



:: आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क ::
O/Q 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



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रजिस्टर्ड बाकए.डी. द्वारा :-

DIN-20221164SX000000C259

क	अपील / फाइल संख्या/ Appeal / File No.	मूल क्रम संख्या / OIO No.	दिनांक/ Date
	V2/547 /RAJ/2021	22/JC(MAN)/2021-22	30-09-2021

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

RAJ-EXCUS-000-APP-357-2022

आदेश का दिनांक / Date of Order:	28.10.2022	जारी करने की तारीख / Date of issue:	02.11.2022
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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 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. J.K.Associates, 409, Star Plaza, 4th Floor, Fulchhab Chowk, Rajkot-360001

इस आदेश (अपील) से व्यथित को 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 मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामाली भवन अमावा अहमदाबाद-360016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhaumali Bhawan, Ass-wa Ahmedabad-360016 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) नियमवाली, 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 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/- 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 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 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, 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 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/- रुपये का निर्धारित शुल्क जमा करना होगा।/
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- 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/-.

(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 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, 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 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/- रुपये का निर्धारित शुल्क जमा करना होगा।/
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(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 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, 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 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/- रुपये का निर्धारित शुल्क जमा करना होगा।/
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- 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/-.

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

- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर 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 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 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 भाग के 10 प्रतिशत (10%), जब भाग 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) सेनबेट जमा की ली गई गलत राशि
(iii) सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के अंश से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान नहीं 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 कोपनीय आवेदन :
Revision application to Government of India:
इस आदेश को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपक्षक 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 (i) 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 बरी 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 क्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समावृत्ति 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 प्रतियाँ 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 प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ-साथ के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the O/O 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, उपरोक्त इन्हें से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पत्रों कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, 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) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्वयं आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क डिपॉजिट लनी 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 बर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान अकर्षित 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



अपील आदेश /ORDER-IN-APPEAL

M/s J.K. Associates (Advocates), 409 Star Plaza, Fulchhab Chowk, Rajkot-360 001 (*hereinafter referred to as 'Appellant'*) has filed Appeal No. V2/547/RAJ/2021 against Order-in-Original No. 22/JC(MAN)/2021-22 dated 24.09.2021 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central Excise & CGST, Rajkot (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that as per data received from the Income Tax Department, the appellant appeared to have received various amounts as consideration for providing taxable service. It appeared that the appellant had not obtained registration under Service Tax Rules and did not pay service tax on the consideration received for providing taxable service. The appellant, in spite of being asked by the jurisdictional officer, did not produce any details or information about the nature of service provided by them.

2.1 Based on the data provided by the Income Tax department, a Show Cause Notice No. V.ST/Div-I-RJT/JC/AS/05/2020-21 dated 29.09.2020 was issued to the Appellant calling them to show cause as to why the value of taxable services provided by them during the period F.Y. 2014-15, 2015-16 and 2016-17 should not be assessed/determined at Rs.9,07,48,798/- under Section 72 of the Finance Act, 1994 and service tax amount of Rs.1,29,34,628/- should not be demanded and recovered from them under proviso to Section 73(1) of the Act, along with interest under Section 75 of the Act, and proposing imposition of penalty under Sections 77 and 78 of the Act.

2.2 The above Show Cause Notice was adjudicated vide the impugned order whereunder adjudicating authority confirmed the demand of Rs.1,29,34,628/- under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act. He also imposed penalty of Rs.1,29,34,628/- under Section 78 and Rs. 10,000/- under Section 77(1)(a) and Rs.10,000/- under Section 77(2) of the Finance Act, 1994.

3.1 Being aggrieved, the Appellant has filed the present appeal contending, *inter alia*, that though all evidences were available before the department, the department failed to determine nature of service provided by them. The appellant submitted that it is evident from the records received from income tax department as well as audited balance sheet submitted by them that they had provided services of 'manpower supply service', but the



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adjudicating authority has classified the service under 'business auxiliary service' inspite of the fact that after 01.07.2012 there was no classification of service at all.

3.2 The appellant submitted that as per Section 72 ibid the Central Excise Officer was supposed to take into account all the relevant material available and make assessment of value of taxable service using best of his judgment. In the instant case the Central Excise officer has not followed the procedure prescribed under said Section. The appellant submitted that services provided by them merit classifiable under 'manpower supply services' as they not only supplied work force to M/s Echjay Industries Pvt Ltd, but also collected service charges for the same with salary and wages, provident fund contribution, employee state insurance contribution, professional tax, production incentives, canteen expenses etc. It has also deducted contribution from employees towards provident fund, state insurance and paid professional tax too.

3.3 The appellant submitted that they had not provided any service specified in clause (i) to (v) and also no service incidental or auxiliary to any activity specified in clause (i) to (vi) of Section 65(19) of the Finance Act, 1994 so as to merit the classification under 'business auxiliary service' by the adjudicating authority. They submitted that the adjudicating authority has failed to identify any of the services mentioned in clause (i) to (vi) for which they provided management or supervision service. They contended that payment of salary and bonus, production incentives, canteen expenses to the workforce as well as payment towards legal obligation of said workforce like provident fund, employee state insurance contribution, labour welfare fund and professional tax cannot be considered as service on behalf of the client. The appellant submitted that the adjudicating authority has erroneously placed reliance upon decision in the case of *Bombay Intelligence Security (I) Ltd-2015 (38) STR.588 (Tri-Mum)*.

3.4 The appellant submitted that as per agreement for retainership dated 15.09.2010 executed between them and M/s Echjay Industries Pvt. Ltd., *inter alia*, provided for transfer of salary including PF, bonus, ESI, OT etc to be distributed to workers, it means they had supplied manpower only for which they received service charge of Rs.5,83,205/- and amount of Rs.1,90,04,564/- towards reimbursement of salaries and wages in 2014-15. If the employees were not supplied by the appellant, M/s Echjay Industries would not have deducted contribution towards provident fund from employees as well as amount towards employee state insurance. This clearly proves that they had supplied manpower only. The appellant submitted that



as per Notification No.30/2012-ST the liability to pay 25% of service tax was on provider of service and 75% on receiver of service in 2014-15 and 100% on the receiver during 2015-16 and 2016-17. It is not matter of dispute that M/s Echjay Industries Pvt Ltd have not paid 75% and 100% of service tax under reverse charge mechanism. The appellant submitted a copy of letter dated 13.09.2021 of M/s Echjay Industries confirming payment of service tax under reverse charge.

3.5 The appellant submitted that demand of service tax on 25% of value for April 2014 to September 2014 is time barred as the ST-3 return for the said period was required to be filed by 25th of October 2014 whereas the demand notice was issued on 28.09.2020. They also contended that demand for the period October 2014 to March 2015 is also time barred as there is no suppression of facts etc. The appellant relied upon the case of *Padmini Products-1989 (43) ELT.195 (SC)*, *Chemphar Drugs & Liniments-1989 (40) ELT.276 (SC)*, *Dhiren Chemical Industries-2002 (139) ELT.3 (SC)*. In view of it appellant submitted that they are not liable to pay any amount of service tax during the period and therefore, impugned order is liable to be set aside.

4. Personal hearing was held on 12.10.2022 when Ms. Drashti Sejpal, Chartered Accountant appeared before me. She reiterated the submissions made in the grounds of appeal. She submitted that adjudicating authority wrongly classified their services as Business Auxiliary Services. The assessee was under the impression that these being related to legal services, they were not liable to pay service tax. However, since they are supplying manpower to their client on contract basis, their services fall under category of manpower supply, where the service receiver was liable to pay service tax to the extent of 75% during 2014-15 and 100% during 2015-16 and 2016-17 on RCM. She drew attention to page No.82, 83, 86, 90-99,100,122 and 138 of the appeal memorandum in this regard. She also contended that part of demand was time barred as there was no wilfull misstatement or suppression on their part. She undertook to submit additional documents/submissions within 3 days. She requested to drop the demand and penalty.

4.1 The appellant in their further submission dated 18.10.2022 contended that the recipient of service had paid service tax on reverse charge basis under the category of 'manpower supply service' and submitted copies of ST3 return filed by M/s Echjay Industries.

I have carefully gone through the facts of the case, the impugned



order, grounds of appeal in the appeal memorandum and oral as well as written submissions made by the Appellant. As per the facts available on record, the demand was made on the basis of data provided by the Income Tax department. Though the documents related to the income shown in the returns of Income Tax department were called for by the jurisdictional CGST officer, the appellant did not provide them. The appellant has submitted the documents at the time of adjudication. The adjudicating authority has observed that the appellant, in their books of accounts, had shown income under two heading (a) service charge and (b) reimbursement which included salaries and wages, bonus, provident fund ESIC, labour welfare fund, professional tax, production incentive and canteen expense. The adjudicating authority has observed that the nature of service actually provided by the appellant did not fall under the purview of 'Legal Service' as claimed by the appellant but it actually fell under the category of 'Business Auxiliary Service' as provided under Section 65(19) of the Finance Act, 1994. The adjudicating authority has determined the tax liability after granting opportunity for hearing.

6. The appellant, in the present appeal, is contesting the classification of service under the category of 'Business Auxiliary Service' on the ground that agreement for retainership dated 15.09.2010 executed between them and M/s Echjay Industries Pvt. Ltd., provided for transfer of salary including PF, bonus, ESI, OT etc to be to be distributed to workers and they had supplied manpower only for which they had received service charge. Thus, the contentious issue before me is whether the service provided by the appellant is 'Business Auxiliary Service' as held by the adjudicating authority or it is service of 'Manpower Supply' as claimed by the appellant.

7. Coming to the issue at hand, I find that the show cause notice was issued on the basis of data provided by the Income Tax department without mentioning the nature or name of service provided as no details were available. In reply to the show cause notice, vide letter dated 04.08.2021, the contention of the appellant before the adjudicating authority was that the service provided by them is 'Legal Services' on which the liability to pay service tax is on the recipient as per Notification No.30/2012-ST. They also referred to the agreement for retainership executed by them with M/s Echjay Industries Pvt. Ltd dated 15.09.2010. Further, they had clarified that they have not provided any service to Echjay Industries Pvt Ltd related to recruitment or supply of manpower or employees. They had also mentioned that TDS was deducted under Section 194J of the Income Tax Act for Professional/legal/technical services and not under 194C of the Income Tax



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Act related to payment made towards contractual obligations, including these under a man-power supply contract.

8. However, in the present appeal, the appellant has made a ground totally contradicting the submissions made before the adjudicating authority by claiming that the service provided by them is 'manpower supply service'. I find that, in reply to the show cause notice submitted vide their letter dated 04.08.2021 (page 86 to 90 of appeal memorandum), the appellant had made the following submissions:

"5. In context to the above, it is submitted that the assessee firm is a firm of Advocates, which is evident from the (i) enrolment/registration certificates issued by the bar Council of Gujarat and (ii) deed of partnership between the partners dated 15.07.2014.

6. Secondly, the assessee firm has provided legal services to M/s Ech-Jay Industries Pvt. Ltd. By way of advising, assisting and consulting them in the area of various labour laws such as Factory Act, Provident Fund Act, ESIC Act, Minimum Wages Act etc. This fact is evident from the agreement for retainership executed by the assessee firm with M/s Ech-Jay Industries Pvt. Ltd. Dated 15.09.2010, copy of which is enclosed as Annexure-C. As per the terms & conditions prescribed in the said agreement, the assessee firm is liable to carry out following activities:

(i) To see all the statutory compliances of client related to contract labour and visit the factory premises of client.

(ii) To update the client and to provide all the notifications related to labour laws issued by Government from time to time.

(iii) To assist and advise client on all legal issues including drafting of Memo, Charge sheets, Applications etc under various labour laws.

(iv) To maintain all statutory records required under Labour Laws from time to time.

7. Thus, the scope of services rendered by the assessee firm is crystal clear in the above agreement and hence, the services provided by the assessee firm to Ech-Jay Industries Pvt. Ltd is in the nature of "Legal Services".

8. Furthermore, it also needs mention that the client, ie., Ech-Jay Industries Pvt. Ltd has also while making payment of legal fees to the assessee firm deducted the income-tax at source (TDS) u/s 194J of the Income-tax Act, 1962. Copies of 26AS statements are enclosed as Annexure-D. As per the said provision (Section 194J), tax at source is required to be deducted by payer/remitter when payment is made against professional/legal/technical services. Therefore, it is again proved that the payment made by Ech-Jay Industries Pvt. Ltd to the assessee firm is for legal services."

From the above submissions, it is evident that the appellant had made a claim of providing "Legal Service" before the adjudicating authority. Thus, the claim of the appellant in the present appeal that they have provided 'manpower supply service' is quite converse and opposite to the submission made before the adjudicating authority. It is settled law that the appellant cannot change its stand and make a new case at appellate stage. I rely upon the case of W.I.P.L-2001 (133) E.L.T. 802 (Tri. - Del.) wherein it is held as under:

"4. We have considered the submissions of both the sides. We agree with the learned SDR that the Appellants cannot take a completely new plea at the Appeal stage; that if the impugned products were not marketable, they should have raised the said plea in their reply to the show cause notice. Having not raised the plea before any of the



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lower authorities, the Respondents cannot now claim that the marketability was assumed by the Department. The facts in *Nippon Derro Ispat Ltd., supra*, were different as the Appellants therein claimed the benefit of Notification No. 57/95 and that goods were capital goods as per Explanation 1(b) to Rule 57Q of the Central Excise Rules. It was open to the Respondents to raise the plea of non-marketability of the impugned products when the show-cause-notices were issued to them. Further any opinion, obtained well after the adjudication of the matter, cannot be allowed to be brought on record. We, therefore, reject the Misc. Application No. 266/2000 in respect of bringing on record the opinion tendered by Indian Pump Manufacturers Association and for raising plea of non-marketability of the impugned goods. However, we allow both the Misc. Application partly for bringing on record the copies of show cause notice, replies thereto, copies of relevant invoices and Memorandum of appeals filed by the Respondents before the Commissioner (Appeals) in the matters."

8.1 I also rely upon the case of *Chenab Textile Mills-2017 (356) E.L.T. 543 (J & K)* wherein it is held as under:

"7. Thus, from the perusal of the aforesaid show cause notice, it is evident that the aforesaid show cause notice gives the sufficient particulars with regard to the basis on which the demand of duty, penalty and interest was being made by the Revenue. It is pertinent to mention here that the assessee did not raise the issue with regard to vagueness of the show cause notices either before the Adjudicating Authority or before the Appellate Authority. The aforesaid contention has been raised for the first time in the objections which have been filed in this appeal. Therefore, the assessee cannot be allowed to raise a new plea for the first time in this appeal. No prejudice has been suffered by the assessee as it has been apprised with regard to the grounds on which the demand with regard to duty, penalty as well as interest was made by the Revenue. Similar view has been taken by the Supreme Court in the case of *Commissioner of Customs, Mumbai v. Toyo Engg. India Ltd. - 2006 (201) E.L.T. 513 (Supreme Court)*. Relevant paragraph No. 16 of the judgment *supra* is reproduced hereunder :

"Learned counsel for the Revenue tried to raise some of the submissions which were not allowed to be raised by the Tribunal before us, as well. We agree with the Tribunal that the revenue could not be allowed to raise these submissions for the first time in the second appeal before the Tribunal. Neither adjudicating authority nor the appellate authority had denied the facility of the project import to the respondent on any of these grounds. These grounds did not find mention in the show cause notice as well. The Department cannot be travelled beyond the show cause notice. Even in the grounds of appeals these points have not been taken".

9. With regard to the claim of the appellant that the service provided is legal service, the adjudicating authority has given findings that the nature of service actually provided by the appellant did not fall under the purview of 'Legal Service'. The adjudicating authority has observed that the service provided by the appellant was appropriately falling under sub-clause (vi) and (vii) of Section 65(19) of the Finance Act, 1994 as 'Business Auxiliary Service' in as much as, the appellant was providing service on behalf of M/s Echjay Industries Pvt. Ltd by way of management of workforce and supervision thereupon, which includes payment of salaries and bonus, production incentives, canteen expenses of the workforce as well as payment towards legal obligations of said workforce.

10. Now coming to the claim of the appellant that the service provided by them is 'Manpower Supply Service', I find that the appellant had made



the following submission before the adjudicating authority in their reply dated 04.08.2021;

"11. Without prejudice to the above, it is submitted that the assessee firm while discharging their obligations/rendering legal services to Ech-Jay Industries Pvt. Ltd has made an arrangement to route all the payments to be made by Ech-Jay Industries Pvt Ltd to their employees/workers through them. This arrangement was made so as to enable the assessee firm to monitor the employee/worker wise payout and to determine the liability of client under various Labour Laws, i.e. Minimum Wages Act, PF Act, ESIC Act, Bonus Act etc. Therefore, the client Ech-Jay Industries Pvt Ltd has made monthly payments to the assessee firm on account of (i) Salary/wages payable by them to their employee and (ii) legal fees as per the retainership agreement. Out of the amount received by the assessee firm from Ech-Jay Industries Pvt. Ltd, towards salary/wages disbursement, they have made back-to-back payment to the actual employees/workers of the client. Therefore, the said amount received by the assessee firm from Ech-Jay Industries Pvt. Ltd and back-to-back disbursed to the actual employees/workers of the client is nothing but in the nature of reimbursement/pure agency, which is outside the purview of the service tax.

12. In connection with the above, it is clarified that the assessee firm has not provided any services to Ech-Jay Industries Pvt. Ltd related to recruitment or supply of manpower or employees. Further, all the employees to whom actual payment made were on the pay-roll/muster of Echjay-Industries Pvt Ltd and there was no role of the assessee firm in managing the workforce of client. However, only for the purpose of ease in compliance, salary/wages of such employees of clients were routed through the assessee firm. This fact is quite evident from the documentary evidences such as bank account statement (already furnished), audited financial statements (already furnished) and agreement with Ech-Jay Industries Pvt Ltd submitted herein above. Further, it also needs mention that the client has not made TDS of the assessee firm u/s 194C of the Income Tax Act, 1961 which is related to payment made towards contractual obligations including manpower supply contract."

10.1 From the above submissions made before the adjudicating authority, it is evident that the appellant has claimed that they had made arrangement to route all the payments to be made by Echjay Industries Pvt Ltd to their employees/workers through them. This arrangement was made so as to enable the assessee firm to monitor the employee/worker wise payout and to determine the liability of client under various Labour Laws, i.e. Minimum Wages Act, PF Act, ESIC Act, Bonus Act etc. They have further clarified that the assessee firm has not provided any services to Echjay Industries Pvt. Ltd related to recruitment or supply of manpower or employees. Further, all the employees to whom actual payment made were on the pay-roll/muster of Echjay Industries Pvt Ltd and there was no role of the assessee firm in managing the workforce of client. I also find from 26AS of the appellant that the TDS has been deducted under Section 194J of the Income tax Act which is applicable when payment is made against professional/legal/technical services. According to the appellant himself, the TDS is required to be deducted under Section 194C of the Income Tax Act when payment is made towards contractual obligations including manpower supply contract. Thus, there is no substance in the contention of the



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appellant that they have provided 'manpower supply service' and, therefore, the same is rejected.

10.2 Regarding the contention of the appellant that the recipient of service had paid service tax on reverse charge basis under the category of 'manpower supply service', I have already given my findings that the service provided by the appellant is not in the nature of manpower supply as the agreement entered into by the appellant and M/s Echjay is not for supply of manpower. This has been categorically affirmed by the appellant in the reply to the show cause notice also. Therefore, even if the recipient of service had paid service tax under RCM under a different category, the liability on the service provider to pay service tax on the service provided by him still remains. Further, it is not ascertainable from the 'ST-3 returns of M/s Echjay whether the service tax paid by them is towards the service provided by the appellant or otherwise. In the circumstances, the contention of the appellant, that the recipient of service has paid service tax under RCM, does not merit consideration when the appellant had not provided manpower supply service at all. Thus, the claim of the appellant that the service provided is 'manpower supply service' is incongruous and not sustainable on merits.

11. I also find from the terms of the retainership agreement dated 15.09.2010 between the appellant and M/s Echjay Industries Pvt. Ltd, the liability of the appellant was to see the statutory compliance of contract labour, paying of salary, providing all notifications related labour laws, advise on legal issues, maintenance of statutory records etc. The terms of the agreement are as under:

"Terms:

J K Associates will see the statutory compliance of contract labour and also visit the factory once in a week.

Also the J K Associates will witness the salary paid to the contract employees. J K Associates will organize the payment schedule and inform the company and accordingly company will transfer money in their account for disbursement. This will not be considered as an income of second party.

J K Associates will be paid legal charges for the same as agreed from time to time. The charges will be excluding of Govt taxes including service charge. The same will be payable by the company if payable for legal firm.

As the salary paid by the company including PF, Bonus, ESI, OT etc. The same will not be considered as income of J K Associates as the same will be distributed to workers for which all statutory record shall be maintained.

J K Associates will provide all notifications related to labour laws issued by the Govt from time to time.

Also shall have to advise on all the legal issues including drafting of Memo, Chargesheets, application etc under labour laws.



It is agreed that as this is a consultancy firm and meant for legal services and for any purpose will not be termed as vendor.

J K Associates will have to maintain all the statutory records required under Labour Laws from time to time. Also the partners will have to audit from time to time with due care.

Transportation will not be provided by the first party. The same will be managed by J K Associates for visit.

Second party will have to hold meeting every month with the Manager P&A of the company and shall do the needful as suggested by the Manager P & A.

Charges paid to second party after deduction of all kind of taxes by the first party for retainership and will be termed as legal charges and will be payable every month as agreed. The said legal charges shall be paid after deduction of taxes at source. The other taxes like service tax and other taxes payable to State and/or Central Govt. or taxes introduced in future by Govt shall be born and payable by the first party."

From the above agreement also it is evident that there is no provision for supplying any manpower present in the agreement. On the contrary, the agreement provided for disbursement of salary, wages, bonus, overtime etc and for maintenance of all statutory records. Thus, I am in agreement with the finding of the adjudicating authority that the service provided by the appellant is in the nature of 'Business Auxiliary Service' falling under sub-clause (vi) and (vii) of Section 65(19) of the Finance Act, 1994 in as much as, the appellant was providing service on behalf of M/s Echjay Industries Pvt. Ltd by way of management of workforce and supervision thereupon, which includes payment of salaries and bonus, production incentives, canteen expenses of the workforce as well as payment towards legal obligations of said workforce. Accordingly, I do not find any merit in the appeal filed by the appellant and the same is liable for rejection.

12. Regarding the claim of the appellant that demand of service tax for April 2014 to September 2014 is time barred as the ST-3 return for the said period was required to be filed by 25th of October 2014 whereas the demand notice was issued on 28.09.2020, I find that as per proviso to Section 73(1) of Finance Act, 1994, where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of -

- (a) Fraud; or
 - (b) Collusion; or
 - (c) Wilful mis-statement; or
 - (d) Suppression of facts; or
 - (e) Contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax,
- show cause notice is required to be served within five years from the relevant date. As per Section 73(6) of Finance Act, 1994 'relevant date' means-

"(6) For the purposes of this section, "relevant date" means, -

"(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid -



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(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

(iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.]”

In the present case, the appellant has not filed any return and hence the relevant date is the last date on which such return was required to be filed. For the period from April 2014 to September 2014 the ST-3 return for the said period was required to be filed by 25th of October 2014. As such, the show cause notice was required to be served latest by 24th of October 2019, but in the present case notice was served on 29.09.2020 and hence the demand for the said period is clearly hit by limitation of time under Section 73 *ibid*.

13. As regarding the contention of the appellant that demand for the period October 2014 to March 2015 is also time barred as there is no suppression of facts etc, I find that the contravention of law on their part have been committed with the deliberate intent to evade payment of service tax by way of not obtaining the service tax registration etc. Had inquiry not been conducted by the department the violation and contravention of law by the appellant would not have come to the notice of the department. Hence the extended period of limitation has been correctly invoked. Further, as per THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020, where any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, the time-limit stand extended to the 31st day of March, 2021. Thus, I hold that the demand has been made within time limit. I also hold that the adjudicating authority has rightly imposed penalty under Section 78, 77(1)(a) and Section 77(2) of the Finance Act, 1994.

14. In view of the above, I uphold the impugned order to the extent of demand of service tax for the period from October 2014 to March 2017 and set aside the demand of service tax for the period from April 2014 to September 2014. Accordingly, I direct the adjudicating authority to re-quantify the demand of service tax for the period from October 2014 to March 2017 and to re-determine the amount of penalty under Section 78 of



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the Finance Act 1994 in a proportionate manner within 30 days of receipt of this order.

१५. 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 / Attested

Joseph

Superintendent

By R.P.A.D.

Central GST (Appeals)
Rajkot

Shiv Pratap Singh - 10-10-2021

(शिव प्रताप सिंह/ SHIV PRATAP SINGH)
आयुक्त (अपील)/Commissioner (Appeals)

सेवा में, मे० जे। के। आस्सोसिएट्स ४०९, स्टार प्लाज़ा, फूलछब चौक, राजकोट ३६० ००१	To M/s J.K. Associates (Advocates), 409 Star Plaza, Fulchhab Chowk, Rajkot-360 001
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प्रतिलिपि:-

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

