



::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 / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot - 360 001

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

रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20211164SX00002732C2

| | | | |
|---|--|-----------------------------|-----------------|
| क | अपील / कादल संख्या/ Appeal / File No. | मूल आदेश सं / O.I.O. No. | दिनांक/ Date |
| | V2/25/RAJ/2021 | 04/JC(AKS)/2019-20 | 13-01-2020 |

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

RAJ-EXCUS-000-APP-045-2021

| | | | |
|------------------------------------|------------|--|------------|
| आदेश का दिनांक / Date of Order: | 15.11.2021 | जारी करने की तारीख / Date of issue: | 15.11.2021 |
|------------------------------------|------------|--|------------|

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधामा 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. Ravi Associate (Guru Krupa, Block No.G-76, Nilkanth Park), Kothariya Road, Rajkot-360002, .

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

(A) सामान्य शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण के प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का 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 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 (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 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 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 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 नियमबाली, 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, 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 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is 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) चित्त 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 सकती 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 (सेस्टट) 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 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 सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेनवेट जमा की सी 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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन डेकार्ड, वित्त मंत्रालय, राजस्व विभाग, चौधी मंजिल, जेवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) मन्विधित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश और आयुक्त (अपील) के द्वारा चित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा समायाविधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the O.I.O and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Chhellan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य में बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) 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-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 सम्भलित 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 तबीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.



:: ORDER-IN-APPEAL ::

M/s. Ravi Associate, Rajkot (hereinafter referred to as "Appellant") has filed Appeal No. V2/25/RAJ/2021 against Order-in-Original No. 04/JC(AKS)/2019-20 dated 13.01.2020 (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 taxable services under the category of "Security/detective Agency service, Man Power Recruitment/ Supply Agency service, cleaning services and was having Service Tax Registration No. AGWPK7248LST001. On the basis of intelligence that the Appellant was indulging in the evasion of service tax by way of non-payment of service tax collected on the contractual services provided to the Bus Depots of Gujarat State Road Transport Corporation (GSRTC) & other organizations, investigation was carried out by the Anti-Evasion section of Central GST and Central Excise, Rajkot in the matter. The investigations culminated into the issuance of Show Cause Notice dated 09.01.2020 to the Appellant proposing demand of service tax amount of Rs. 95,36,549/- along with interest and imposition of penalties under various sections of the Finance Act, 1994(32 of 1994) (herein after referred to as "the Act")

2.1 The Show Cause Notice was adjudicated vide impugned order wherein the demand of service tax amount of Rs. 95,36,549/- was confirmed along with interest, late fee under section 70 and penalties under sections 77 and 78 of the Act were also imposed. The adjudicating authority also appropriated an amount of Rs. 9,84,493/- paid by the appellant during investigation against the service tax liability.

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

- (i) The impugned order has been passed without following the principles of natural justice; that the investigation was being conducted for last 3 years and all of a sudden the Proprietor of the appellant was called and was served a Show Cause Notice dated 09.01.2020 and was pressurized to sign a letter on 10.01.2020 to accept the allegations as made in the show cause notice; that impugned order was issued on 13.01.2020, within 4 days of issue of the notice
- (ii) The officers filed application under SVLDRS, 2019 and asked to pay the duty so that the appellant can get the immunity from payment of interest and penalty ; that before Appellant could understand the issue, pandemic Covid-19 engulfed the entire world

[Handwritten signature]



and appellant was also a victim of that; Hon'ble Supreme Court and the President had extended the date for all types of compliance upto 31.12.2020, however, when proprietor of the appellant approached the department to know the status, it was informed that the last date for payment was 30.06.2020 only ;

- (ii) an imaginary figure has been taken for demand of service tax and has been confirmed by the adjudicating authority;
- (iv) for taking recourse to section 72, the procedure has been prescribed in the section itself ; that in this case it is not clear as to on what basis the value has been arrived at and further no opportunity was given to the noticee before preparation of Annexure-B ; that Best judgment must be based on some theory or logic and not at the whims of the proper officer to qualify as 'best judgment' which is lacking here; that no procedure was followed ; that reliance is placed upon following orders :-
 - (i) PC ST, Delhi-I Vs. Creative Travel Pvt Limited (2016(45)STR33(Del.)
 - (ii) Carlberg India Pvt Ltd Vs. Commissioner of Service tax (2016(42)STR55(Tri.Del.)
 - (iii) Coca Cola (I) Pvt Ltd Vs. Commissioner of Service Tax (2015(40)STR547 (Tri.Del.))
 - (iv) N.B.C. Corporation Ltd Vs. Commissioner of Service Tax (2014(33)STR113 (Tri.Del.))
- (v) It was on record that the recipient of services M/s. GSRTC had already paid an amount of Rs. 18,88,779/- directly to the department, an amount of Rs. 9,84,493/- only was taken on record and appropriated; that further an amount of Rs. 4,10,258/- was also paid which have not been taken on record;
- (vi) The extended period of limitation is not invocable as there was no suppression of facts with an intent to evade payment of service tax ; that in absence of such detailed observations , the charge of suppressions is not established; merely making allegations of suppression in the Show Cause Notice without any proper evidences cannot be ground for invoking extended period of limitation ;
- (vii) If the service tax is treated as payable, the considerations is to be treated as inclusive of the service tax payable;
- (viii) Since the service tax is not payable as explained above question of payment of interest and imposition of penalty does not arise ;



[Handwritten signature]

- (ix) In the present case where no suggestion or allegations of any malafide intention to evade payment of duty is even made against them. there is no justification in the imposition of penalty ; that reliance is placed upon the judgment in the case of ITEL Industries Pvt ltd (2004(163)ELT219(Tri.Bang.)
- (x) It is settled position of law that to impose penalty under section 78 of the Act, existence of suppression etc is basically required to be proved which is completely absent in the preset case ; that reliance is placed upon following judgments
 (i) Tamil Nadu Housing Board Vs. CCE (1994(74)ELT 9(SC))
 (ii) CCE, Vs. Town Hall Committee Mysore City Corporation 2011(24)STR 172(Kar)
 (iii) BSNL Vs. Commissioner of Service tax 2008(9)STR 499(Tri.Bang)
 (iv)CCE Vs. Instant Credit 2010(17)STR 397(Tri.Del)
- (xi) The entire amount received from the recipient is recorded in the statutory records and as such in view of the facts and proviso to section 78, the penalty should be fifty percent of the service tax so determined and not hundred percent

4. Personal hearing was conducted on 21.10.2021. Shri R.C.Prasad appeared as authorized representative on behalf of the Appellant. He re-iterated submission made in appeal memorandum and additional submission made during personal hearing.

4.1 The appellant in his additional submission made at the time of personal hearing has inter-alia contended that

- (i) The impugned order has been issued without verifying the facts and without following the principles of natural justice;
- (ii) From the time line of the events, it may be seen that the order has been issued in haste and deprived the appellant its basic right to defend and put the facts right;

| Sr.No. | Event/issue of documents | Date |
|--------|---|---|
| 01 | Recording of statement of the authorized person | 08.01.2020 |
| 02 | Issue of show cause notice | 09.01.2020 |
| 03 | Issue of the impugned order | 13.01.2020(11 & 12.01.2020 were holidays) |

(ii) From the above time line, it may be seen that the appellant was issued the impugned order, within 3 days of completion of the inquiry in violation of principle



[Handwritten signature]

of natural justice

(iii) In the para-2 of the Show Cause Notice , it is mentioned that the appellant was providing services of “Manpower Recruitment / supply Agency “ to various depots of GSRTC and other organizations ; that as per Notification No. 30/2012-ST dated 20.06.2012, the liability to pay service tax under “Manpower Recruitment / supply Agency” was on the receiver of the service and not on provider of the service ; that it is not known whether any demand notice was issued to the receiver of the service or otherwise, but the entire demand has been made from the appellant, the service provider which is not legal and sustainable; that an amount of Rs. 10,88,773/- was collected from M/s. GSRTC ;

(iv) During inquiry the appellant had paid an amount of Rs. 22,09,031/- , however, in para 20(ii) of the impugned order , the amount shown to be paid an appropriated is Rs. 9,84,493/- only;

(v) The appellant was pressurized to accept the service tax liability, pressurized to pay service tax, though it was not required to pay and was pressurized to opt for SVLDRS, 2019; that due to wrong mention of the amount paid during the investigation, the amount to be paid under SVLDRS, 2019 was also calculated wrong by the department

(vi) Though appellant is not required to pay service tax and / or penalty, the entire amount received from the recipient is recorded in the statutory records and as such in view of the facts and proviso to section 78, the penalty should be fifty percent of the service tax so determined and hundred percent.

5. I have carefully gone through the facts of the case, the impugned order, the Appeal Memorandum and oral and written submissions made at the time of hearing. The issue to be decided in the case is whether the impugned order confirming service tax demand of Rs. 95,36,549/- under the proviso to Section 73(1) of the Act, along with interest under Section 75, appropriating an amount of Rs. 9,84,493/-, imposing penalty under Sections 77, 78 and late fee under Section 70 of the Act, is correct, legal and proper or not.

6. The Appellant has contended that the impugned order has been issued without following the principles of natural justice and that the investigations was being conducted



Handwritten signature

for last 3 years and all of a sudden, the Proprietor of the Appellant was called and was served a Show Cause Notice on 09.01.2020 and was pressurized to sign a letter on 10.01.2020 to accept the allegations as made in the Show Cause Notice. It was also contended that impugned order was issued within 4 days of issue Show Cause Notice. In this regard, I find that the Appellant in its letter dated 10.01.2020 addressed to the adjudicating authority, has accepted the service tax liability mentioned in the Show Cause Notice and also waived the requirement of personal hearing. Once the Appellant has accepted the liability mentioned in the Show Cause Notice and waived the requirement of personal hearing, the adjudicating authority cannot be faulted in passing the impugned order within 4 days of issuance of Show Cause Notice and it cannot be said that there is violation of principles of natural justice by the adjudicating authority. I also find that it is not possible to verify at this stage to verify the allegation made by the Appellant that its proprietor was pressurized to sign the letter dated 10.01.2020. Accordingly, I find that plea of the Appellant that there is violation of principle of natural justice is not acceptable. In any case, the Appellant has been given adequate opportunities in present proceedings to put forth his defense by way of written as well as oral submissions.

7. The Appellant has argued that there is gross violation of the mandate and procedures mentioned in Section 72 of the Act (best judgment assessment) by the adjudicating authority in arriving at the value for demand of service tax. Reliance also placed upon various judgments in support of above argument. In this regard, I find that the adjudicating authority at Para-19.2 of the impugned order, while resorting to best judgment method under Section 72, has observed that the Appellant had not filed ST-3 returns for the period from Oct-2014 to June-2017 and that in absence of ST-3 returns and most of the invoices issued the only option left was to calculate the tax liability on the basis of the data available in Form 26AS, Tax Audit Reports and available invoices. Moreover, the adjudicating authority at Para-13 of the impugned order has described the methodology adopted to arrive at the service tax liability of Rs. 95,36,549/- and also observed that the said assessment of value of the taxable service has been admitted in statement dated 08.01.2020. I find that the Appellant has not disputed above observations/ findings of the adjudicating authority in its submissions. I also find that the Appellant has not denied nor retracted the contents of the several statements of the proprietor and authorized person of the Appellant recorded under Section 70 of the CGST ACT, 2017, wherein they had admitted the service tax evasion and modus operandi adopted by them to dupe various authorities/organizations including GSRTC. Accordingly, I hold that the adjudicating authority has rightly adopted the best judgment method under Section 72 of the Act and whatever arguments made and judgments relied upon by the Appellant in this regard are irrelevant. In any case, if the Appellant was not satisfied with the calculation



dy

of the adjudicating authority, then he should have come up with his own calculation with corresponding documentary evidences which he has not done.

8. The Appellant has further argued that it was pressurized to opt for the SVLDRS, 2019 and that due to wrong mention of the amount paid during the investigation, the amount to be paid was also calculated wrong by the department. I find that this authority is not empowered to decide any dispute arising out the SVLDRS, 2019, hence, I resist from recording any findings in this regard.

9. Further, the Appellant has also contended that in Para-2 of the Show Cause Notice, it is mentioned that the Appellant was providing services of "Manpower Recruitment / supply Agency" to various depots of M/s. Gujarat State Road Transport Corporation (GSRTC) and other organizations. It was further contended that as per Notification No.30/2012-ST dated 20.06.2012, the liability to pay service tax under "Manpower Recruitment/Supply Agency" was on the receiver of the service. The entire demand has been made from the Appellant which is not sustainable; that an amount of Rs. 10,88,773/- was also collected directly from M/s. GSRTC. In this regard, I find that the Appellant has not furnished any contract or other documentary evidences before me, based on which the nature of services can be verified. Hence, in my opinion this aspect along with the claim made by the Appellant regarding the payment of Rs. 10,88,773/- by the GSRTC, requires fresh consideration by the adjudicating authority. Accordingly, I remand the matter with direction to the adjudicating authority to record specific findings regarding the exact nature of the services provided by the Appellant to GSRTC keeping in mind the provisions of Notification No.30/2012-ST dated 20.06.2012 and also verify whether any amount has been collected directly from GSRTC which has bearing on over all service tax liability of the Appellant.

10. The Appellant's another contention is that though they have paid an amount of Rs. 22,90,031/-, only an amount of Rs. 9,84,493/- has been appropriated in the impugned order. In support of above contention, the Appellant has furnished documents showing above payment. I find that it is not possible to verify the authenticity of these documents at Appellate stage, especially when the proprietor and their authorized representative in their statements, as narrated in the impugned order, had admitted that they used to furnish fake challans to GSRTC and other organization showing payment of service tax to extract payment of their bills from them. Accordingly, I remand the matter back to the adjudicating authority to verify the authenticity of the above payment made by the Appellant and pass a speaking order in this regard.



adhy

11. I also find that considering the nature of service tax evasion and modus operandi narrated in the impugned order, the adjudicating authority is justified in invoking extended period of limitation as well as imposition of penalty under Section 78, 77 and late fee under Section 70 of the Act. I do not find any substance in the arguments made by the Appellant on above aspects.

12. In view of the above findings, I set aside the impugned order only for the limited purpose of passing a speaking order in terms of findings recorded at Para 9 and 10 above. The Appellant is also directed to furnish all the documents desired by the adjudicating authority and cooperate in the adjudication process. Needless to mention that principles of natural justice should be adhered to while passing *de novo* order.

13. I set aside the impugned order and dispose the appeal by way of remand to the adjudicating authority.

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.

Attended

 Superintendent
 Central GST (Appeals)
 Rajkot

Kumar
 (Akhilesh Kumar) 15th NOVEMBER 2021..
 Commissioner (Appeals)

By RPAD

| | |
|---|--|
| To M/s. Ravi Associate, Gurukrupa, Block No. G-76, Nilkanth Park, Kothariya Road, Rajkot. | प्रति एमएसए रवि एसोसिएट, गुरुकृपा, ब्लॉक नंबर जी-76, नीलकंठ पार्क, कोठारिया रोड, राजकोट। |
|---|--|

प्रति:-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



