

::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल,जी एस टी भवन / 2nd Floor, GSTBhavan. रेस कोर्स रिंग रोड, / Race Course Ring Road,



<u>राजकोट / Rajkot – 360 001</u>

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रजिस्टर्ड<u>डाकए.डी. द्वारा</u> :-

DIN-20221264SX0000000A2CE

अपील / फाइलसंख्या/ क Appeal /File No.

मूलआदेशसं / OIO No.

दिनांक/

V2/465/RAJ/2021

DC/JAM-I/ST/01/2021-22

06-2021

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

RAJ-EXCUS-000-APP-372-2022

आदेश का दिनांक /

28.11.2022

जारी करने की तारीख/

Date of Order:

Date of issue:

02.12.2022

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

Passed by Shri Shiv Pratep Singh, Commissioner (Appeals), Rejkot.

अपर आयुक्ता संयुक्त आयुक्ता उपायुक्ता सहायक आयुक्त, केन्द्रीय उत्पाद शुल्का सेवाकरावस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सजित: / 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. Vraj Corporation, Ganga Apartment, Shop no. 1, Ground floor, 6/4 Patel Colony, Jamnagar-361008

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 अपी<mark>लीय न्यायाधिकरण के प्रति अपील,केन</mark>्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अ<mark>धिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखि</mark>+त 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:-

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.

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

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- I(a) above

अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपन्न 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 कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000-रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजन्दार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रखांकित बैंक द्वारत किया जाना चाहिए। संबंधित जुम्पट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थमन आदेश (स्टे ऑडर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ॥ (iii)

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/-.

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994की धारा 88(1) के अंतर्गत सेवाकर नियमवाली. 1894, के नियम 9(1) के तहन निर्धारित प्रपत्र 8.7.-5में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आंदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न कर (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 गरा जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,00%-रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शास्त के सहायक रिज़स्तार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित उपर का भुगतान, बैंक की उस शास्ता में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शास्त्र स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/ . (B)

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be file 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 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs, Rs.10,000/- where the amount of service tax & interest tenanded & penalty levied is more than fifty Lakhs, Rs.10,000/- where the amount of service tax & interest tenanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the state of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is frusted. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

वित्त अधिनियम, 1994की 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 प्रपन्न S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुक्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुक्क हारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुक्क। सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न (i)

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 Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

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 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। (ii)

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है धारा 11 डी के अंतर्गत रकम सेनवेट जमा की ली गई गलत राशि

(ii)

सेनवेट जमा नियमावली के नियम 8 के अंतर्गत देय रकम

ू बशर्ते यह कि इस धारा के प्राक्थान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष

- बश्रते यह कि इस धारा के प्रावधान वित्तीय (सं° 2) अधिनयम 2014 क अरभ से पूर्व किसी अपालाय प्राधिकारी के समिक्ष विचाराधीन स्थान अर्जी एवं अपील को लागू नहीं होगे!!

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.

आरत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण आवेदन :
स्वरंडिंग की पुनरीक्षण आवेदन मिलिखेत मामली में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर
सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई,वित्त मंत्रालय, राजस्य 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 Delhi110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to subsection [1] of Section-35B ibid: (C)

यदि माल के किसी नकसान के मामले में, जहां नकसान किसी माल को किसी छारखाने से भंडार गृह के पारगुमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह मारग्मन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंकरण 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 (i)

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। I 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. (ii)

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

सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनयम 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 अधवा 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. iiv)

उपरोक्त आवेदन की दो प्रतियां प्रपन्न 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 संतप्त की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धास 35-EE के तहत निधारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संतप्त 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 OlO 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. (v)

पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुक्क की अद्वायमी 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. (vi)

यदि इस आदेश में कई मल आदेशों का समावेश हैं तो प्रत्येक मल आदेश के लिए शुल्क का भगतान उपर्युक्त ढूंग से किया जाना चाहिये। इस तथ्य के होते हुए भी को लिख पढ़ी कार्य से बचने के लिए यथास्थित अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case, if the order covers variousnumbers 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. (D)

वधासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-। के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लेगा 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. (E)

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को समिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982. (F)

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उच्च अपीलीय प्राधिकारी को अपील द्वाखिल 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 Vraj Corporation, Jamnagar (hereinafter referred to as the appellant) has filed appeal No.46/RAJ/2021 against Order-in-Original No. DC/JAM-1/ST/01/2021-22 dated 4.06.2021 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Central Excise & CGST, Division-I, Jamnagar (hereinafter referred to as 'adjudicating authority').

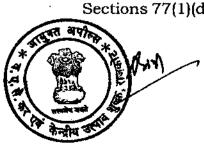
- Briefly stated the facts of the case are that investigation was initiated against the appellant by the officers of Directorate General of Goods & Service Tax Intelligence, Vadodara (DGGI) and it was noticed that they had not paid service tax on the works contract service provided to Agricultural Produce Market Committee (APMC). It was also noticed that they have late filed ST-3 returns for the period from October 2016 to March 2017 and April 2017 to June 2017 but not paid late fee. It was further noticed that they had not paid interest of Rs.3,02,640/- on late payment of service tax of Rs.13,99,420/-. They have also short paid service tax of Rs.20,10,509/-. Therefore a show cause notice was issued demanding service tax of Rs.20,10,509/- under Section 73 of the Finance Act, 1994 and proposing penalty under Sections 76,77(1)(d), 77(2) and 78(1) of the Finance Act, 1994 and also under Rule 7C of Service Tax Rules 1994. It was also proposed to demand and recover interest of Rs.3,02,640/- on late payment of service tax of Rs.13,99,420/-under Section 75 of the Finance Act 1994. The adjudicating authority, by the impugned order, confirmed the demand of Rs.20,10,509/- along with interest under Section 75 of the Finance Act 1994 of Rs.3,02,640/- and imposed penalty of Rs.20,10,509/- under Section 78 of the Finance Act 1994, Rs.10,000/- under Section 77(1)(d) Rs.30,000/- under Section 77(2) of the Finance Act, 1994 and Rs.40,000/- under rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.
- 3.1 Being aggrieved, the appellant filed the present appeal wherein they, inter alia, have contended that the Deputy Director, DGGI, Vadodara has no jurisdiction to issue the show cause notice under the Finance Act. The appellant submitted that the lower authority has failed to invoke provisions of Section 73A of the Finance Act and, therefore, the initiation of proceeding itself was without jurisdiction.
- 3.2 The appellant submitted that he had rightly claimed exemption under Sr.No.14(d) of Notification No.25/2012-ST dated 0.06.2012 because he had provided services of construction of sheds for APMC for storage of harvested agriculture produce, which is not in dispute. Therefore, the appellant submitted the adjudicating authority had wrongly rejected exemption claimed on

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services provided to APMC on the ground that there was no specific mention of 'Kishan Kalpriksha Yojna' in the said notification.

- 3.3 The appellant further submitted that there was violation of principles of natural justice in the adjudication process as the submissions made by the appellant were not considered and no reason was given in the impugned order for not accepting such submissions.
- 3.4 The appellant contended that the proceedings initiated against them were barred by limitation and the extended period of limitation was invoked without recording any ground or reason. Appellant submitted that audit officers had noticed all the details of service tax from the appellant's audited books of account and this clearly showed that all the facts and details were in the appellant's records and registers which were open to scrutiny and verification of the revenue officers. The appellant contended that it is held in cases like *Hindalco Industries-2003 9161*) ELT.346, Kirloskar Oil Engines Ltd-2004 (178) ELT.998 AND Martin & Hariss Laboratories Ltd-2005 (185) ELT.421 that balance sheet being a public document, when any information was disclosed or recorded in the balance sheet, then the assessee could not be accused of suppressing the fact because a ledger and a balance sheet was a public document open to scrutiny.
- 3.5 The appellant submitted that any service tax was liable to be paid by them under Reverse Charge Mechanism, then the appellant was legally entitled to Cenvat Credit. When any payment of duty of tax by an assessee result in admissibility of Cenvat credit to the assessee himself, it is revenue neutral situation not authorizing the Revenue to initiate any proceedings against them as held in cases like Narmada Chematur Pharmaceuticals Ltd-2005 (179) ELT.276 (SC), Coca-Cola India Pvt. Ltd-2007 (213) ELT.490 (SC), SRF Ltd-2007 (81) RLT.479, PTC Industries Ltd-2003 (19) ELT.1046 and Reliance Industries Ltd-2009 (244) ELT.253.
- 3.6 The appellant submitted that the present case was a case where all the facts discussed in the show cause notice were within the knowledge of the Department and hence the show cause notice was barred by limitation. There being no contravention by way of suppression of facts with intent to evade payment service tax on the part of the appellant, the invocation of extended period of limitation was illegal and unjustified. They relied upon the cases of Padmini Products-1989 (43) ELT.195 (SC), Chemphar Drugs & Liniments-1989 (40) ELT.276 (SC), Continental Foundation Jt. Venture-2007 (216) ELT.177 (SC), Messrs Jasiprakash Industries Ltd-2002 (146) ELT.481 (SC).
- 3.7 The appellant submitted that the action of imposing penalties under Sections 77(1)(d) and 78(1) of the Finance Act, 1994 was also without jurisdiction





because no one could be penalized under different sections for the same offence. They contended that it is required to be established that action of an assessee was deliberate in the matter of penalty and this measure was to be resorted to sparingly. In the facts of the present case no justifiable case of any malafide intention to evade payment of duty is made and hence there is no justification in the imposition of penalty. The appellant submitted that matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of *Hindustal Steel Ltd-1978 ELT.(J159)* wherein it held that penalty should not be imposed merely because it was lawful to do so and requested to set aside the penalty and interest.

- 4. The appellant was granted personal hearing on 06.09.2022, 12.10.2022, 18.10.2022 and 01.11.2022. The letters of personal hearing were sent by e-mail also. It is also noticed that only one latter dated 06.10.2022 intimating personal hearing to be held on 12.10.2022 was returned back undelivered. Thus, it appears that the personal hearing letters were received by the appellant. But the appellant failed to appear for personal hearing. No request for adjournment was received either. Therefore, I am left with no alternative but to proceed to decide the appeal *ex-parte* on the basis of facts available on record.
- 5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal in the appeal memorandum. The question to be answered in the present appeal is whether the appellant is eligible for exemption under Sr.No.14(d) of Notification No.25/2012-ST dated 20.06.2012 because he had provided services of construction of sheds for APMC for storage of harvested agriculture produce.
- 6. In this regard, I find that the adjudicating authority has denied the exemption under Sr.No.14(d) of Notification No.25/2012-ST dated 20.06.2012 and confirmed the demand on the premises that the work done for APMC was carried out under "Kishan Kapriksha Yojna" and there was no specific mention of 'Kishan Kalpriksha Yojna' on infrastructure creation for post-harvest and cold storage facilities for agriculture produce. On the other hand, the appellant submitted that he had rightly claimed exemption under Sr.No.14(d) of Notification No.25/2012-ST dated 0.06.2012 because he had provided services of construction of sheds for APMC for storage of harvested agriculture produce, which is not in dispute. Sr.No.14(d) of Notification No.25/2012-ST dated 0.06.2012 as it stood at the relevant time reads as under:

[&]quot;14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-



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- (d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
- (e) ----"
- Plain read ing of Sr. No.14(d) of Notification No.25/2012-ST dated 0.06.2012 reveals that exemption was granted to services by way of construction, erection, commissioning, or installation of original works pertaining to postharvest storage infrastructure for agricultural produce including a cold storages for such purposes. In the present case, I find that, the appellant has constructed covered shed for APMC. Though APMC is dealing with agricultural produce, it is not disputed that the shed constructed is for storing agricultural produce in the market yard for selling. The same does not qualify as post harvest storage, but is a stage much subsequent to it. Therefore, I am of the considered view that exemption Sr. No.14(d) of Notification No.25/2012-ST dated 0.06.2012 is not available to such infrastructure in the market, which is meant for sale through market agents and is not for post harvest storage. The post harvest storage activity is closely related to agricultural activity whereas storage in APMC shed for sale in the market is no way related to harvesting activity. Therefore, the demand of service tax amounting to Rs.20,10,509/- and penalties imposed under Sections 77(1)(d), 77(2) and 78 of the Finance Act, 1994 are sustainable. I observe that appellant has not contested the recovery of interest of Rs.3,02,640/- and penalty of Rs.40,000/- imposed under rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 and hence the same are upheld.
- 8. In view of the above discussions and findings, I reject the appeal and uphold the demand of service tax amounting to Rs.20,10,509/-, interest of Rs. 3,02,640/-, penalty of Rs. 40,000/- under Rule 7C and penalties imposed under Sections 77(1)(d), 77(2) and 78 of the Finance Act, 1994.
- ९. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।
- 9. The appeal filed by the Appellant is disposed off as above सत्यापित / Attested

Superintendent Central GST (Appeals) Raikot (शिव प्रताप सिंह/ SHIV PRATAP SINGH) आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

सेवा में, मे॰ व्रज कार्पोरेशन, गंगा अपार्टमेंट, शोप न.१, ग्राउंड फ्लोर, ६/४ पटेल कॉलोनी, जामनगर-३६१ ००८ To

M/s Vraj Corporation, Ganga Apartment, Shop No.1, Ground Floor, 6/4, Patel Colony, Jamnagar-361 008

प्रतिलिपि:-

- 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।
- अप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, रमंडल-।, जामनगर को आवश्यक कार्यवाही हेतु।
 गार्ड फ़ाइल।

