



::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

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

DIN-20210664SX0000520095

क.	अपील / फाइल नम्बर / Appeal / File No.	मूल आदेश / OIONo.	दिनांक / Date
	V2/49/RAJ/2020	01/D/AC/2019-20	30-04-2020

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

**RAJ-EXCUS-000-APP-022-2021**

आदेश का दिनांक / Date of Order:	<b>31.05.2021</b>	जारी करने की तारीख / Date of issue:	<b>09.06.2021</b>
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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 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. Bank of India, Main Branch, M G Road, Para Bazar, Rajkot,**

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) बर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद 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 ब्रताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्टेट) 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, 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 माँग, व्याज की माँग 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 महायक 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। स्वयं 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 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 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 माँग, व्याज की माँग 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 महायक 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। स्वयं 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 of 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, सेवाकार 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 प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकार, 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 सेवाकार 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 सेवाकार 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकार के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की गयी गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के अर्ब से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ों 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 को पुनरीक्षण 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 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 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 चरी गई केन्द्रीय उत्पाद शुल्क के छूट (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 क्रेडिट क्रेडिट इम 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 तरीक 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 उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संग्रहण 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 साथ 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 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।  
यहां 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 हंग से किया जाना चाहिए। 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, 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 टिकट 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 सेवाकार अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित 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 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)



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

M/s Bank of India, Main Branch, Rajkot (*hereinafter referred to as "Appellant"*) has filed Appeal No. V2/49/RAJ/2020 against Order-in-Original No. 1/D/AC/2019-20 dated 30.4.2020 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner (in situ), CGST and Central Excise, Division-I, Rajkot (*hereinafter referred to as "adjudicating authority"*).

2. The facts of the case, in brief, are that the Appellant was engaged in providing Banking and Financial Services and was registered with Service Tax having Registration No. AAACB0472CSTF04. During Audit of the records of the Appellant by the Departmental Officers, it was observed that they had availed escort service from the Police Department for cash transfers and paid Rs. 2,03,95,447/- during the years 2013-14 and 2014-15. It appeared that the said service was covered under 'Security Service' and the Appellant was liable to pay service tax on charges paid to the Police Department on reverse charge basis, in terms of Notification No. 30/2012-ST dated 20.6.2012, as amended. It was further observed that the Appellant had availed Cenvat credit of Rs. 1,21,048/- on 14.3.2015 on the basis of document dated 20.2.2014 issued by their Zonal Office being Input Service Distributor. On being pointed out, the appellant made payment of Service Tax amounting to Rs. 1,21,048/- vide Challan dated 23.08.2018 under protest. It appeared that the Appellant had availed Cenvat credit beyond one year from date of issuance of document, which is in contravention of proviso to Rule 4(7) of the Cenvat Credit Rules, 2004. It was also observed that the Appellant had opted for provisions contained in Rule 6(3B) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as 'CCR, 2004'*) which required the Appellant to pay every month an amount equal to fifty percent of Cenvat Credit availed on input and input services, however the Appellant made short payment of Rs. 66,548/- during the period from 21.5.2013 to 6.11.2014. On being pointed out, the Appellant paid Rs. 66,548/- but did not pay interest.

2.1. Based on the audit observations, Show Cause Notice No. VI(a)8-474/Circle-I/AG-4/2017-18 dated 11.10.2018 was issued to the Appellant calling them to explain as to why Service Tax amount of Rs. 25,20,878/- should not be demanded and recovered from them under 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. The Notice also asked the Appellant to explain as to why Cenvat credit of Rs.



1,21,048/- should not be recovered from them along with interest under Rule 14 of CCR, 2004 and proposing imposition of penalty under Section 78 of the Act read with Rule 15 *ibid*. The notice also proposed vacation of stay on amount paid under protest and its appropriation towards their tax liability. The Notice also asked the Appellant to explain as to why short payment of service tax of Rs. 66,548/- should not be demanded and recovered from them under Section 73 of the Act and the amount of Rs. 66,548/- paid by the Appellant should not be appropriated against the said demand; interest should not be charged under Section 75 of the Act and proposing penalty under Sections 76,77 and 78 of the Act. The Notice also proposed penalty on the Manager of the Appellant under Section 78A of the Act.

2.2 The above Show Cause Notice was adjudicated vide the impugned order, whereby the adjudicating authority,

- (i) confirmed Service Tax demand of Rs. 25,20,878/- 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. 25,20,878/- under Section 78 of the Act and penalty of Rs. 10,000/- under Section 77 of the Act;
- (ii) confirmed demand of Cenvat credit of Rs. 1,21,048/- and appropriated the amount paid under protest, along with interest, under Rule 14 of CCR, 2004 and imposed penalty of Rs. 12,105/- under Section 76 of the Act and penalty of Rs. 1,21,048/- under Section 78 of the Act read with Rule 15 of CCR, 2004;
- (iii) confirmed service tax demand of Rs. 66,548/- in terms of Rule 6(3B) of CCR, 2004 read with Section 73 of the Act and appropriated amount of Rs. 66,548/- paid by the Appellant, ordered for recovery of interest under Section 75 of the Act;
- (iv) imposed penalty of Rs. 10,000/- under Section 77(2) of the Act;
- (v) imposed penalty of Rs. 10,000/- on the Manager of the Appellant under Section 78A of the Act.

3. Being aggrieved, the Appellant has preferred the present appeal on various grounds, *inter alia*, as under:-

- (i) The adjudicating authority failed to understand the facts regarding non-payment of service tax of Rs. 25,20,878/-. The Appellant had received escort service from Police Department while carrying huge amount of cash balance on payment of specified charges; that the word

*du*



'person' appearing in the definition of 'Security Agency Service' must be construed to be a natural person as well as juristic person and by no stretch of imagination, the same will include the State or its officers or the posts created under a statute.

(ii) That the Board vide Circular No. 89/7/2006-S.T., dated 18-12-2006 has clarified that charges recovered by any sovereign/public authority for carrying out any statutory function will not be liable for levy of service tax if (a) Sovereign/public authorities perform duties which are in the nature of statutory and mandatory obligation to be fulfilled in accordance with the law. (b) the fee collected is levied as per provisions of relevant law and (c) The amount collected is to be deposited into Government treasury; that their case is covered by said Circular Police Department is an extended arm of the State Government and is controlled and managed by the State Government. It is carrying out the activities as entrusted to it vide the Police Act which are statutory and constitutional in nature and relied upon Hon'ble CESTAT Mumbai's Order passed in the case of Mumbai Police Vs. Commissioner of Service Tax.

(iii) That they were using Finacle Software, which automatically calculated service tax payable by them at pre-defined rates set by Head office. There was no such liability to pay service tax generated from Finacle software; that they had not received any direction from their head office to pay service tax under reverse charge basis in respect of service in dispute. Service tax being complex subject and non-core area of working for bank employees, the manager of bank at relevant time period was unaware about such non-payment of service tax on RCM basis. However, there was no intentional to evade service tax. Hence, the demand is not sustainable.

iv) The adjudicating authority has ignored the explanation submitted for delayed availment of Cenvat credit of Rs. 1,21,048/-. The appellant bank is branch of Bank of India, the centralized bank. The branch manager has to take prior approval for each and every matter from zonal office. The branch manager has to send the copy of invoices to head office for approval of that expense. The Cenvat credit of invoices which were dated 20th February, 2014, got the sanction from head office after almost 7 to 8 months. Hence, the same were produced for Cenvat credit after quite long delay. The delay was genuine by following the procedural



formalities of its head office.

(v) That the appellant had opted for Rule 6(3B) of CENVAT Credit Rules, 2004 where by the appellant shall pay for every month an amount equal to 50% of input and input service in particular month. However, for period 21-05-2013 to 06-11-2014, there were certain small and penny amount invoice for which either by mistake credit taken were 100% or the eligible credit to be taken was lapsed on certain invoices. Hence, the appellant has made short payment of Rs. 66,548/-. In the bank, the staff changes from time to time and hence such short payment was made due to bona fide mistake of staff. When it was pointed out during Audit, they immediately made the payment of service tax. Hence, the above genuine points may be considered and drop the interest and penalty in this regard.

4. Personal Hearing in the matter was scheduled in virtual mode on 5.8.2020, 26.8.2020, 11.9.2020, 28.9.2020, 12.2.2021 and 23.2.2021. However, no consent was received from the Appellant nor any request for adjournment was received. I find that sufficient opportunities have been offered to the Appellant. Since, the Appeal cannot be kept pending indefinitely, I proceed to decide the appeal on merits on the basis of grounds raised in appeal memorandum.

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

- (i) the Appellant is liable to pay service tax of Rs. 25,20,878/- on reverse charge basis in respect of 'Security Service' availed from the Police Department?
- (ii) Cenvat credit of Rs. 1,21,048/- availed beyond period of one year from date of issue of document is correct, legal and proper ?
- (iii) the Appellant is liable to pay interest on non-payment of amount under Section 6(3B) of CCR, 2004 or not?

6. On going through the records, I find that the Appellant had availed escort service from Police Department while transferring cash balance and had paid specified charges to Police Department. The impugned order confirmed service tax demand on the ground that the said service is covered under 'Security Service' and the Appellant was liable to pay service tax on charges paid to the

*dy*



Police Department on reverse charge basis, in terms of Notification No. 30/2012-ST dated 20.6.2012, as amended.

6.1 The Appellant has contended that the word 'person' appearing in the definition of 'Security Agency Service' must be construed to be a natural person as well as juristic person and the same will not include the State or its officers or the posts created under a Statute. The Appellant further contended that Police Department is an extended arm of the State Government and is controlled and managed by the State Government, which is carrying out the activities as entrusted to it vide the Police Act which are statutory and constitutional in nature and that their case is covered by Board's Circular No. 89/7/2006-S.T., dated 18-12-2006. The Appellant has also relied upon the judgement of Hon'ble CESTAT, Mumbai in case of Mumbai Police Vs. Commissioner of Service Tax which was upheld by the Hon'ble Supreme Court vide Order dated 18.09.2017 in Diary Number 24355 of 2017.

7. I find that the Appellant was held liable to pay service tax on charges paid to the Police Department on reverse charge basis, in terms of Notification No. 30/2012-ST dated 20.6.2012, amended by Notification No. 45/2012-ST dated 7.8.2012. It is pertinent to examine the relevant provisions of the said notification, which are reproduced as under:

"I. The taxable services,—

(A)

...

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or security services or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;"

7.1 I find that erstwhile Section 65(105)(w) of the Act defined the term 'taxable service' in respect of 'Security Service' as under:

(w) to any person, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity;

7.2 I find that erstwhile Section 65(94) of the Act defined the term 'Security



Agency' as under:

(94) "security agency" means any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel;

7.3 I find that Section 65B(37) of the Act defined the term "person" as under:

"(37) 'Person' includes,—

- (i) an individual,
- (ii) a Hindu Undivided Family,
- (iii) a company,
- (iv) a society,
- (v) a limited liability partnership,
- (vi) a firm,
- (vii) an association of persons or body of individuals, whether incorporated or not,
- (viii) Government,
- (ix) a local authority, or
- (x) every artificial juridical person, not falling within any of the preceding sub-clauses;"

(Emphasis supplied)

7.4. Further, amendments were made in Rule 2 (1) (d) of the Service Tax Rules, 1994 vide Notification No. 46/2012 - ST dated 07.08.2012 to define security service under clause (fa) to mean services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity.

7.5. On combined reading of the legal provisions above, it is apparent that any service provided by a person in relation to security of property or person is taxable under the category of 'Security Service'. Any person engaged in the providing security service is covered under Security Agency and definition of term 'person' defined under Section 65B(37) *supra* and came into effect from 1.7.2012 also includes Government. Further, liability to pay service tax on 'Security Service' is on recipient of service in terms of Notification No. 30/2012-ST dated 20.6.2012, as amended.

7.6 On examining the facts of the case on hand in backdrop of the above legal provisions, I find that the Appellant had availed escort service from the Police Department for transfer of cash during the period FY 2013-14 and FY 2014-15. The said service is appropriately covered under Security Service' in terms of Section 65(105)(w) of the Act in pre-negative list regime and subsequently under





Rule 2 (1) (d) (fa) of the Service Tax Rules, 1994 reproduced *supra*. Further, the Police Department, being part of Gujarat Government, is covered under the definition of person under Section 65B(37) *supra* and consequently covered as 'Security Agency'. Thus, contention of the Appellant that "*the term 'person' appearing in the definition of 'Security Agency Service' must be construed to be a natural person and the same will not include the State or its officers or the posts created under a Statute*", is devoid of merits as definition of person under Section 65(37) of the Act also includes Government. The Appellant is, therefore, liable to pay service tax on 'Security Service' availed by them, being recipient of service in terms of Notification No. 30/2012-ST dated 20.6.2012, as amended.

7.7. The Appellant has contended that Police Department is an extended arm of the State Government and is controlled and managed by the State Government, which is carrying out the activities as entrusted to it vide the Police Act which are statutory and constitutional in nature and that their case is covered by Board's Circular No. 89/7/2006-S.T., dated 18-12-2006. I find that escort service availed by the Appellant from Gujarat Police Department for transfer of cash cannot be said to be statutory or constitutional function. The Appellant could have availed escort service from any other private agency for said purpose. As regards reliance placed on the Board's Circular No. 89/7/2006-S.T., dated 18-12-2006, I find that the Board in the said Circular has, *inter alia*, clarified that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations and the fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and no service tax is leviable on such activities. The Board also clarified that if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service. As discussed above, the escort service availed by the Appellant from the Police Department was not statutory in nature. Further, the said service was availed by the Appellant for a consideration which was not in the nature of statutory fee/levy. Hence, the said service was covered within the definition of 'Security Service' during the relevant period.

7.8. I have examined the relied upon case law of Mumbai Police Vs. Commissioner of Service Tax in Appeal No. ST/85424,85425/2014. In the said case, the Hon'ble Tribunal, Mumbai has vide Order No. A/85703-85704/2018 dated 23.03.2018 confirmed the service tax confirmed the demand on the



grounds that the Appellant had provided security service to property or persons. The said judgement of the Hon'ble Tribunal was based on the judgement of Hon'ble Tribunal, Delhi in the case of Dy. Commissioner of Police, Jodhpur - 2017 (48) S.T.R. 275 (Tri. - Del.). In the said case the Tribunal, Delhi, *inter alia*, held that definition of person which was introduced vide Section 65B(37) of the Act to include Government only with effect from 1.7.2012 but the same cannot be applicable to prior to that date. However, in the present case, the period involved is 2013-14 and 2014-15 and definition of 'person' contained in Section 65B(37) of the Act will be applicable. Hence, the said CESTAT order relied upon by the appellant is not applicable to the facts of the present case.

7.9. In view of above discussion, I hold that the impugned order has rightly held the Appellant liable to pay service tax on the charges paid to the Police Department, being recipient of service in terms of Notification No. 30/2012-ST dated 20.6.2012 amended by Notification No. 45/2012-ST dated 7.8.2012. However, there appears some discrepancy in quantification of demand. As per facts recorded at para 2.1.5 of the Show Cause Notice, amount of service tax payable by the Appellant on reverse charge basis was arrived upon by considering 100% of service tax payable. In the present case, period involved is 2013-14 and 2014-15 and during the said period, service recipient was liable to pay service tax @75% on reverse charge basis in terms of Notification No. 30/2012-ST dated 20.6.2012 amended vide Notification No. 45/2012-ST dated 7.8.2012. Hence, service tax demand is required to be re-calculated. I, therefore, set aside the impugned order to the extent of confirmation of demand on this count and remand the matter to the adjudicating authority for limited purpose of re-quantifying the service tax demand as per rate prescribed vide Notification No. 45/2012-ST dated 7.8.2012 under speaking order. The Appellant shall be liable to pay interest on such re-quantified demand under Section 75 of the Act.

7.10. Regarding penalty of Rs. 25,20,878/- imposed under Section 78 of the Act I find that non-payment of service tax by the Appellant as recipient of service came to light during audit of the records of the Appellant. Hence, there was suppression involved and penalty under Section 78 of the Act was rightly imposed. I, therefore, uphold the imposition of penalty under Section 78 of the Act. However, penalty shall be equal to service tax demand re-quantified in de novo order.



8. As regards the second issue, I find that the Appellant had availed Cenvat credit of Rs. 1,21,048/- on 14.3.2015 on the basis of document dated 20.2.2014. The impugned order denied said Cenvat credit on the ground that it was availed beyond period of one year from date of issue of document and hence, not admissible in terms of proviso to Rule 4(7) of CCR, 2004. The Appellant pleaded that they had to take prior approval for each and every matter from zonal office and they had sent copy of invoices to their zonal office head for approval but got the sanction after almost 7 to 8 months and requested to condone the delay.

8.1 I find that the Appellant has not disputed about availment of said Cenvat credit beyond period of one year from date of issue of document by their Input Service Distributor. I find that time limit of one year was prescribed in Rule 4(7) of CCR, 2004 for availment of Cenvat credit. Hence, it is not permissible to allow Cenvat credit beyond period of one year from date of issue of document. Further, this time limit cannot be condoned even if the lapse is for genuine reasons. I, therefore, uphold confirmation of demand of Rs. 1,21,048/- under Rule 14 of CCR, 2004. When demand is upheld, it is natural that confirmed demand is required to be paid along with interest. I, therefore, uphold recovery of interest under Rule 14 *ibid*.

8.2 Regarding penalty of Rs. 1,21,048/- imposed under Section 78 of the Act read with Rule 15 of CCR, 2014, I find that said irregular availment of Cenvat credit of Rs. 1,21,048/- came to light during audit of the records of the Appellant. Hence, there was suppression involved and penalty under Section 78 of the Act was rightly imposed. I, therefore, uphold the imposition of penalty of Rs. 1,21,048/- under Section 78 of the Act read with Rule 15 *ibid*.

8.3 Regarding penalty of Rs. 12,105/- imposed under Section 76 of the Act, I find that as per proviso to Section 78 of the Act in force at material time, *if penalty is payable under Section 78, provisions of Section 76 shall not apply*. In the present case, penalty of Rs. 1,21,048/- was imposed under Section 78 of the Act. Hence, penalty imposed under Section 76 is not sustainable. I, therefore, set aside penalty of Rs. 12,105/- imposed under Section 76 of the Act.

9. As regards the third issue, I find that the Appellant had opted for provisions contained in Rule 6(3B) of the Cenvat Credit Rules, 2004, which required the Appellant to pay every month an amount equal to fifty percent of Cenvat Credit availed on input and input services. During audit, it was observed




that the Appellant had made short payment of Rs. 66,548/- during the period from 21.5.2013 to 6.11.2014. On being pointed out, the Appellant paid Rs. 66,548/- but did not pay interest. The impugned order confirmed demand of Rs. 66,548/- under Rule 6(3B) of CCR, 2004 read with Section 73 of the Act and appropriated the amount paid by the Appellant towards confirmed demand. The impugned order also ordered for recovery of interest on said short payment under Section 75 of the Act. The Appellant has not disputed about their liability to pay said amount under Rule 6(3B) of CCR, 2004 but requested to set aside recovery of interest on the ground that staff in their bank changes from time to time and such short payment occurred due to bona fide mistake of their staff. In terms of Section 75 of the Act, payment of interest is mandatory on every person who fails to deposit the Service Tax or any part thereof to the account of the Central Government within the period prescribed. Since, the Appellant had delayed payment, interest is mandatory, as held by the Hon'ble Supreme Court in the case of Pratibha Processors reported as 1996 (88) ELT 12 (SC). I, therefore, uphold the recovery of interest under Section 75 of the Act.

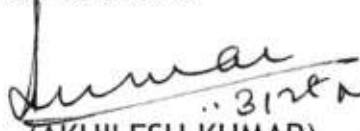
10. Regarding Penalty of Rs. 10,000/- imposed under Section 77 of the Act, I find that the adjudicating authority held that the Appellant failed to assess tax dues correctly and hence, they were liable to penalty under Section 77. I concur with the findings of the adjudicating authority and uphold the penalty under Section 77 *ibid*.

11. In view of above, I set aside the impugned order to the extent of confirmation of demand of Rs. 25,20,878/- and imposition of penalty of Rs. 25,20,878/- under Section 78 and remand the matter to the adjudicating authority for limited purpose of re-quantifying the service tax demand as per finding given in para 7.8 above. I set aside the impugned order to the extent of imposition of penalty of Rs. 12,105/- under Section 76 of the Act. The remaining portion of the impugned order is upheld.

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

12. The appeal filed by the Appellant is disposed off as above.

सत्यापित,  
  
 निपुण शर्मा  
 अपीलकर्ता के प्रतिनिधि

  
 31st May, 2021  
 (AKHILESH KUMAR)  
 Commissioner (Appeals)

By Regd Post A.D.



By Regd Post A.D.

To,  
M/s Bank of India,  
Main Branch, Para Bazar,  
M.G. Road,  
Rajkot.

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, राजकोट -1 मण्डल, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

