



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::  
O/O THE 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

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी.द्वारा :-

DIN- 20210664SX000033053F

| क | अपील / फाइलसंख्या/<br>Appeal /File No. | मूल आदेश सं /<br>O.I.O. No. | दिनांक/<br>Date |
|---|--|-----------------------------|-----------------|
|   | V2/62/GDM/2020                         | 14/AC/Anjar-Bhachau/2020-21 | 02/09/2020      |

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

**KCH-EXCUS-000-APP-175-2021**

| आदेश का दिनांक /<br>Date of Order: | जारी करने की तारीख /<br>Date of issue: |
|------------------------------------|--|
| 24.06.2021                         | 25.06.2021                             |

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Akhilesh Kumar, 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 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 :-

**M/s. Hariom Earthmovers & Transport, Tuna, Tuna Vadi Vistar, Taluka Anjar, District Kutch.**

इस आदेश(अपील) से व्यक्ति 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 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 पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 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 समक्ष 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 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 shall be accompanied by a fee 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/-



- (i) वित्त अधिनियम, 1994 की धारा 83 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 दी 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 प्रमाणित 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 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 (सेस्टेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35ए 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलित देय राशि दस करोड़ रुपए से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्त यह कि इस धारा के प्रावधान वितीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ों 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 प्रथमपरंतक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, 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 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
- (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 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 an 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) सुनिश्चित 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 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 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.
- (vi) 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 पट्टी 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 Appellate 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-1 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](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).





(ii) That Notification No.13/2016-ST date 1.3.2016 specified two different rates of interest in case of delay in payment of service tax by an assessee. The first situation where 24% interest is specified is a case where the assessee collected any amount as service tax but failed to pay the amount so collected to the credit of the Central Government on or before the day on which such payment became due. For other cases, interest rate @15% is prescribed. The Department has not established that the appellant had actually collected service tax from the clients to whom taxable services were rendered during April, 2016 to June, 2017 during the month when service was rendered and invoice was issued, and still retained such amount collected as service tax until payment of service tax was made at a subsequent stage.

(iii) The Department could have demanded interest @15% only for the number of days of actual delay in this case. When the days of actual delay as shown in the above referred statement are considered and interest @15% is calculated thereon, the actual amount of interest liability would be much less than what is demanded from the appellant in this case and therefore this excessive demand deserves to be set aside.

(iv) The proceedings initiated under show cause notice dated 9.1.2020 were ex-facie barred by limitation, and therefore the show cause notice as well as the impugned order now made thereon are ex-facie illegal and without jurisdiction. The period involved in the present case is from April, 2016 to June, 2017, whereas the show cause notice for demanding interest in respect of service tax payable for the above period was issued in January, 2020. Interest is a separate levy; and the way service tax is levied and charged under Section 66B of the Finance Act, 1994 amended by the Finance Act, 2012, interest was levied and charged by virtue of Section 75 of the said Act. It is a settled legal position that tax, penalty and interest are separate levies, and such levies can be collected from the assessee only if there was a charging section for such levies which provided for levy and collection of tax, penalty, interest, and the like. The Show Cause Notice dated 9.1.2020 had been served upon the appellant invoking Section 75 of the said Finance Act. The proposal in the show cause notice was for recovering interest on late payment of service tax by the appellant. But this show cause notice had been issued beyond the normal period of limitation, though there has not been any suppression of facts or willful mis-statement or fraud or collusion or any



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contravention of provisions of the Act by the appellant with any intent to evade payment of service tax. Therefore, the show cause notice for demanding and recovering interest could not have been issued invoking larger period of limitation in the facts of the present case. The show cause notice for demanding and recovering interest under Section 75 having been issued to the appellant beyond the period of limitation laid down under sub-section (1) of Section 73 of the said Finance Act, the impugned order now made against the appellant thereby confirming demand of interest for the period beyond the normal period of 30 months from the date of service of the show cause notice is illegal and without jurisdiction.

4. Personal hearing in the matter was conducted in virtual mode through video conferencing on 8.6.2021. Shri Sudhanshu Bissa and Shri Amal Dave, both Advocates, appeared on behalf of the Appellant. They reiterated submission of appeal memorandum and contended that demand of interest is required to be re-quantified and would submit a calculation sheet as part of written submission and requested to remand the matter to the adjudicating authority for re-quantification. The Appellant submitted calculation sheet on 9.6.2021 showing interest payable on late payment of service tax.

5. I have carefully gone through the facts of the case, the impugned order and ground of appeal submitted by the appellant in the memorandum of appeal. The issue to be decided is whether the impugned order confirming demand of interest under Section 75 of the Act is correct, legal and proper or not.

6. On perusal of the records, I find that the Appellant had paid service tax during the period from April, 2016 to June, 2017 late. The impugned order confirmed demand of interest amounting to Rs. 42,03,661/- under Section 75 of the Act. I find that the Appellant has not disputed about delay in payment of service tax or their liability to pay interest but pleaded that the impugned order has erroneously applied rate of interest @24% in respect of all the transactions whereas in some cases, they are eligible for interest@15%, in terms of Notification No. 13/2016-ST date 1.3.2016.

7. I find it is pertinent to examine the relevant portion of Notification No. 13/2016-ST date 1.3.2016 stipulating rate of interest as under:



*dy*

| Serial Number | Situation   | Rate of simple interest |
|---------------|---|-------------------------|
| (1)           | (2)   | (3)                     |
| 1.            | Collection of any amount as service tax but failing to pay the amount so collected to the credit of the Central Government on or before the date on which such payment becomes due. | 24 per cent.            |
| 2.            | Other than in situations covered under serial number 1 above.   | 15 per cent.            |

8. I have examined the calculation sheet submitted by the Appellant in light of the above provisions. I find that the Appellant has submitted calculation showing that they are liable to pay interest of Rs. 41,26,238/- for delayed payment of service tax. As reflected in the calculation sheet, the Appellant had issued total 36 invoices during the disputed period of April, 2016 to June, 2017. Out of this, the Appellant had admittedly received payment in respect of 17 invoices within the quarter in which respective invoices were issued and the Appellant had also calculated interest @24% in the said calculation sheet without claiming interest @15%. In remaining 18 cases, delay in receipt of payment ranges from 4 days to 75 days and in only one case, delay in receipt of payment was 188 days. However, the Appellant had paid tax after delay of over one year from due date in all cases and in few cases, delay was more than 2 years. So, the contention of the Appellant that they had not received any amount from their clients as service tax during the month or quarter when invoice was issued is contrary to facts. It is clearly reflected from the calculation sheet that the Appellant had collected service tax from their clients but delayed payment of service tax. Once it is established that the Appellant had received service tax from their clients but failed to deposit in Government account within due date, then interest is payable @24%, in terms of Sl. No. 1 of Table reproduced above. Further, there cannot be any bifurcation in calculating interest @15% / @24% as demonstrated by the Appellant in the calculation sheet as it is incorrect to calculate interest @15% from due date to actual receipt of payment and then calculate interest @24% from date of receipt of payment to date of actual payment in Government account for the reason that such a situation is not contemplated in the said Notification. I, therefore, hold that the Appellant was correctly held liable to pay interest of Rs. 42,03,661/- @24% on delayed payment of service tax under Section 75 of the Act.

9. The Appellant has contended that the Show Cause Notice for demanding interest has been issued invoking larger period of limitation though there has not been any suppression of facts or willful mis-statement or fraud or collusion or



any contravention of provisions of the Act by the appellant with any intent to evade payment of service tax and hence, the Show Cause Notice is barred by limitation.

9.1 I find that there is no time limit prescribed in Section 75 of the Act for recovery of interest. It is a settled position of law that time limit applicable to demand of duty also applies to demand of interest thereon. I rely on the judgement passed by the Hon'ble Supreme Court in the case of TVS Whirlpool Ltd reported as 2000(119) ELT A177(SC), wherein it has been held that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon. It is also pertinent to mention that the Board vide Circular No. 1053/2/2017-CX dated 10.3.2017 has clarified that interest needs to be demanded following due process of demand and period of limitation as prescribed in Section 11A of the Central Excise Act, 1944 would also apply to demand of interest. I find that provisions of Section 73 of the Finance Act, 1994 are *pari materia* with Section 11A of the Central Excise Act, 1944. Thus, period of limitation as prescribed in Section 73 of the Finance Act, 1994 would also be applicable for demand of interest. I find that maximum period prescribed for demanding service tax under Section 73 for normal period is within 30 months from relevant date and relevant date for the purpose of present proceedings is date of filing of return as stipulated under Section 73(6)(i)(a) *ibid*. On going through the ST-3 Returns for the period April-September, 2016, October-March, 2017 and April-June, 2017 submitted by the Appellant in appeal memorandum, I find that all the 3 ST-3 Returns were filed on 22.11.2018. Hence, period of limitation will start from the date of filing of ST-3 Return i.e. 22.11.2018. Hence, Show Cause Notice issued on 9.1.2020 is within normal period of limitation of 30 months and Show Cause Notice is not barred by limitation. I, therefore, discard the contention of the Appellant being devoid of merit.

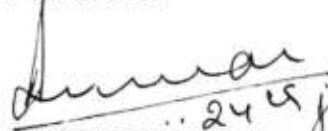
10. In view of above, I uphold the impugned order and reject the appeal filed by the appellant.

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

11. The appeal filed by the Appellant is disposed of as above.



सत्यापित,  
  
 विपुल शाह  
 संचालक (अपीलेंस)

  
 24 June, 2020  
 (AKHILESH KUMAR)  
 Commissioner (Appeals)

By RPAD

|   |  |
|---|--|
| To,<br>M/s Hariom Earthmovers &<br>Transport,<br>Tuna, Tuna Vadi Vistar,<br>Taluka Anjar, District Kutch. | सेवा में,<br>मे० हरिओम अर्थमूवर्स अँड ट्रांसपोर्ट,<br>तुणा, तुणा वाडी विस्तार,<br>तालुका अंजार,<br>जिल्ला कच्छ । |
|---|--|

प्रतिलिपि :-

- 1) 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, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अंजार-भचाउ मण्डल, गांधीधाम आयुक्तालय, गांधीधाम, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

