone, whether or not the said taxable services are provided inside the Special Economic Zone, from the whole of the service tax leviable thereon under section 66 of the said Finance Act. I would like to reproduce Para 2(a) of the said Notification, which reads as under:-

"2. The exemption contained in this notification shall be subject to the following conditions, namely :-

(a) the person liable to pay service tax under sub-section (1) or sub-section (2) of section 68 of the said Finance Act shall pay service tax as applicable on the specified services provided to the developer or units of Special Economic Zone and used in relation to the authorized operations in the Special Economic Zone, and such person shall not be eligible to claim exemption for the specified services.

Provided that where the developer or units of Special Economic Zone and the person liable to pay service tax under sub-section (2) of section 68 for the said services are the same person, then in such cases exemption for the specified services shall be claimed by that person;

(b) the developer or units of Special Economic Zone shall claim the exemption by filing a claim for refund of service tax paid on specified services;"

(Emphasis supplied)

7.1 In view of above, it is evident that the service provider is required to pay service tax in respect of the services provided in relation to the authorized operations in a Special Economic Zone and exemption from service tax was/is not available to the service provider but to the service receiver by way of refund only. Hence, I find that the argument of the appellant is devoid of any merits. I further find that the appellant has not submitted documents evidencing as to whom they had provided which taxable services and did not submit even value of the taxable services provided to each SEZ unit/Developer for their authorized operations even after several letters issued by the department! I also find that M/s. Adani Ports & SEZ Ltd., Mundra vide letter dated 19.02.2014 has informed the department that the appellant had provided taxable services to them during the period from 2008-09 to 2012-13, for which service tax of Rs. 40,33,061/- had been paid by them to the appellant. In view of this factual position, exemption from payment of service tax can't be sought by the appellant in the name of the services provided to SEZ units and simply by stating that they have provided services related to agriculture produce and the bald argument made by the



*[Handwritten signature]*

appellant without producing any documentary evidences cannot be accepted. Hence, I have no option but to uphold demand of service tax in respect of the services provided to M/s. Adani Ports & SEZ Ltd.

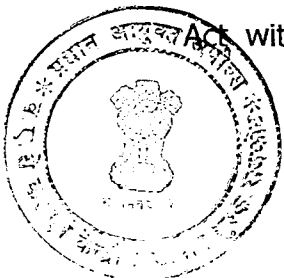
7.2 I find that M/s. Swaminarayan Vijay Carry Transport Pvt. Ltd. vide letter dated 05.08.2013 also informed the department that they paid service tax of Rs. 4,56,705/- for 2008-09, Rs. 41,987/- for 2009-10, Rs. 6,75,667/- for 2011-12 and Rs. 7,57,250/- for 2012-13 to the appellant. I find that the appellant has not contested that they have not received service tax from M/s. Swaminarayan Vijay Carry Transport Pvt. Ltd. Thus, I have no option but to uphold demand for the services provided by the appellant to them and confirmed by the impugned order on this account.

7.3 The appellant has not contested confirmation of demand of service tax in respect of rest of the services and thus, the appellant has no dispute for demand of service tax for services provided to others. Therefore, I uphold the demand of service tax in respect of the services provided by the appellant to all persons other than SEZ units.

7.4 In view of above, the appellant was required to pay total service tax of Rs. 73,36,048/- during the period from October, 2008 to March, 2013, however, out of which they have paid service tax of Rs. 10,63,381/- only during 2008-09 (October to March) and 2009-10. The appellant is, thus, required to pay service tax of Rs. 62,72,667/- as confirmed vide the impugned order. I, therefore, have no option but to uphold demand of total service tax of Rs. 62,72,667/- as confirmed vide the impugned order. I also hold appropriation of Rs. 9,16,639/- paid by the appellant correct and justified.

8. I find that the appellant has not only provided taxable services but has also collected service tax from his customers and, however, not paid collected service tax to the Government, which he was required to pay immediately. Having not paid then, the appellant is duty bound to pay service tax along with interest now forthwith. There is no doubt that the appellant has suppressed the material facts from the department with intent to evade payment of service tax as they did not file Service Tax Returns correctly. In fact, they filed incorrect ST-3 Returns only with intent to evade payment of service tax. Hence, I hold that the appellant has contravened the provisions of Section 68 and Section 70 of the

ACT with intent to evade payment of due service tax and hence, is liable to



*[Handwritten signature]*

penalty correctly imposed in the impugned order under Section 77 of the Act.

8.1 I also find that the appellant neither appeared for personal hearing before the lower adjudicating authority nor submitted any defence reply to the SCN and also not appeared for personal hearing before the undersigned despite 4 opportunities were given to them over a period of 3 months. It is also a fact that the appellant had not co-operated with the investigation and had not submitted any documentary evidences regarding bifurcation of taxable and non-taxable income inspite of repeated assurances given by them in their statements! The proprietor of the appellant firm did not appear to the investigating authorities despite summons issued to him during the course of investigation. All these facts reflect properly on part of the appellant. In my view, this is a fit case for prosecution of the appellant and its proprietor as they have not only not paid service tax due to the Government but have not paid service tax of more than 60 lakhs despite having been collected from customers! Therefore, the impugned order has very correctly imposed penalty of Rs. 62,72,667/- under Section 78 of the Act, which is totally justified in the facts of this case.

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

९.१ 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 in above terms.

*(Signature)*  
10/11/19

*(Signature)*  
10/11/2019  
(कुमार संतोष)  
प्रधान आयुक्त (अपील्स)

By RPAD

To,

M/s. R. Pooja Enterprise, Plot No. 25, Shakti Nagar, Mirza Corner, Mundra (Kachchh)	मे. आर. पुजा एंटरप्राइज़, प्लॉट नं. २५, शक्ति नगर, मिर्जा कोर्नर, मुँदरा (कच्छ)
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प्रति:

(1) प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अहमदाबाद क्षेत्र, अहमदाबाद को जानकारी हेतु।

(2) आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम को आवश्यक कार्यवाही हेतु।

(3) संयुक्त आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल, मुँदरा को आवश्यक कार्यवाही हेतु।

(4) गार्ड फ़ाइल