::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔरकेन्द्रीय 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 – 2477952/2441142Email: commrappl3-cexamd@nic.in

DIN20230164SX0000777C10

क	अपील / फाइलसंख्या/ Appeal /File No. **GAPPL/COM/STP/1675/2022**	मूल आदेश सं / O.I.O. No. **1074/SERVICE TAX/DEMAND/2021-22**	दिनांक/Date **30-Mar-2022**

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

BHV-EXCUS-000-APP-134-2022

आदेश का दिनांक / Date of Order: **27.12.2022**	जारी करने की तारीख / Date of issue:**03.01.2023**

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh,Commissioner (Appeals),Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,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 theAppellant&Respondent :-

M/s. Shree Progressive Courier Service(Mitesh Nagindas Patel), C Shop No. 06,Aristo Complex,Waghawadi Road,Bhavnagar-364002

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

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, **1994** की धारा **86** के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर॰ के॰ पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावी अहमदाबाद- ३८००१६को की जानी चाहिए ।/

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of dutydemand/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 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 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs 10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम,1994 की धारा **86** की उप-धाराओं **(2)** एवं **(2A)** के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, **1994**, के नियम **9(2)** एवं **9(2A)** के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की 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 For 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 Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम **1944** की धारा **35**एफ 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" मे 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 अर्ज़ी एवं अपील को लागू नहीं होंगे।/

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा **35**EE के प्रथमपरंतुक के अंतर्गतअवर 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 छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसी आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं° **2**),1998 की धारा **109** के द्वारा नियत की गई तारीख अथवा समयाविधि पर या बाद में पारित किए गए है।/
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।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, **1975**, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित **6.50** रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, **1982** में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की 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 है। /
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.

:: अपील आदेश / ORDER-IN-APPEAL ::

Patel) [hereinafter referred to as "Appellant"] has filed the present Appeal against Order-in-Original No. 1074/SERVICE TAX/DEMAND/2021-22 dated 30.03.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Bhavnagar-1 (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department shared the third party information/ data based on Income Tax Returns/ 26AS of the Appellant for the Financial Year 2015-16 & 2016-17. Letter dated 18.07.2019 & summon dated 10.07.2020 was issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents viz. copies of I.T. Returns, Form 26AS, Balance Sheet (including P&L Account), VAT/ Sales Tax Returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. for the Financial year 2015-16, 2016-17 & 2017-18 (upto June-2017), which was returned back from the postal authorities undelivered. However, as per data available with department on ACES, it was observed that the Appellant filed Service Tax returns for the period April-September-2015, October-March-2016, April-September-2016 and October-March-2017.

3. In absence of data/information, a Show Cause Notice dated 21.12.2020 was issued to the Appellant demanding Service Tax on differential value of ITR returns and S.T.-3 returns, including cess to the tune of Rs. 4,90,861/- under Section 73(1) of the Act by invoking extended period of 5 years alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 78, 77(2) and 77(1)(c) of the Act upon the Appellant.

4. The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order confirming Service Tax demand of Rs. 4,90,861/- under Section 73(1) along with interest under Section 75 of the Act and imposing penalty of Rs. 4,90,861/- under Section 78 and penalty of Rs. 5,000/- each under Section 77(1)(c) and 77(2) of the Act.

5. Being aggrieved, the Appellant has preferred the present appeal on various grounds as stated below:

(i) The Show Cause Notice and the impugned order has been issued without any investigation and effort to know whether the amount shown in the TDS/ITR is towards providing service or there is any service then which type of service has been provided by them. The department ought to have conducted inquiry in this regard and for this CBIC has taken note of this and issued advisory for not to

issue notices without any verification. The Form 26AS is not a perfect system and is for deduction of TDS. They rely on case of Ravindra Pratap Thareja Vs. ITO- TS-657-ITAT-2015(JAB), Court on its own Motion Vs. CIT- 2013 (352) ITR 273, CCE Vs. Mayfair Resorts- 2011 (22) STR 263, Synergy Audio Visual Workshop P. Ltd. Vs. Commissioner of S. T. Bangalore-2008 (10) STR 578, Amrish Ramesh Chandra Shah Vs. UOI and Others-2021-TIOL-583-HC-MUM-ST, CBIC instruction dated 26.10.2021, Order-In-Appeal No. BHV-EXCUS-000-APP-022-2021-22 dated 31.03.2022 and M/s. Luit Developers Pvt. Ltd. Vs. Commissioner of CGST and C.Ex., Dibrugarh- 2022-TIOL-180-CESTAT-Kol.

(ii) The impugned order has been issued not on the basis of any material evidence or any investigation but ignoring the submission of the Appellant and instructions issued by the Board and without verifying the facts and against spirit and direction of the instructions of the Board. The impugned order travelled beyond scope of Show Cause Notice and the Appellant relied on the decision of Huhtamaki PPL Ltd. Vs. Commissioner of C.Ex. & S.T., Surat-I-2021 (50) GSTL 309 (Tri.-Ahmd.), R. Ramdas Vs. Joint Commissioner of C.Ex. Puducherry-2021 (44) GSTL 258 (Mad.), Machintosh Burn Ltd. Vs. Commissioner of Service Tax, Kolkata-2020 (35) GSTL 409 (Tri.-Kolkata), Swapne Nagari Holiday Resort Vs. Commissioner of C.Ex., Raigad-2019 (21) GSTL 559 (Tri.-Mumbai), ST Electricals Pvt. Ltd. Vs. Commissioner of Central Excise, Pune-I-2019 (20) GSTL 273 (Tri.-Mumbai), Ajanta Manufacturing Ltd. Vs. Commissioner of Customs, Kandla- 2019 (369) ELT 1067 (Tri.-Ahmd.).

(iii) The Show Cause Notice or the impugned order fails to demonstrate how the activities carried by the Appellant falls under the definition of service since there is no single evidence on record to suggest that any consideration in any form was at any time received by the Appellant for provision of any service. It is on record that on bills/invoices the amount is mentioned is for registered post/ book post and the Appellant is not 'postal department' for sending the posts through registered post or book post. The posts were sent through postal department only and the Appellant was collecting the amount charged from its customers, who were engaging him for providing courier service and for providing courier service, the Appellant was paying applicable Service Tax and there is no amount of service charge or any extra amount for booking the posts through postal department.

(iv) The activities of the Appellant were of working as 'pure agent' and no Service Tax is payable on the amount received for the expenses incurred on behalf of another person. The Adjudicating Authority was convinced with the fact that the Appellant was sending the covers/documents through postal department and expenditure incurred was reimbursed by them from the parties

to whom services were provided. They rely on Rule 5 of Service Tax (Determination of value) Rules, 2006 and explanation thereto. They further stated that (i) there was no written contract but an oral contract and they rely on Section 10 of the Indian Contract Act, 1872, Nanak Builders and Investors Pvt. Ltd. vs. Vinod Kumar Alag AIR 1991 Delhi 315, Alka Bose vs. Parmatma Devi & Ors [CIVIL APPEAL NO(s). 6197 OF 2000], (ii) Neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service (iii) Does not use such goods or services so procured (iv) Receives only the actual amount incurred to procure such goods or services.

(v) The services of registered post and book post are placed under negative list and amount charged for providing such services are outside the service tax net since the amount collected from the customers for the expenses incurred for 'registered post' or book post and all such services are placed under 'negative list of services' and not taxable. Section 66 D of the Act.

(vi) The charge of non disclosure of true and correct details is baseless and thus the extended period cannot be invoked. The show cause notice and impugned order was issued on the basis of information and details filed by them with Income Tax department. Had there been any intention to evade payment of service tax, it had not disclosed the details to the Income Tax department. They were not required to pay any service tax, and as such, there was nothing to with hold the information. There was no suppression at all and as such the show cause was time barred and Service Tax cannot be demanded and confirmed under proviso to sub-section (1) of Section 73 of the Act and they rely upon following case laws:

(1) M/s Oriental Insurance Company Limited vs Commissioner, LTU, New Delhi-2021-TIOL-307-CESTAT-DEL- Date of Decision: 25.5.2021

(2) Blackstone polymers versus Commissioner of Central Excise, Jaipur-II-2014 (301) E.L.T. 657 (Tri. - Del.)

(3) Kirloskar Oil Engines Ltd. Versus Commissioner of Central Excise, Nasik-2004 (178) E.L.T. 998 (Tri. - Mumbai)

(4) Hindalco Industries Ltd. Versus Commissioner of C. Ex., Allahabad-2003 (161) E.L.T. 346 (Tri. - Del.)

(5) Circular no. 1053/02/2017-CX, F.No. 96/1/2017-CX.I dated 10th March, 2017 laying down guidelines for issuance of SCN.

(vii) The Appellant submitted that the in the case of interpretation of law, no penalty is imposable considering several judgment of the Tribunals and High Courts and they rely on the judgment in the case of ITEL INDUSTRIES PVT.LTD.

Reported in 2004 (163) E. L. T. 219 (Tri - Bang.). The matter of penalty is governed by the principles as laid down by the Honb'le Supreme Court in the land mark case of M/s. Hindustan Steel Ltd. Reported in 1978 ELT (J159). They further submitted that 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 present case and they rely on the case of TAMIL NADU HOUSING BOARD Versus COLLECTOR OF CENTRAL EXCISE, MADRAS as reported at 1994 (74) E.L.T. 9 (SC), COMMISSIONER OF C. EX., MYSORE Versus TOWN HALL COMMITTEE, MYSORE CITY CORPORATION: 2011 (24) S.T.R. 172 (Kar.), BSNL Vs COMMISSIONER OF SERVICE TAX, BANGALORE: 2008 (9) S.T.R. 499 (Tri. - Bang.), COMMISSIONER OF C. EX., LUDHIANA Versus INSTANT CREDIT: 2010 (17) S.T.R. 397 (Tri. - Del.)

6. Personal hearing in the matter was held on 23.12.2022. Shri R. C. Prasad, consultant appeared for personal hearing and reiterated the submissions made in the appeal. He submitted that the appellant is not providing any service. He is merely collecting the packages for dispatch of his regular clients and is sending them through India Post without any personal monetary consideration. He is just claiming exact amount paid to India Post on reimbursement basis. Appellant is not getting any additional amount towards any service by him either from the clients or from India Post. He made further written submissions at the time of personal hearing and requested to set aside the impugned order in these two cases.

6.1 The consultant submitted further written submission which is akin to grounds of appeal already submitted by them. They further placed reliance on the decision of M/s. Seher Vs. Commissioner of Service Tax, Delhi- 2022-TIOL-114-CESTAT-Del., Commissioner of Central Excise and Service Tax Vs. M/s. Cruiser Impex Pvt. Ltd., Ludhiana- 2019-TIOL-3770-CESTAT-CHD, M/s. Sai Manpower Placement and HR Services Vs. Commissioner of Central Excise and Service Tax, Lucknow- 2019-TIOL-1398-CESTAT-Del.

7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. I find that Show Cause Notice had been issued without verifying any data or nature of services provided by the Appellant as the same had been issued only on the basis of data received from the Income Tax department and the Adjudicating Authority has confirmed the demand of Service Tax vide impugned order without considering the written submission dated 08.03.2021 and what is submitted at the time of personal hearing on 23.03.2022.

8. I find that the main issue that is to be decided in the instant case is

whether the services provided by the Appellant is taxable under Service Tax or otherwise. On going through the impugned order, it has been held by the Adjudicating Authority that the services provided by the Appellant to the parties through postal department are taxable and demand is sustainable.

9. The Appellant is a proprietorship firm engaged in providing courier agency service. They are also providing services of registered post and book post to their customers through post offices and for this they also purchase postal tickets from the post offices on behalf of their customers, paid for that and then recover from their customers by way of reimbursement through invoices. The Appellant has submitted copies of ledger account for purchase of post tickets for the year 2015-16 and 2016-17. They have also submitted copies of bills issued by them to their customer supported by certificate issued by the respective post office for dispatch of number of articles through registered post and book post. The amount mentioned in the bill issued by the Appellant is tallying with the amount mentioned in the certificate issued by the respective post office for dispatch of the articles. The Appellant has charged and collected the Service Tax on extra charges viz. labour charge etc. only and in all other cases have charged the same amount which they have paid to the postal authorities for post of articles of their customers.

10. Now, as per the contention of the Appellant, whether activity carried out by them is working as 'pure agent' as per Rule 5 of Service Tax (Determination of value) Rules, 2006 and whether the Service Tax is payable on amount received for the expenses incurred on behalf of their customers or otherwise. The same is re-produced below:

> *"Rule 5. Inclusion in or exclusion from value of certain expenditure or costs.-*
> *(1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.*
>
> *Explanation. - For the removal of doubts, it is hereby clarified that for the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication services actually provided.*
>
> *(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-*
> *(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured*
> *(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;*
> *(iii) the recipient of service is liable to make payment to the third party;*
> *(iv) the recipient of service authorises the service provider to make payment on his behalf;*
> *(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;*

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.
***Explanation1.**-For the purposes of sub- rule (2), "pure agent" means a person who-*
(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
(c) does not use such goods or services so procured; and
(d) receives only the actual amount incurred to procure such goods or services."

On plain verification of the copies of invoices submitted by the Appellant, it is found that they have charged the amount for dispatch of registered post, book post etc. from their customer and for that they have paid the said amount to the respective post office on behalf of their customers. For any extra amount charged by the Appellant for their customer, the Appellant has charged the Service Tax on that extra amount and shown separately in the invoices. They have also submitted the copy of post ticket purchase ledger for the year 2015-16 and 2016-17 which tallied with the amount mentioned in their invoices of the respective customers.

10.1 I find from the invoices and other documents submitted by the Appellant that they have fulfilled all the conditions as laid down under the definition of the Pure Agent given in the Explanation 1 to the Sub rule (2) of Rule (5) of Service Tax (determination of Rules) 2006. I further find that the Appellant has substantiated their claim for reimbursement of expenses, i.e. acting as pure agent for the expenses borne by the Appellant on behalf of their clients submitted the copies of the Profit and Loss Account clearly shown the post income as well as post & telegram expense in the Revenue Income of both the Annual Profit & Loss Account of both the F.Y. 2015-16 and F.Y. 2016-17 and also submitted the copies of the Invoices in which the other than postal expenses shown separately.

10.2 In view of the above, I find that the Appellant has fulfilled all the conditions as laid down under the definition of Pure Agent as supra and the expense of postage of articles though post office received from their clients are nothing but the reimbursement of expenses borne by the them on behalf of their clients during the relevant years i.e. F.Y. 2015-16 and F.Y. 2016-17. Thus, I find that they are working as 'pure agent' of their customers/ clients and are eligible for exclusion of expenditure or costs incurred by them as 'pure agent' of their customers.

10.3 Therefore, I am of considered view that the value of postal tickets purchased by the Appellant on behalf of their customers is required to be excluded from the total differential value on which Service Tax has been demanded.

11. It is also seen that the Service Tax demand is on difference of value shown in Service Tax returns/26AS and value shown in S.T.-3 returns. I find that the total income booked in the balance sheet as well as profit & loss account is to be considered as final since the Form 26AS is not actual income but meant for TDS purpose only. The income booked in the books of account of the Appellant is also tallied with the total income reflected in the Income Tax Returns filed with the Income Tax Department. Therefore, I find that to arrive at demand on difference value between ITR/books of account and value shown in S.T.-3 returns is to be considered and not the value of Form 26AS. The details are as under:

Sr. No.	Details	F. Y. 2015-16 (Rs.)	F. Y. 2016-17 (Rs.)
1	Value of taxable service as per ITR/books of account	91,72,389	35,51,689
2	Value of taxable service on which Service Tax paid as per S.T.-3 returns	64,00,955	29,58,334
3	Differential taxable value on which Service Tax not paid	27,71,434/-	5,93,355/-
4	Value of postal tickets	26,28,416/-	5,93,352/-
	Difference	1,43,018/-	NIL

With regards to value of taxable service on which Service Tax paid as per S.T.-3 returns for the year 2015-16, the Appellant has submitted that the taxable value of Rs. 1,43,018/- reflecting in S.T.-3 returns for the period October-December-2015 has not been considered by the Department. Hence, the taxable value of Rs. 74,960/- shown in the Show Cause Notice is for the period January-March-16 only and the total value of October-2015 to March-2016 is Rs. 2,17,978/- (Rs. 1,43,018/- plus Rs. 74,960/-). The Appellant submitted the copies of S.T.-3 returns and on verification of the value shown in the said returns for the year 2015-16, it is found that the taxable value of Rs. 1,43,018/- for the period October-December-2015 has not been considered. Therefore, of Service Tax on difference of Rs. 1,43,018/- as shown in the above table is not liable to be recovered since the same is nothing but the taxable value shown in the S.T.-3 returns which was not considered at the time of issuance of Show Cause Notice.

12. In view of discussions and finding, I set aside the impugned order and allow the appeal filed by the Appellant.

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

13. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested

(शिव प्रताप सिंह)/(Shiv Pratap Singh)

Superintendent
Central GST (Appeals)
Rajkot

आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

To,	सेवा में,
M/s. Shree Progressive Courier Service, (Prop.: Mitesh Nagindas Patel), C-1040, Opp. Bindunivas, Kaliyabid, Bhavnagar-364002	मे. श्री प्रोग्रेसिव कुरियर सर्विस, (मालिक: मितेश नागिनदास पटेल), C-1040, बिन्दु निवास के सामने, कालियाबीड, भावनगर-364002 ।

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, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
3) अपर आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मण्डल-2 भावनगर को आवश्यक कार्यवाही हेतु।
5) गार्ड फ़ाइल।