



::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: commrapp13-cexamd@nic.in



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

DIN-20210664SX000022752D

क	अपील / फाइल नं./ Appeal / File No.	मूलआदेश नं / OIONo.	दिनांक/ Date
	V2/73/RAJ/2020	12/JC/VM/Sub-Commr/2019-20	16-03-2020

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

**RAJ-EXCUS-000-APP-023-2021**

आदेश का दिनांक / Date of Order:	<b>31.05.2021</b>	जारी करने की तारीख / Date of issue:	<b>09.06.2021</b>
------------------------------------	-------------------	--	-------------------

**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. Naval Sandesh Engineering, Bhulan Bhavan, Shreeji Society, Near M T F Gate, Moti Khavdi, Sikka, 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 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 बताए 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 असर्वा 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, जहाँ उत्पाद शुल्क की माँग, ब्याज 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 सहायक 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 जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 नियमवानी, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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, जहाँ सेवाकर की माँग, ब्याज 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 सहायक 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 जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 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/-.



(ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवानी, 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 प्रतियां संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा महायुक्त 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.

(iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेन्टेट) 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 रुपये में अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग 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 वित्तीय (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन 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 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 भरी 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) मुनिश्चित 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 समायाचिधि 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। जहां 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 निम्न 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) यथामंशोधित 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 बर्णित एवं अन्य संबंधित 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 appellants may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)



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

M/s. Naval Sandesh Engineering, Sikka, District: Jamnagar (hereinafter referred to as "Appellant") has filed Appeal No. V2/73/RAJ/2020 against Order-in-Original No. 12/JC/VM/Sub-Commr/2019-20 dated 17.3.2020 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Rajkot (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant was engaged in providing various services viz. Erection, Commissioning and Installation Service, Works Contract Service, Supply of Tangible Goods service etc. and was registered with Service Tax Department having Registration No. AAHFN8763CST001. Investigation carried out by the officers of the Preventive Wing, Central Excise, Rajkot revealed that the Appellant had provided various taxable services and had charged and collected service tax from their clients but did not deposit the same in Government exchequer. On culmination of investigation, Show Cause Notice dated 15.10.2015 was issued to the Appellant proposing recovery of service tax amount of Rs. 1,21,22,161/- short paid / not paid during the period from F.Y. 2010-11 to F.Y. 2013-14. Subsequently, another Show Cause Notice dated 30.11.2015 was issued to the Appellant for demanding service tax amount of Rs. 49,02,338/- for the Financial Year 2014-15.

2.1 It appeared that the Appellant had not filed ST-3 Returns for the period from April, 2015 to June, 2017. The jurisdiction Range Superintendent requested the Appellant to provide details of taxable service provided by them during the said period by issuing letters but the Appellant did not respond. Subsequently, summons were also issued seeking presence of the Appellant but the Appellant did not respond. Hence, the taxable value of services provided by the Appellant during the said period was determined by resorting to best judgement assessment under Section 72 of the Finance Act, 1994 (hereinafter referred to as 'Act').

2.2 Show Cause Notice No. V.ST/CGST-AR-IV/DIV-I-JMR/Sub-Comm/RKC/2/2019-20 dated 29.5.2018 was issued to the Appellant calling them to show cause as to why service tax amounting to Rs. 1,90,48,500/- should not be demanded and recovered from them under proviso to sub-Section (1) of Section 73 of the Act, along with interest under Section 75 of the Act and proposed imposition of penalty under Sections 76, 77 and 78 of the Act.



*dy*

2.2 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who re-determined service tax demand on the basis of documentary evidences submitted by the Appellant and confirmed demand of service tax amounting to Rs. 1,07,68,331/- under proviso to Section 73(1) of the Act, along with interest under Section 75 of the Act and imposed penalty of Rs. 1,07,68,331/- under Section 78 of the Act and Rs. 10,000/- under Section 77(2) of the Act.

3. Being aggrieved, the Appellant preferred the present appeal contending, *inter-alia*, as under:

(i) They accept the fact that they have not paid service tax charged and collected from their service recipients; that reason for defaulting in payment of service tax was that their accountant who was looking after financial matters started diverting fund meant for payment of service tax to Government.

(ii) The impugned Show Cause Notice was issued by invoking the extended period of limitation; that they wish to rely upon judgement of the Hon'ble Supreme Court passed in the case of Nizam Sugar Factory wherein it has been laid down that when the first Show Cause Notice was issued, all the relevant facts were in the knowledge of the authorities and later on while issuing second show cause notice, the same facts could not be taken as suppression of facts on the part of assessee, as these facts were already within the knowledge of the Department.

(iii) The impugned Show Cause Notice was issued on 29.5.2018 and hence, demand for the FY 2015-16 and first half of 2016-17 cannot be sustained; that only demand for second half of 2016-17 and 3 months of 2017-18 is within normal period of limitation and remaining demand is liable to be set aside.

(iv) The service tax demand confirmed in the impugned order is on higher side and that their liability to pay service tax in the years 2015-16, 2016-17 and 2017-18 is lower than what has been confirmed in the impugned order.

(v) Since there was no malafide intention is attributable for non-



*des*



payment of service tax, penalty under Section 78 may be restricted to 10%.

4. Personal hearing in the matter was scheduled on 12.2.2021, 23.2.2021, 9.3.2021 and 24.3.2021 and communicated through email and Speed Post. However, no consent was received from the Appellant to remain present in hearing 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 the 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. 1,07,68,331/- under proviso to Section 73(1) of the Act, along with interest under Section 75 and imposing penalty under Sections 77 and 78 of the Act is correct, legal and proper or not.

6. On perusal of the records, I find that an offence case was booked against the Appellant for evasion of service tax. Investigation carried out by the departmental officers revealed that the Appellant had rendered various taxable services and had charged and collected service tax from their clients during the period from F.Y. 2010-11 to F.Y. 2013-14 for which Show Cause Notice was issued to them demanding service tax amount of Rs. 1,21,22,161/-. I find that Show Cause Notice was also issued for the subsequent period F.Y. 2014-15 for demand of service tax of Rs. 49,02,338/- short paid / not paid. For the subsequent period, the Appellant had not filed ST-3 Returns. The jurisdictional Range Superintendent sought information from the Appellant about taxable value of service provided by them during the period from April, 2015 to June, 2017 but the Appellant did not respond. Hence, Show Cause Notice was issued to the Appellant by invoking the provisions of Section 72 of the Act. The adjudicating authority considered the documentary evidences submitted by the Appellant and re-determined service tax and confirmed service tax demand of Rs. 1,07,68,331/- along with interest and imposed penalty under Sections 77 and 78 of the Act.

7. I find that the Appellant has not disputed the charge that they had not paid service tax charged and collected from their service recipients. They have



*du*

pleaded that they did not deposit the service tax collected from their clients in the Government Account as their accountant, who was looking after financial matters, diverted the funds meant for payment of service tax to Government. I do not find any justification in the plea of the Appellant. Even if irregularities were committed by their accountant as pleaded, it will not absolve the Appellant from their liability to pay service tax on the taxable services rendered by them. I, therefore, discard this plea being devoid of merit.

8. The Appellant has contested the invocation of extended period of limitation on the grounds that when the first Show Cause Notice was issued, all the relevant facts were in the knowledge of the Department and later on while issuing second show cause notice, the same facts could not be taken as suppression of facts as these facts were already within the knowledge of the Department. I find that the Appellant in the present case had charged and collected service tax from their clients but did not deposit the same in Government account during the period from F.Y. 2010-11 to F.Y. 2014-15, which was unearthed during investigation carried out against them. For the subsequent period from April-2015 to June, 2017, the Appellant had not filed ST-3 returns. Hence, it was not possible for the Department to know whether they continued providing taxable service during said period or not and whether they were discharging service tax properly or not. I find that such information was in the personal domain of the Appellant and unless and until the Appellant firm brought these facts to the knowledge of the Department, there is no way the Department could possess knowledge about the same. As narrated in Para 5 of the impugned order, the jurisdictional Range Superintendent had issued letters to the Appellant on 3.1.2016, 16.12.2016, 5.9.2017, 26.10.2017 and 17.1.2018 seeking information about taxable services provided by them during the period from April, 2015 to June, 2017. However, the Appellant did not respond. The jurisdictional Range Superintendent also issued Summons on 4.4.2018 and 17.4.2018 directing the Appellant to remain present before him along with required information but the Appellant did not obey. Subsequently, as a last resort, demand was raised on 29.5.2018 by invoking provisions of Section 72 of the Act. Thus, it appears that the Appellant had deliberately suppressed the facts of rendering taxable service by them during the period from April, 2015 to June, 2017 by not providing information to the Department with intent to evade payment of service tax. Considering the facts of the case, I am of the opinion



*Handwritten signature*

that the adjudicating authority was justified in invoking extended period of limitation on the grounds of suppression of facts. I rely on the Order passed by the Hon'ble CESTAT, Mumbai in the case of Nitin Patki reported as 2011 (273) E.L.T. 104 (Tri. - Mumbai), wherein it has been held that,

“11. Coming to the issue of the limitation of time raised by the appellant, we find that the extended period of time has been rightly invoked in the instant case. It is not the appellant's contention that they had informed the department of affixing the higher RSP, on the imported or locally procured goods or the fact that they were relabelling the products and also affixed the bar code and also undertaken repacking in some cases. They have also not followed any of the procedures prescribed under the Central Excise Act and the Rules. Ignorance of law or *bona fide* belief, cannot be an excuse. With the introduction of self-removal procedure and self-assessment of excise duty, a higher responsibility has been cast on the assessee to comply with all the requirements prescribed under the statute. The department cannot nor are they expected to find out on their own in all cases what each assessee is doing and whether discharging the correct duty liability. The non-registration and non-declaration of their activities and non-compliance with the procedures with respect to removal of goods from the place of manufacture certainly would amount to suppression of facts and therefore, the adjudicating authority has correctly invoked the extended period of time for demand of central excise duty and we hold accordingly.”

(Emphasis supplied)

8.1 I have also gone through the relied upon decisions rendered by the Hon'ble Supreme Court in the case of Nizam Sugar Factory – 2006 (197) ELT 465 (SC), P & B Pharmaceuticals (P) Ltd- 2003 (153) ELT 14 (SC) and ECE Industries Ltd – 2004 (164) ELT 236 (SC), wherein it has been held that when the first Show Cause Notice was issued by invoking extended period of limitation on the grounds of suppression of facts, all the relevant facts were in the knowledge of the authorities and later on while issuing second show cause notice, the same facts could not be taken as suppression of facts on the part of assessee, as these facts were already within the knowledge of the Department. However, in the present case, the facts are different. The investigation carried out against the Appellant revealed that they had charged and collected service tax from their clients but did not deposit the same in Government account during the period



*dy*

from 2010-11 to 2014-15. For the subsequent period from April-2015 to June, which is subject matter of present appeal, the Appellant had not filed prescribed ST-3 returns nor responded to the letters / Summons issued by the jurisdictional Range Superintendent calling for information about details of taxable services provided by them. It is only in reply to Show Cause Notice, the Appellant provided the required details along with documentary evidences about taxable services rendered by them during the period from April, 2015 to June, 2017. Thus, the Appellant deliberately suppressed the facts of rendering taxable services by them. The facts of the present case is different and clearly distinguishable from the relied upon case laws. I, therefore, distinguish the facts of the case with those in the case laws relied on by the appellant and discard their contentions.

9. In view of above discussion and findings, I uphold the confirmation of service tax demand under Section 73(1) of the Act. Since, confirmation of service tax demand is upheld, it is natural that confirmed demand is required to be paid along with interest. I, therefore, uphold the impugned order for recovery of interest under Section 75 of the Act.

10. It is further observed that the Appellant has contested that service tax demand confirmed in the impugned order is on higher side and that their liability to pay service tax in the years 2015-16, 2016-17 and 2017-18 is lower than what has been confirmed in the impugned order. I find that the adjudicating authority at Para 21 of the impugned order has observed that opportunity was given to the Appellant to produce invoices and ledger accounts of the disputed period to ascertain exact service tax liability as there were different service tax rates prevailing during period under reference but the Appellant did not produce any documents nor appear for personal hearing. I find that the Appellant has not disputed these findings of the adjudicating authority in their appeal memorandum, so raising this contention at this stage is not acceptable. However, I find that the adjudicating authority has calculated service tax at highest rate in the years 2015-16 and 2016-17 and that turnover of entire year 2017-18 was taken for calculating service tax demand for the period April, 2017 to June, 2017 in absence of required documents/ information, as narrated in Para 22 of the impugned order. Hence, in the interest of justice, I remand the matter to the adjudicating authority for limited purpose of



*ds*



quantification of service tax demand for the period April,2015 to June,2017. The Appellant is directed to produce invoices, ledger accounts and any other documents/ information as may be called upon by the adjudicating authority within two months from the date of this order. If the Appellant fails to comply with the above directions, then the adjudicating authority shall quantify the demand on the basis of available records. The adjudicating authority is directed to carry out this exercise under speaking order after following principles of natural justice.

11. As regards penalty imposed under Section 78 of the Act, the Appellant has pleaded that there was no *malafide* intention for non-payment of service tax. I find that the Appellant was registered with Service Tax Department. They had during the relevant period charged and collected service tax from their clients but did not deposit the same in Government exchequer. It is on record that they had also charged and collected service tax from their clients for the previous period from F.Y. 2010-11 to F.Y. 2014-15, which was unearthed during investigation carried out against them. Thus, it is clear that the Appellant has been consistently evading payment of service tax and their intention to evade payment of tax is apparent from case records. Since invocation of extended period of limitation on the grounds of suppression of facts is upheld by me in paras *supra*, penalty under Section 78 of the Act is mandatory as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty imposed under Section 78 of the Act. The penalty shall be equal to service tax demand re-quantified in de novo order.

12. Regarding penalty of Rs. 10,000/- imposed under Section 77 of the Act, I find that the adjudicating authority has imposed penalty on the grounds that the Appellant had failed to assess correct service tax and also failed to file prescribed ST-3 returns for the period from April, 2015 to June, 2017 within due date. I concur with the findings of the adjudicating authority and uphold imposition of penalty of Rs. 10,000/- under Section 77 of the Act.



13. In view of above, I dispose of the appeal by way of remand to the adjudicating authority for limited purpose of re-quantifying the service tax demand as per finding given in para 10 above.

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

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

*Akhil*  
31<sup>st</sup> May, 2021  
(AKHILESH KUMAR)  
Commissioner (Appeals)

Attested

*V.S.*

(V.T.SHAH)  
Superintendent (Appeals)

By RPAD

To, M/s. Naval Sandesh Engineering 'Bhulan Bhavan', Shreeji Soceity, Near MTF Gate, Moti Khavdi, Sikka, District Jamnagar.	सेवा में, मैसर्स नवल संदेश इंजीनियरिंग, 'भुलन भवन', श्रीजी सोसाइटी, एमटीएफ गेट के पास, मोटी खावड़ी, सिक्का, जिल्ला जामनगर।
---	---

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) सयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड-फाइल।

