



एन टैक्स मार्केटिंग एंड सर्विसेस, एडु. ए. रोड, एन सी, राष्ट्रीय राजधानी क्षेत्र  
 EN TAX MARKETING SERVICES PRIVATE LIMITED, NEW DELHI - 110001



राजस्थान राज, सी एस रोड फ्लोर 100/100A, GST Showroom,

रिजिस्टर्ड ऑफिस: रा. 1, 20th Cross Road, Band

कंप्यूटरीज: नजदर-110001

Contact No: 011-2729627/2962742 Email: info@en-tax.com

पंजीकृत नाम: सी. डी. कर्करा :

1	आपका पता: 100/100A, सी एस रोड, फ्लोर 100/100A, GST Showroom, रा. 1, 20th Cross Road, Band	आपका पता: 100/100A, सी एस रोड, फ्लोर 100/100A, GST Showroom, रा. 1, 20th Cross Road, Band	आपका पता: 100/100A, सी एस रोड, फ्लोर 100/100A, GST Showroom, रा. 1, 20th Cross Road, Band
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14) आई. टी. एन. सी. आई. (Income-tax) - 1919

**REV-INCONS-000-APP-166-2018-19**

आवेदन का दिनांक: 06.07.2018 जारी करने की तिथि: 09.07.2018  
 Date of Order: 06.07.2018 Issue Date:

जुजरा रोजीर, आभुस (आवेदक), राजकोट, गुजरात प्रदेश।  
 Forard by Bhai Kurnar Bantosh, Commissioner (Appeals), Rajkot

- 1) आपका पता: 100/100A, सी एस रोड, फ्लोर 100/100A, GST Showroom, रा. 1, 20th Cross Road, Band
- 2) अपीलकर्ता & जवाबदारों का नाम: Mrs. Prashanti Construction, C-10815, Dpp, Maini service Station (HMC) Chitra, Bhavnagar-364 005
- 3) आपका पता: 100/100A, सी एस रोड, फ्लोर 100/100A, GST Showroom, रा. 1, 20th Cross Road, Band
- 4) आपका पता: 100/100A, सी एस रोड, फ्लोर 100/100A, GST Showroom, रा. 1, 20th Cross Road, Band
- 5) आपका पता: 100/100A, सी एस रोड, फ्लोर 100/100A, GST Showroom, रा. 1, 20th Cross Road, Band
- 6) आपका पता: 100/100A, सी एस रोड, फ्लोर 100/100A, GST Showroom, रा. 1, 20th Cross Road, Band



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

M/s. Pruthvi Construction, C 1/815, Opp. Haraji Service Station, GIDC, Chitra, Bhavnagar - 364 005 (hereinafter referred to as "the appellant") filed appeal against Order-in-Original No. G3/AC/SIX/DIV/2016-18 dated 17.04.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner(AC), Central Excise HQ., Bhavnagar (hereinafter referred to as "the lower adjudicating authority").

2. The brief facts of the case are that the appellant provided taxable services "Works Contract Service", "Construction Service" and "Management, Maintenance or Repair Service" to various customers but never filed ST-3 Returns and not paid proper service tax. Inquiry initiated against the appellant under summons proceedings revealed that Shri Prudipsinh B. Gehil, Proprietor of M/s. Pruthvi Construction and M/s. Pruthvi Electricals was engaged in providing construction services whereas M/s. Pruthvi Electricals engaged in providing services related to repair and maintenance of transformers; that they provided various services to their customers however they did not provide any service to District Panchayat, Bhavnagar and Municipal Corporation, Bhavnagar during the period from 2011-12 to 2015-16. The documents submitted by the appellant revealed that the appellant had provided construction services of various civil structures, erection of electric substations, Mobile Towers, Repairing of transformers etc. to various customers during the period from 2011-12 to 2015-16, for which the appellant received consideration but did not pay service tax due thereon and never filed ST-3 Returns; that the appellant was liable to pay service tax of Rs. 49,50,516/-, out of which they paid service tax of Rs. 10,61,742/- during investigation. Show Cause Notice F. No. VJ/373-18/SIX/DIV/2016-17 dated 20.10.2016 was issued to the appellant proposing recovery of service tax of Rs. 49,50,516/- under proviso to Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act") along with interest under Section 75 of the Act and

imposition of penalty under Section 77 and Section 78 of the Act. The proposals made in SOI were disposed by the lower adjudicating authority vide the impugned order wherein demand of Rs. 49,43,548/- was confirmed under proviso to Section 75(1) of the Act and Rs. 10,01,742/- so far as it was appropriated, dropped demand of Kishu Kalyan Case of Rs. 6,968/- ; ordered recovery of interest under Section 75 of the Act and imposed penalty of Rs. 10,000/- and Rs. 49,43,548/- under Section 77(2) and Section 78 of the Act respectively.

3. Being aggrieved by the impugned order, the appellant filed the present appeal *inter alia*, on the grounds that,

(i) Service tax was not paid by them because of bonafide belief that the same was not payable and the appellant did not know the service tax law; that they paid service tax Rs. 10,01,742/- and interest Rs. 10,000/- during investigation.

(ii) The appellant has not contested levy of service tax but contested imposition of penalty due to their bonafide belief they had and their activities do not fall under service tax and therefore, there was reasonable cause on their part in not charging/collecting service tax and not depositing service tax. The appellant is of the view that they are entitled for the benefit of Section 69 of the Act and no penalty should be imposed on them.

(iii) Mere detection by the department does not mean that non-payment of service tax was with intent to evade payment of service tax unless the department brings out facts that the appellant was having knowledge that service tax was payable but still they did not pay. No such facts forthcoming from SOI as well as impugned order. When no such evidence is available and that the appellant had not recovered the service tax from their customers and hence, requested to grant immunity from the penalty.

(iv) The appellant relied upon decision of the Hon'ble Bombay High Court in case of *Rishish Vasastrac Pvt. Limited* reported as 2005 (10) STR 5 (Bom); and *Ucal Chemicals* reported as 2008 (9) STR 230 (Bom).

4. Personal hearing in the matter was attended to by Shri Madhav N. Vaidya, CA, who reiterated the grounds of appeal and made written submission to submit that they have paid Rs. 10.61 lakhs during investigation of the case; that this payment was made before issue of SCN; that penalty is not impossible in such cases and waiver under Section 111 of the Finance Act, 1994 is required to be granted as there is no suppression of facts on their part.

**Findings:-**

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submissions of the appellant. I find that the impugned order was received by the appellant on 18.05.2017 and appeal was filed on 25.07.2017 i.e. delay of 23 days beyond normal period of 10 days from the date of receipt of the impugned order. The appellant has stated that their consultant was engaged in adjudication proceedings of various authorities due to drive of adjudication, reply work of notices issued by the Income Tax Department due to dematerialization of currency; statutory audit work of Nationalized Banks and migration & consulting work of GST and Judiciary, which delay has occurred. Since delay is of 23 days only, which is within further limit of 30 days. I cannot delay and proceed to decide the appeal on merits. The issue to be decided in the present appeal is as to whether the impugned order imposing penalty, in the given facts of the case, is proper or otherwise.

6. I find that the appellant has not contested demand of service tax of Rs. 49,13,548/- and has accepted the impugned order and has preferred present appeal seeking immunity from imposition of penalty in terms of Section 111 of the Act.

6.1 I find that the lower adjudicating authority has held that the appellant provides various taxable services during the period from 2011-12 to 2015-16 but neither assessed nor reported service tax nor paid service tax payable to the Government; that the appellant never disclosed receipt of such income from taxable services in their

ST 3 Returns. These facts could be ascertained by the department at the time of investigation and yet appellant made payment of service tax of Rs. 10,61,742/- during investigation against their liability of Rs. 49,45,543/- . It is held that the appellants contravened the provisions of Section 68 and Section 70 of the Act with intent to evade payment of due service tax and consequently by the department. Therefore, the lower adjudicating authority's impugned order has correctly confirmed demand of Rs. 49,45,543/- under Section 73(1) of the Act reckoning extended period.

6.2 The appellants has contended that they have neither charged service tax nor collected service tax under bona-fide belief that the activities carried out by them were not liable to service tax and therefore, it is not a case of suppression of facts with intent to evade payment of service tax knowingly. Therefore, imposition of penalty as required to be set aside and benefit under Section 80 of the Act needs to be granted to them. It is held that Section 60 of the Act can be invoked only when the assessee is able to prove that there was reasonable cause for their failure to pay service tax. In the present case, the appellant has not provided any acceptable/justified reason for their failure in making payment of service tax. They have also not paid any service tax payable since 2004, after more than 2 years of detection by the department.

6.3 It is found that the amount of service tax is very substantial and hence, if they had any doubt regarding liability under payment of service tax, they could have and should have enquired from the department, which was not done by them. In view of above facts, I have no option but to hold that they suppressed vital facts of providing taxable services from the department with intent to evade payment of service tax. The sum payable of Rs. 10,61,742/- made by the appellants during investigation, after detection by the department, is not sufficient to indicate that it was bona-fide intent of the appellants to pay since beyond doubt in this case due to non-payment of due service tax ever since and therefore, this case is not

fit to invoke the provisions of Section 80 of the Act.

7. The act of the appellant also cannot be over looked in the name of ignorance of the law as pleaded by them. I find that the Hon'ble High Court in the case of *Rajshree Dye. & Fin. Mills (P) Ltd.* reported as 2011 (305) E.L.T. 412 (G.J.) has held that *'We are conscious of the fact that this being the provision embodied in the statute itself, nobody can be permitted to plead ignorance of the law. We are also aware that this being the law and intent of legislation being also very clear all concerned are expected to know the law.'* The Hon'ble Supreme Court in the case of *Cummins India Ltd* reported as 2013 (297) E.L.T. 468 (C.O.I.) has held that it is settled principle that ignorance of law is no excuse not to levy of taxes.

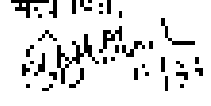
8. In view of above facts, the demand was correctly confirmed invoking extended period under Section 73 (2) of the Act. I have already noted that the appellant had suppressed the material facts from the department with intent to evade payment of service tax and hence, confirmation of demand of Rs. 49,43,546/- and imposition of penalty of Rs. 49,43,546/- under Section 78 of the Act is correct, legal and proper. Since, the adjudicating authority had given the appellant option to pay reduced penalty as provided under law. Hence, no further relaxation is required to be given by this Appellate Authority.


8.1 The lower adjudicating authority held that the appellant had never filed 57-D Returns during the period from 2011-12 to 2015-16 under Section 70 of the Act and therefore, penalty imposed under Section 77(2) of the Act and the appellant has not contested the said findings of the lower adjudicating authority though argued for waiver of penalty under Section 80 of the Act. Considering the facts of the case, penalty cannot be waived in terms of Section 80 of the Act as has been held in earlier para also. Hence, penalty imposed under Section 77(2) of the Act is upheld.

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

9.1 अपीलकर्ता द्वारा दल की गई अपील का निम्नलिखित प्रकार से किया जाता है।

9. The appeal filed by the appellant stand allowed all in above terms.

कृत विना,  
  
 आ. सं. २०१९  
 अ. सं. २०१९/२०१९

  
 (कुमार संगीष)  
 आयुक्त (अपील)

**By Regd. Post A. D.**

To.

M/s. Pruthi Construction,  
 C-1/315, Coo. Harull Service Station,  
 GIDEC, Centra, Bhavnagar - 364 005

श्री. पृथ्वी कन्स्ट्रक्शन,  
 सी-१/३१५, मारुति हारुल स्टेशन के  
 सामने, जी.आई.डी.सी., पिन,  
 भावनगर-३६४००५.

Copy for information and necessary action to:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
  - 2) The Commissioner, CGST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
  - 3) The Assistant Commissioner, CGST & Central Excise Division 1, Bhavnagar.
- श्री/ Guard File.