



::आयुक्त (अपील) 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



सत्यमेव जयते

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रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20211264SX0000000A41

क्र	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/100/GDM/2019	06/JC/2019-20	24-06-2019

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

KCH-EXCUS-000-APP-260-2021

आदेश का दिनांक / Date of Order:	01.12.2021	जारी करने की तारीख / Date of issue:	02.12.2021
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श्री अखिलेश कुमार, आयुक्त (अपील), 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. PSL Limited (Plot No. 4 & 5), Sector 12B, Post Box No. 113, Gandhidham, Kutch.

इस आदेश (अपील) से ब्यथित 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) सामा 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 (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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। 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 नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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। 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 fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs or less, Rs.5000/- 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 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.
- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपील 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 रुपए 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 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 को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपूरतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के 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 क्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के मंथन के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में बर्णित एवं अन्य संबन्धित 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 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 PSL Limited, Survey No. 35, 37, 41, 307/1 & 2, 308/1 & 2, Village - Varsana & Nani Chirai, Taluka - Anjar, District: Kutch (hereinafter referred to as "Appellant") has filed the present appeal against Order-in-Original No. 06/JC/2019-20 dated 24.06.20219 (hereinafter referred to as "impugned order") passed by the Joint Commissioner, Central GST Commissionerate, Gandhidham - Kutch, (hereinafter referred to as "adjudicating authority").

2. The facts of the case, in brief, are that the Appellant was holding Service Tax Registration No. AAACP2734KST010 for payment of service tax under forward charges as well as reverse charge mechanism. During scrutiny of records of the Appellant for the period from October-2014 to September, 2015, it was observed that the Appellant was providing services under the category of Business Auxiliary Services and they have claimed exemption in their ST-3 returns as 'amount charged against export of service provided or to be provided' and did not pay applicable service tax thereon. On being asked to clarify, the appellant vide letter dated 3.12.2015 informed that they had undertaken fabrication process for bending the imported pipes and subsequently re-exported the same during the period from October, 2010 to April, 2015. The Appellant claimed that the said fabrication process was covered under second proviso to Rule 4(a) of Place of Provisions of Service Rules, 2012 and since the recipient of service was located outside India and consideration had been received in foreign exchange, the services provided by them qualified as export of service in terms of Rule 6A of the Service Tax Rules, 1994.

2.1 It appeared that second proviso to Rule 4(a) of Place of Provisions of Service Rules, 2012 was amended vide Notification No. 14/2014-ST dated 11.7.2014 removing phrase 're-conditioning or re-engineering' from the said proviso. Thus, with effect from 1.10.2014 when the amended Rule 4(a) came into force, only the activity of repairs was covered under second proviso to Rule 4(a). Consequently, place of provision of service in respect of activity of re-conditioning would be location where the services are actually performed. Since, the imported goods were physically made available to the Appellant for carrying out fabrication process, place of provisions would be taxable territory of India and the activities undertaken by them would not be considered as export of service in terms of Rule 6A of the Service Tax Rules, 1994 and the Appellant would be required to discharge service tax on the consideration received by them during the period from October, 2014 to September, 2015.



2.2 The Show Cause Notice No. 5/Jt. Comm/2018-19 dated 17.9.2018 was issued to the Appellant calling them to show cause as to why service tax amounting to Rs. 52,32,236/- 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 proposed imposition of penalty under Sections 76, 77 and 78 of the Act.

2.3 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order wherein he confirmed demand of service tax amounting to Rs. 52,32,236/- under Section 73(1) of the Act, along with interest under Section 75 of the Act and imposed penalty of Rs.10,000/- under Section 77 and penalty of Rs. 52,32,236/- under Section 78 of the Act.

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

- (i) They did not make any temporary import of Seamless Steel Pipes into India for the purpose of repair or re-conditioning or re-engineering nor did they make any repair of the said goods and made any re-export of such goods after repair or reconditioning or re-engineering; that the department has no evidence to support that the appellant is making temporary import, however, the Bills of Entry filed under Section 69 of the Customs Act, 1962 (hereinafter referred to as the 'Act, 1962') clarifies that the import made by the appellant was not a temporary import; that they submitted illustrative copies of Bills of Entry for the relevant period.
- (ii) That the imported pipes were cleared by filing Warehousing Bill of Entry on submission of Warehousing Bond under Section 59 of the Act, 1962 and permitted for deposit of goods in a warehouse under Section 60 of the 1962; that the imported goods were processed in the Bonded Warehouse by following the provisions of "Manufacturing and other operations in relation to goods in warehouse" under Section 65 of the Act, 1962; that after completion of the process of bending have been physically exported to place "outside India" from the private bonded warehouse under Section 69 of the Act, 1962 by filing shipping bills; that they submitted illustrative copies of shipping bills for imported pipes after the process of induction bending physically



exported to place outside India; that the charges for fabrication services rendered on imported pipes have been received in freely convertible foreign exchange as per export order placed by the overseas buyer; that from this fact, it is evident that recipient of service was located outside the territory of India; that there was no dispute in the show cause notice with regard to making physical export of the Steel Pipes Bends by the appellant as recipient of service is located "outside India" and the consideration is received in "convertible foreign exchange" and therefore, the contention of the department that the exemption availed under the guise of re-export was not admissible is in itself no tenable in the eyes of law.

- (iii) That the services rendered by the appellant on the goods physically exported for the period under consideration squarely covered under the scope of Rule-3 of the Place of Provisions of Services Rules, 2012 as recipient of service is located outside the country and therefore, the appellant is not liable to pay service tax on the services rendered on the goods physically exported from private bonded warehouse.
- (iv) That the extended period of limitation is not invocable in the present case as there was no suppression of facts with an intent to evade payment of service tax; that they were regularly filing ST-3 Returns and therefore, the demand beyond the normal period is barred by limitation; that they were under a bona fide belief that they were not liable to pay service tax; that this cannot be regarded as suppression of facts with intent to evade payment of service tax; that they have disclosed all material facts as and when sought by the department; that they were following this practice since very long time and they have been audited by the service tax authorities from time to time and all activities carried out by the appellant were well within the knowledge of the authorities.
- (v) That for imposing penalty under Section 78 of the Finance Act, there should be an intention to evade payment of Service tax, or there should be suppression or concealment of material facts; that they have provided all the details as and when service tax authority has asked to submit and authority was well aware with



activities carried out by the appellant and therefore, the penalty imposed under Section 78 is not sustainable.

4. Personal hearing in the matter was held on 29.01.2020 before the then Commissioner (Appeals), Rajkot. Shri Abraham A. Chacko, General Manager (Commercial), appeared for hearing and drawn the attention towards Order dated 15.02.2019 passed by the Hon'ble National Company Law Tribunal (NCLT), Ahmedabad Bench, wherein the Hon'ble Tribunal had issued moratorium.

5. In view of the moratorium issued by the Hon'ble NCLT, Ahmedabad under Section 14 of the Insolvency and Bankruptcy Code, 2016 vide Order dated 15.2.2019, the appeal was kept in abeyance till the outcome of Corporate Insolvency Resolution Process (CIRP). On going through the NCLT website, it is noticed that the Hon'ble NCLT has issued orders for liquidation of M/s PSL Ltd vide Order dated 8.9.2021 since no bid was received under CIRP and as part of liquidation, the Appellant firm has been sold to M/s Lucky Holding Pvt. Ltd as a 'going concern'.

5.1 Personal Hearing was scheduled in virtual mode through video conferencing on 1.12.2021. Shri Ambarish Pandey, Advocate, on being authorized by Shri Nitin Jain, Insolvency Professional, appeared for virtual hearing and reiterated the submission made in appeal memorandum.

6. I have carefully gone through the facts of the case, the submissions made in the appeal memorandum and oral submission made during Personal Hearing. The issue to be decided in the present appeal is whether the appellant is liable to pay service tax on bending process undertaken on imported pipes which were subsequently re-exported, or not.

7. On perusal of records, I find that the Appellant had carried out process of bending on the imported Seamless Pipes, which were subsequently re-exported after the process. The adjudicating authority confirmed service tax demand covering the period from October, 2014 to September, 2015 on the grounds that services were rendered within taxable territory of India since place of provision of service would be place of actual performance of service as provided under Rule 4(a) of Place of Provisions of Service Rules, 2012.

7.1 The Appellant have contended that the charges for fabrication services rendered on imported pipes were received in freely convertible foreign



exchange as per export order placed by the overseas buyer, which would indicate that recipient of service was located outside the territory of India; that there was no dispute in the show cause notice with regard to making physical export of the Steel Pipes Bends by the appellant as recipient of service is located "outside India" and the consideration is received in "convertible foreign exchange" and therefore, the contention of the department that the exemption availed under the guise of re-export was not admissible is not sustainable.

8. In order to determine whether the fabrication process undertaken by the Appellant on imported goods, which were subsequently re-exported, can be considered as export of service as claimed by the Appellant, it is pertinent to examine whether the fabrication service provided by the Appellant would fulfill the criteria prescribed under Rule 6A of the Service Tax Rules, 1994 to consider the said services as export of services. The provisions of Rule 6A ibid is reproduced as under:

"RULE 6A. Export of services. — (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-

- the provider of service is located in the taxable territory,
- the recipient of service is located outside India,
- the service is not a service specified in the section 66D of the Act,
- the place of provision of the service is outside India,
- the payment for such service has been received by the provider of service in convertible foreign exchange, and
- the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act."

8.1 It is pertinent to examine the relevant provisions of Place of Provisions of Service Rules, 2012, to determine whether place of provision of service in the present case was outside India or not. The relevant provisions of Place of Provisions of Service Rules, 2012 are reproduced as under:

"RULE 4. Place of provision of performance based services. — The place of provision of following services shall be the location where the services are actually performed, namely :-

(a) services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service :

Provided that ...

Provided further that this clause shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair;"

(Emphasis supplied)



8.2 In the present case, it is not under dispute that the goods on which fabrication process was carried out by the Appellant was physically made available to them and services were provided within taxable territory of India. Hence, place of provision of service in this case would be location where the services were actually performed i.e. taxable territory of India, as stipulated in Rule 4(a) *supra*. Further, fabrication process carried out by the Appellant on imported pipes were not repairs but re-conditioning and hence, second proviso to Rule 4(a) *supra* would not be applicable to the facts of the present case. Since, the place of provision of service was not outside India, the services rendered in the present case cannot be said to be export of services in view of the provisions contained in Rule 6A *supra*. Hence, the Appellant has been rightly held liable to pay service tax on the fabrication services rendered in taxable territory of India. I, therefore, uphold the impugned order confirming service tax demand of Rs. 52,32,236/-. Since, demand is upheld, it is natural that confirmed demand is required to be paid along with interest under Section 75. I, therefore, uphold the impugned order for recovery of interest.

9. The Appellant has contended that the services rendered by the appellant on the goods physically exported for the period under consideration squarely covered under the scope of Rule 3 of the Place of Provisions of Services Rules, 2012 as recipient of service is located outside India and, therefore, the appellant is not liable to pay service tax on the services rendered on the goods physically exported from private bonded warehouse. I find that it is pertinent to examine the provisions of Rule 3 *ibid*, which are reproduced as under:

“RULE 3. Place of provision generally. — The place of provision of a service shall be the location of the recipient of service :

Provided that in case of services other than online information and database access or retrieval services, where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.”

9.1 I find that place of provision of service is generally location of recipient of service as provided under Rule 3 above. However, in the present case, place of provision of service is the location where the services were actually performed i.e. taxable territory of India, in terms of Rule 4(a) *ibid* as discussed in detail *supra*. I, therefore, hold that the present case is not covered under Rule 3 *ibid* as claimed by the Appellant.



10. The Appellant has contended that the imported pipes were cleared by filing Warehousing Bill of Entry on submission of Warehousing Bond under Section 59 of the Act, 1962 and permitted for deposit of goods in a warehouse under Section 60 of the 1962; that the imported goods were processed in the Bonded Warehouse by following the provisions of "Manufacturing and other operations in relation to goods in warehouse" under Section 65 of the Act, 1962; that after completion of the process of bending, the imported pipes were physically exported to place 'outside India' from the private bonded warehouse under Section 69 of the Act, 1962 by filing shipping bills.

10.1 In this regard, I find it is pertinent to examine the findings given by the adjudicating authority at para 21 of the impugned order, which are reproduced as under:

"21. From the above, it is clear that the services were rendered and consumed within taxable territory of India. In fact, goods were exported after providing the services and in no case services were exported. The exemption of export of services was availed under the guise of re-export of imported goods. And as per Rule 4 of the POPS Rules, 2012, the Noticee provided the services in India and is liable to pay Service Tax. Provisions of Customs relating to Customs Bonded Warehouse do not vitiate the provisions of Service Tax and Service Tax liability is purely determined on the basis of provisions of Service Tax law. Further, there is no exemption provided in the Service Tax Law for the services provided in Customs Bonded Warehouse. Thus, the Noticee is liable to pay Service Tax alongwith interest and penalty under the category of "Business Auxiliary Service" which does not amount to manufacture in terms of Section 2(f) of the Central Excise Act, 1944."

10.2 I do not find any infirmity in the above findings considering that the services rendered by them were not export within the meaning of Rule 6A of the Service Tax Rules, 1994 as held by me *supra*. I, therefore, discard this contention as devoid of merit.

11. The Appellant has contested the invocation of extended period of limitation on the grounds that as there was no suppression of facts with an intent to evade payment of service tax; that they were regularly filing ST-3 Returns and therefore, the demand beyond the normal period is barred by limitation; that they were under a bona fide belief that they were not liable to pay service tax; that this cannot be regarded as suppression of facts with intent to evade payment of service tax. I find that the Appellant wrongly claimed exemption in the ST-3 Returns by reporting as 'amount charged against export



of service provided or to be provided' and did not pay applicable service tax thereon. However, during detailed scrutiny of records of the Appellant, it was revealed that fabrication process carried out by them on imported pipes did not amount to export of services. Thus, there was a clear mis-statement on the part of the Appellant. The adjudicating authority is, thus, justified in invoking extended period of limitation on the grounds of mis-statement.

12. As regards penalty imposed under Section 78 of the Act, the Appellant has pleaded that there should be an intention to evade payment of Service tax, or there should be suppression or concealment of material facts; that they have provided all the details as and when service tax authority has asked to submit and authority was well aware with activities carried out by the appellant and therefore, the penalty imposed under Section 78 is not sustainable. I find that since invocation of extended period of limitation on the grounds of mis-statement 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 of Rs. 52,32,236/- imposed under Section 78 of the Act.

13. 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 did not pay service tax in accordance of Section 68 of the Act. I concur with the findings of the adjudicating authority and uphold imposition of penalty of Rs. 10,000/- under Section 77 of the Act.

14. In view of above, I uphold the impugned order and reject the appeal.


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

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



सत्यापित,

 विपुल शाह
 अधीक्षक (अपील)


 (AKHILESH KUMAR)
 Commissioner (Appeals)

By R.P.A.D.

To,
M/s PSL Limited,
Survey No. 35, 37, 41, 307/1 & 2, 308/1 & 2,
Village Varsana & Nani Chirai,
Taluka: Anjar,
District: Kutch.

प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
 - 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
 - 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अंजार-भचाउ मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।
- ✓ 4) गार्ड फ़ाइल।



