



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

O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जा 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 :-

DIN-20210164SX000001060B

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक/ Date
	V2/108/RAJ/2019	AC/JAM-I/ST/9/2019-20	24.06.2019

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

RAJ-EXCUS-000-APP-002-2021

आदेश का दिनांक / Date of Order:	22.01.2021	जारी करने की तारीख / Date of issue:	29.01.2021
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/

Passed by Shri Akhilesh Kumar, 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 :-

M/s. Roy Maritime Services, 205, Madhav Complex, Opp DKV College, P.N.Marg, Jamnagar

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 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 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) 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.5,000/- 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 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 नियमवली, 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. 1,000/- 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 सकेंगी 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 अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 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 अपीलित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "शान किए गए शुल्क" में निम्न शामिल है

- (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

- बशर्ते यह कि इस धारा के प्रावधान विलोय (रं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारार्थन स्वयं अर्जी 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 प्रथमपरंतुक के अंतर्गत अवर 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 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) 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 (न. 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.

- (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 OI/O 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 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, not withstanding the fact that the one appeal to the Appellant 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 appellants may refer to the Departmental website www.cbec.gov.in



:: ORDER-IN-APPEAL ::

M/s Roy Maritime Services, Jamnagar (*hereinafter referred to as "Appellant"*) filed Appeal No. V2/108/RAJ/2019 against Order-in-Original No. AC/JAM-I/ST/9/2019-20 dated 24.6.2019 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST Division-I, Jamnagar (*hereinafter referred to as "adjudicating authority"*).

2. The facts of the case, in brief, are that the Appellant was engaged in providing 'Manpower Recruitment/Supply Agency Service' and 'Supply of Tangible Goods Service' and was registered with Service Tax having Registration No. AAHFR9210QST001. Investigation carried out against the Appellant revealed that they had charged and collected service tax from their clients but had short paid / not paid service tax in Government Account during the years F.Y. 2013-14 to F.Y.2016-17 and had also failed to file ST-3 Returns for the period from October, 2013 to March, 2017. The Appellant paid Service Tax amount of Rs. 29,43,106/- along with interest of Rs. 6,95,267/- during investigation.

2.1 Investigation culminated into issuance of Show Cause Notice No. V.ST/GSTR-I-JMR/20/2018-19 dated 11.6.2018 to the Appellant calling them to show cause as to why Service Tax amount of Rs. 40,50,111/- should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 (*hereinafter referred to as 'Act'*) along with interest under Section 75 and proposing imposition of penalty under Sections 76, 77 and 78 of the Act and recovery of late fee under Section 70 read with Rule 7C of the Service Tax Rules, 1994, for failure to file ST-3 Returns. The notice also proposed denial of Cenvat credit of Rs. 9,70,484/- availed and utilized by the Appellant.

2.2 The above Show Cause Notice was adjudicated vide the impugned order which confirmed demand of Service Tax of Rs. 40,50,111/- under proviso to Section 73(1) of the Act and ordered for its recovery along with interest under Section 75 of the Act and also imposed penalty of Rs. 40,50,111/- under Section 78 of the Act, penalty of Rs. 10,000/- under Section 77 of the Act and late fee of Rs. 1,09,900/- under Section 70 *ibid*. The impugned order denied Cenvat credit of Rs. 9,70,484/- and ordered for its recovery under Cenvat Credit Rules, 2004.

3. Being aggrieved, the Appellant has preferred the present appeal on



various grounds, *inter alia*, as under:-

(i) The impugned order was passed without giving proper opportunity of being heard and without going through the written submission submitted by them; that the impugned order, being contrary to facts and passed without proper justification, is required to be set aside.

(ii) The adjudicating authority has not considered calculation sheet submitted by them in reply to Show Cause Notice, which showed that they had made excess payment of Rs. 81,895/-.

(iii) The adjudicating authority has erred in not considering relevant documents on the basis of which Cenvat credit was taken and utilized like invoices, ledgers, audit reports etc. and erroneously denied Cenvat credit.

(iv) The adjudicating authority has erred in invoking extended period of limitation under proviso to Section 73(1) of the Act for confirming service tax demand and also erred in imposing penalty under Sections 70,77,78 of the Act and Rule 15 of the Cenvat Credit Rules, 2004.

4. Hearing in the matter was scheduled on 3.1.2020 and 14.1.2020 but the Appellant did not appear for hearing. Subsequently, the appeal was kept in abeyance as the Appellant had opted for Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. The CGST, Rajkot vide email dated 3.7.2020 informed that application filed by the Appellant was rejected. Hence, the matter was listed for hearing in virtual mode on 5.8.2020, 26.8.2020, 11.9.2020, 28.9.2020 and 29.12.2020. However, no consent was received for hearing nor any request for adjournment was received. Since, the appeal cannot be kept pending indefinitely, I take up the appeal for decision on the basis of available records.

5. I have carefully gone through the facts of the case, the impugned order and grounds raised in Appeal Memorandum. The issue to be decided in the present appeal is whether the impugned order confirming service tax demand of Rs. 40,50,111/-, imposing penalty under Sections 70,77 and 78 of the Act and denying Cenvat credit of Rs. 9,70,484/- is correct, legal and proper or not.

6. On going through the records, I find that an offence case was booked against the Appellant for evasion of service tax. Investigation carried out against



provisions of Income-tax Act, 1961. We note that without further examining the reasons for difference in two, Revenue has raised the demand on the basis of difference between the two. We note that Revenue cannot raise the demand on the basis of such difference without examining the reasons for said difference and without establishing that the entire amount received by the appellant as reflected in said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption or abatement, since it is not legal to presume that the entire differential amount was on account of consideration for providing services.”

7.1 In view of above, I hold that service tax determined on the basis of Form 26AS for the year 2013-14 is not correct. The Appellant has not produced any documents before me and hence, it is not possible to determine correct service tax amount. I, therefore, find it appropriate to remand the matter to the adjudicating authority to determine correct service tax amount for the years 2013-14 to 2016-17 keeping in mind the provisions of Point of Taxation Rules, 2011. The Appellant is also directed to produce documents, if called upon by the adjudicating authority. The adjudicating authority shall pass fresh order by adhering to the principles of natural justice.

8. Now, coming to denial of Cenvat credit of Rs. 9,70,484/- availed by the Appellant. The Appellant has pleaded that the adjudicating authority has not considered relevant documents on the basis of which Cenvat credit was availed by them like invoices, ledgers, audit reports etc. I find that the adjudicating authority denied Cenvat credit by observing at para 44 of the impugned order as under:

“44. I find that the show cause notice also proposes denial of Cenvat Credit of Rs. 9,70,484/- availed by the Noticee on input services and inputs in respect of maintenance of capital goods, insurance, phone bills. I find that Rule 4(1) of the Cenvat Credit Rules, 2004 stipulates that manufacturer or provider of output service shall not take Cenvat credit after one year (six months during the period 01.10.2014 to 28.02.2015) from the date of issue of the document specified in Rule 9(1) of the Cenvat Credit Rules, 2004. Further Rule 9(9) of the Cenvat Credit Rules, 2004 stipulates that “The provider of output services availing Cenvat Credit, shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year”. I find that availment of Cenvat Credit by the Noticee also casts their responsibility to comply with



the Appellant revealed that they had provided 'Manpower Recruitment/Supply Agency Service' and 'Supply of Tangible Goods Service' and charged and collected service tax from their clients but evaded payment of service tax during the Financial Years 2013-14 to 2016-17 and had also failed to file ST-3 Returns for the period from October, 2013 to March, 2017. I find that the adjudicating authority determined service tax demand at Rs. 40,50,111/-, by considering highest of the income recorded in invoices, sales ledger, ST-3 Returns, Profit & Loss Account and Form 26AS of the Appellant for the relevant period.

7. I find that the Appellant has not disputed about provisions of service by them or their liability to pay service tax on the services rendered by them. The Appellant has contested the quantification of service tax demand confirmed against them. The Appellant has pleaded that they submitted written submission and calculation sheet before the adjudicating authority, which showed that they had made excess payment of service tax of Rs. 81,895/- during the period under dispute but the same was not considered by the adjudicating authority while passing the impugned order. I find that the adjudicating authority determined taxable value by considering highest of the incomes recorded in invoices, sales ledger, ST-3 Returns, Profit & Loss Account and Form 26AS of corresponding financial year. As recorded in para 41 of the impugned order, the adjudicating authority considered income recorded in Form 26AS as taxable value for the year 2013-14 whereas for the years 2014-15 to 2016-17, income as per invoices have been taken as taxable value for the respective years, without giving any justification. It is pertinent to mention that with the introduction of the Point of Taxation Rules, 2011 with effect from 1.4.2020, service tax is to be discharged on accrual basis instead of receipt basis. Form 26AS of Income Tax records income received by an assessee in a particular financial year. It may be possible that such income may be consideration of service provided in previous financial years or may be pertaining to any exempted service. Unless the adjudicating authority examines records of the Appellant and brings on record that amount reflected in Form 26AS pertains to taxable service rendered in a particular financial year and liable to service tax in terms of Point of Taxation Rules, 2011, it is not legally correct to determine service tax purely on the basis of amount recorded in Form 26AS. I rely on the Order passed by the Hon'ble CESTAT, Allahabad in the case of Kush Constructions reported as 2019 (24) G.S.T.L. 606 (Tri. - All.), wherein it has been held that,

"Revenue has compared the figures reflected in the ST-3 returns and those reflected in Form 26AS filed in respect of the appellant as required under the



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

