



::आयुक्त (अपील) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/407/BVR/2017	02/AC/STAX/DIV/2017-18	17/04/2017

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

BHV-EXCUS-000-APP-184-2018-19

आदेश का दिनांक / Date of Order:	24.07.2018	जारी करने की तारीख / Date of issue:	25.07.2018
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कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ 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 / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :-**
M/s Rajvi Enterprises, C-1/815, Opp. Maruti service Station, GIDC Chitra, Bhavnagar-364004.

2. M/s Rajvi Enterprise, Village-Padva, Taluka-Ghogha, Dist: Bhavnagar-364050.

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों में 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 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।/
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) नियमवाली, 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 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 duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी 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 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 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/-.



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- (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 उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति पमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) 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 अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो। केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं
- धारा 11 डी के अंतर्गत रकम
 - सेनवेट जमा की ली गई गलत राशि
 - 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 विचाराधीन स्थगन अर्ज़ी 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 :
- amount determined under Section 11 D;
 - amount of erroneous Cenvat Credit taken;
 - 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 को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ससद 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:
- यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से 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
 - 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 छुट (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.
 - 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.
 - सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी 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 समयावधि 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.
 - 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 संश्लेषण 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 साक्ष्य 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.
 - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ 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 से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पदों 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, not withstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) 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 और 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 से संबंधित 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. Rajvi Enterprise, Village-Padva, Taluka-Ghogha, Distirc-Bhavnagar, Pin Code – 364 050 (hereinafter referred to as "the appellant") filed appeal against Order-in-Original No. 02/AC/STAX/DIV/2017-18 dated 17.04.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner(AE), Central Excise HQ., Bhavnagar (hereinafter referred to as "the lower adjudicating authority").

2. The brief facts of the case are that the inquiry initiated against the appellant under summons proceedings revealed that the appellant was engaged in providing "Commercial or Industrial Construction Work"; "Supply of Tangible Goods"; "Rent a Cab"; Site Formation and Clearance, Excavation and Earthmoving and Demolition" and "GTA" to their various customers during the period from 2010-11 to 2014-15 (upto September, 2014), for which they received consideration but did not pay service tax due thereon and never filed ST-3 Returns. The inquiry also revealed that the appellant was liable to pay service tax of Rs. 30,16,099/-, out of which they paid service tax of Rs. 5,00,000/- during investigation. Show Cause Notice F. No. V/15-05/Dem-ST/HQ/2015-16 dated 17.04.2015 was issued to them proposing recovery of service tax of Rs. 30,16,099/- 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 SCN were decided by the lower adjudicating authority vide the impugned order wherein demand of Rs. 30,16,099/- was confirmed under proviso to Section 73(1) of the Act and Rs. 5,00,000/- paid was appropriated; recovery of interest under Section 75 of the Act was asked and penalty of Rs. 10,000/- under Section 77(1)(a) of the Act; penalty of Rs. 10,000/- under Section 77(2) of the Act and Rs. 30,16,099/- under Section 78 of the Act with reduce penalty option imposed on them.

3. Being aggrieved by the impugned order, the appellant filed this present appeal, *interalia*, 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. 5,00,000/- during investigation.

(ii) The appellant did not contest levy of service tax but contested imposition of penalty due to their bonafide belief they had that their activities do not fall under service tax and therefore, there was reasonable cause on their part in not charging/collecting service tax and have not depositing service tax. The appellant is of the view that they are entitled for the benefit of Section 80 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 SCN as well as impugned order; that when no such evidence is available and the appellant had not recovered service tax from their customers, immunity from penalty can be granted under Section 80 of the Act.

(iv) The appellant relied upon decision of the Hon'ble Bombay High Court in case of Ashish Vasantrao Patel reported as 2008 (10) STR 5 (Bom) and Lark Chemicals reported as 2008 (9) STR 230 (Bom) for grant of waiver of penalty.

4. Personal hearing in the matter was attended to by Shri Madhav N. Vadodriya, CA, who reiterated the grounds of appeal and submitted that they are contesting imposition of penalty under Section 78 of the Act on the ground that they have shown all transactions in their records; that there is no intent on their part to made payment of service tax; that only fault on their part is that they thought their civil construction services are not service taxable and hence, they did not charge service tax, also did not collect service tax but even then they paid Rs. 5.0 lakhs of service tax during inquiry; that penalty imposed, under Section 77(1) and Section 77 (2) are required to be exempted under Section 80 of the Act. He also made written submission to submit that the appellant neither suppressed the facts willfully not with intent to evade tax; that they have no knowledge of service tax was payable. The appellant requested that no penalty under Section 77 and Section 78 of the Act is required to be imposed and immunity from the penalty imposed may be granted by invoking provisions of Section 80 of the Act.

Findings:-

5. I find that the impugned order was received by the appellant on 05.05.2017 (as stated by the appellant in ST-4) and appeal was filed on 04.08.2017 and thus, the appeal has been filed within further period of one month beyond normal period of two months from the date of receipt of the impugned order in term of Section 85(3A) of the Act. I condone delay of within further one month and proceed to decide the appeal on merits.

6. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submissions of the appellant. 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 correct or otherwise.

7. I find that the appellant has not contested demand of service tax of Rs. 30,16,099/- confirmed vide the impugned order and has preferred present appeal seeking immunity from imposition of penalty in terms of Section 80 of the Act.

7.1 I also find that the lower adjudicating authority has held that the appellant provided various taxable services during the period from 2010-11 to 2014-15(upto

September, 2014) but neither assessed appropriate service tax nor paid service tax payable to the Government; that the appellant never disclosed receipt of income from such taxable services in ST-3 Returns. These facts could be unearthed by the department at the time of investigation and the appellant made payment of service tax of Rs. 5,00,000/- during investigation against their liability of Rs. 30,16,099/-.

7.2 The appellant has contended that they have neither charged service tax nor collected service tax under their bonafide belief that the activities carried out by them were not liable to service tax and therefore, this is not a case of suppression of facts with intent to evade payment of service tax knowingly. Therefore, imposition of penalty is required to be set aside and benefit under Section 80 of the Act needs to be granted to them. I find that Section 80 of the Act can be invoked only when the appellant 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 in as much as they have not paid, service tax payable by them even now, after more than 3 years of detection by the department.

7.3 I find that the turnover of the appellant very substantial and hence, if they had any doubt regarding charging and/or payment of service tax, they could have and should have inquired 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 part payment of Rs. 5,00,000/- made by the appellant during investigation, after detection by the department, could not be of any help to them. The intent of the appellant to evade payment of service tax is established beyond doubt in this case due to non-payment of full service tax even now after 3 years of issue of SCN and therefore, this case is not fit to invoke the provisions of Section 80 of the Act.

7.4 The act of the appellant 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 Rajeshree Dyg. & Ptg. Mills (P) Ltd. reported as 2014 (305) E.L.T. 442 (Guj.) has held that "*We are conscious of the fact that this being the provision embedded 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 (G.O.I.) has held that it is settled principle that ignorance of law is no excuse not to levy or pay taxes.

8. I, therefore, hold that the appellant contravened the provisions of Section 68 and Section 70 of the Act with intent to evade payment of due service tax. Therefore, the lower adjudicating authority has correctly confirmed demand of Rs. 30,16,099/- under Section 73(1) of the Act invoking extended period and correctly

imposed penalty under Section 78 of the Act.

8.1 In view of above facts, the demand was correctly confirmed invoking extended period under Section 73 (1) of the Act. I have already held 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. 30,16,099/- and imposition of penalty of Rs. 30,16,099/- under Section 78 of the Act is correct, legal and proper. The adjudicating authority has given appellant option to pay reduced penalty as provided under law. Hence, no further relaxation is required to be given by this Appellant Authority.

8.2 I find that the appellant failed to obtain Service Tax Registration and also failed to get it amended in time in terms of Section 69 of the Act read with Rule 4 of the Service Tax Rules, 1994 (hereinafter referred to as 'Rules'). Hence, penalty of Rs. 10,000/- imposed under Section 77(1)(a) of the Act is upheld.

8.3 It is a fact that the appellant had never filed ST-3 Returns in time 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 these 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 by me in earlier para. Hence, penalty imposed under Section 77(2) of the Act is also upheld.

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

सत्यापित.

(Signature)
25/07/2018

आर. पी. शाह
अधीक्षक (अपील्स)

(Signature)
(कुमार सतोष) 25/07/2018
आयुक्त (अपील्स)

By Regd. Post A.D.

To,

M/s. Rajvi Enterprise, Village-Padva, Taluka-Ghogha, Distirc- Bhavnagar, Pin Code – 364 050	मे. राजवी एंटरप्राइज़, गाँव-पड़वा, तालुका-घोघा, डिस्ट्रिक-भावनगर, पिन कोड – ३६४ ०५०.
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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-I, Bhavnagar.
- 4) Guard File.

