



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



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001

सत्यमेव जयते

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

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20230164SX000000FDB0

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेशक / OIO No.	दिनांक / Date
	V2/45/RAJ/2022	31/D/AC/2021-22	24-02-2022

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

RAJ-EXCUS-000-APP-401-2022

आदेश का दिनांक / Date of Order:	27.12.2022	जारी करने की तारीख / Date of issue:	03.01.2023
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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 / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता/प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

M/s. Shreejkrupa Project Limited, 206-Krishana Complex, Rajnagar Chaowk, Nana Mava Main Road, Rajkot.

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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) बर्गीकरण 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, की जाणी 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 असावा अहमदाबाद- 380016 को जाणी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and shall be accompanied by a fee of Rs. 1000/- 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 Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (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 इस करीब रूप से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 की 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 विचारधीन स्थान अर्थात् अपील को लागू नहीं होये।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

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

(C) भारत सरकार कोपनरीक्षण आवेदन :
Revision application to Government of India:

इस आदेश को पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए।
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहाँ नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है।
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी 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 समायाचिधि 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 संप्रेषण 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 साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए।
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए।
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.

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

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं।
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in



अपील आदेश / ORDER-IN-APPEAL

M/s Shreejikrupa Project Limited, 206-Krishna Complex, Rajnagar Chowk, Nana Mava Main Road, Rajkot-360 001 (*hereinafter referred to as appellant*) has filed appeal No.V2/45/RAJ/2022 'against Order-in-Original No. 31/D/AC/2021-22 dated 10.01.2022 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST Division, Rajkot-I (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case in brief are that a show cause notice dated 02.03.2020 was issued on the following points observed during the course of audit of records of the appellant:

1.	Non-payment of service tax on RCM basis on account of work contract services received from service provider other than body corporate (Revenue Para No.8)	29,72,366
2.	Non-payment of service tax on legal services under reverse charge mechanism (Rev. Para No.9)	2,98,372
3.	Non-payment of Service tax on receipt of Security services under reverse charge mechanism (Rev. Para No.11)	1,92,803
	Total	34,63,541

The adjudicating authority, vide the impugned order, had confirmed the demand of service tax of Rs.9,17,338/-, Rs.2,98,372/- and Rs.1,92,803/- and dropped demand of Rs.20,55,028/-. The adjudicating authority imposed penalty of Rs.14,04,523/- under Section 78 of Finance Act, 1994 and Rs.10,000/- under Section 77(2) of the Finance Act, 1994.

3. The appellant has filed appeal against the impugned order in which they, *inter alia*, submitted that the demand of service tax is time-barred. They submitted that show cause notice was issued in pursuance to the audit of the records and of the appellant. They contended that all documents were submitted for audit on 27.02.2019 and based on these documents only, various show cause notices including the present show cause notice were issued. The appellant submitted that it is a settled law that when a show cause notice has been issued invoking extended period for demand, second/subsequent show cause notice cannot be issued invoking extended period. The appellant also drawn attention to Circular No.1053/2/2017-CX dated 10.03.2017 and submitted that instructions issued by the department are binding to the departmental officers. They relied upon a catena of other decisions in this regard.

The appellant submitted that the adjudicating authority had travelled beyond the scope of the show cause notice in as much as the entire findings of



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the adjudicating authority are either based on his own knowledge or from the submissions made by the appellant and none of the facts based on which the demand confirmed was part of the show cause notice. They submitted that there was no mention of any of the activities carried out by the appellant in the show cause notice. The appellant contended that in cases where the consequential demand traverses beyond the scope of the show cause notice, it would be deemed that no show cause notice has been given, for that particular demand for which a proposal has not been made. They relied upon the case laws of *Huhtamaki PPL Ltd-2021-TIOL-249-CESTAT-AHM*, *Syndicate Bank-2020-TIOL-1222-CESTAT-BANG*, *Neccon Power, Infra Ltd-2020-TIOL-988-CESTAT-KOL* and *Platinum-IT Solutions-2019-TIOL-3409-CESTAT-CHD*.

3.2 The appellant submitted that there is excess payment of service tax of Rs.17,67,766/- and as such the remaining demand may be adjusted/appropriated from the excess payment

3.3 The appellant submitted that no penalty is imposable under Section 77 and Section 78 of the Finance Act, 1994. The appellant contended that in case of interpretation of law, no penalty is imposable considering several judgments. The appellant relied upon the case of *Iitel Industries Pvt Ltd-2004 (163) ELT.219 (Tri-Bang)*. Appellant submitted 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. They further relied upon the case of *Tamil Nadu Housing Board-1994 (74) ELT.9 (SC)*, *Town Hall Committee, Mysore City Corporation-2011 (24) STR.172 (Kar)*, *BSNL-2008 (9) STR.499 (Tri-Bang)* and *Instant Credit-2010 (17) STR.397 (Tri-Del)*.

4. Shri R.C. Prasad, consultant appeared for personal hearing on 30.11.2022 and handed over written submissions in case of four appeals separately. He reiterated the same and the submissions made in the appeal. He submitted that the show cause notices were issued in four cases on the basis of common audit. It is well settled that once all facts became known to the department, suppression cannot be alleged for a subsequent show cause notice and extended period cannot be invoked in these cases. He cited various judgments in this regard and the departmental instructions on this point. Apart from this on merits also the balance of convenience is in their favour as may be seen from the submissions made by them in the grounds of appeal and the written submissions handed over at the time of personal hearing. Therefore, he requested to set aside the impugned orders and allow to the appeals. In the written submission, the appellant has reiterated the submissions already made in the grounds of appeal.



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

(Signature)

the appeal memoranda and written as well as oral submissions made by the Appellants. The issues to be decided in the appeal are whether the order of adjudicating authority confirming the demand is proper and whether the demand is time barred.

6. The contention of the appellant regarding the limitation was that show cause notice was issued in pursuance to the audit of the records of the appellant and various show cause notices, including the present show cause notice, were issued. The appellant submitted that it is a settled law that when a show cause notice has been issued invoking extended period for demand, second/subsequent show cause notice cannot be issued invoking extended period. In this regard it is observed that total six show cause notices were issued on the basis of a single audit report No.Audit/Circle-1/Group-6A/581/2019-20 dated 28.11.2019 covering the period October 2013 to June 2017. The show cause notices were issued separately covering different points of the audit report and were issued on different dates. Thus it is evident that, the show cause notices, though separately issued, were covering the period of audit October 2013 to June 2017 and hence cannot be said to have been issued for subsequent period. The case laws relied upon by the appellant are related to issue of show cause notice on the same issue for subsequent periods. Therefore, the case law of *Nizam Sugar Factory-2006 (197) ELT.465 (SC)* and other case laws cited by the appellant is not applicable in the present case. In view of the above, I do not find any infirmity in the findings of the adjudicating authority at paragraph 17 of the impugned order.

7. Regarding the issue of confirmation of demand on 'works contract' service, I find that main contention raised by the appellant in the grounds of appeal is that the adjudicating authority has travelled beyond the scope of show cause notice. I find substance in the said contention as the show cause notice speaks about the liability of the appellant to pay service tax on RCM basis as per Notification No.30/2012-ST on account of work contract services received from service provider other than body corporate whereas the adjudicating authority has confirmed the demand on forward charge basis. At paragraph 19.2 of the impugned order the adjudicating authority has made the following observations:

"19.2 Having gone through the allegations made in the show cause notice, I note it with great concern that the show cause notice issuing authority has misunderstood the concept of reverse charge mechanism under Notification No.30/2012-ST dated 20.06.2012 by raising the demand of 50% on the noticee on the basis of invoices issued by the sub-contractor to the main contractor i.e. the noticee. Before proceeding further, I find it of utmost importance to mention that it is the service provider who is under obligation to discharge the service tax liability on service portion in execution of a work contract. It is only in few cases that this obligation is partially shifted to service recipient vide Notification No.30/2012-ST dated 20.06.2012. The notification provides that in case of taxable services provided or agreed to be provided by way of service portion in execution of works contract by any a) individual, b) Hindu Undivided Family or c) partnership firm,



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whether registered or not, including association of persons, located in the taxable territory, the percentage of service tax payable by service provider and service receiver would be 50% each by the service provider and the service recipient. It is a fact on record that the main contractor, i.e. the noticee is a body corporate who has provided works contract service to various persons and is liable to pay service tax to the full extent of 100% on forward charge basis. There is neither any applicability of Notification 30/2012-ST dated 20.06.2012 nor the tax is to be paid partially to the extent of 50% by the service provider i.e. the noticee..."

7.1 From the above, it is evident that the adjudicating authority has categorically given his findings that the appellant is not liable to pay service tax under partial reverse charge mechanism under Notification No.30/2012-ST. As per the charges in the show cause notice, the demand was made on the premises that appellant received work contract service from service provider other than body corporate and the appellant, being a body corporate located in the taxable territory, appeared liable to pay service tax being recipient under RCM which they have not paid. As such, I am of the considered view that, the adjudicating authority, when given a categorical finding that the appellant was not required to pay service tax under partial reverse charge mechanism under Notification No.30/2012-ST, was not permitted to go further to determine the service tax liability on forward charge basis. By determining the service tax liability on forward charge basis, he has traversed beyond the scope of the show cause notice which is not permissible under law. Therefore, I hold that the demand of service tax of Rs.9,17,338/- determined by the adjudicating authority as per his findings at paragraphs 19.3 to 19.6.2 of the impugned order is not sustainable and, accordingly, set aside the demand of service tax of Rs.9,17,338/- (Rupees nine lakh seventeen thousand three hundred thirty eight only) as mentioned at paragraph 25 (i) of the impugned order.

7.2 As regarding the confirmation of service tax on the other two points are concerned, I find that the appellant has not challenged the same in the present appeal. Therefore, demands of service tax of Rs.2,98,372/- and Rs.1,92,803/- as mentioned at paragraphs 25 (ii) and (iii) of the impugned order are upheld.

7.3 The appellant also contended that there is excess payment of service tax of Rs.17,67,766/- and requested to adjust the remaining demand from the excess payment. In this regard, I find that, the appellant had made the said claim of excess payment considering their liability to pay 50% of service tax on reverse charge mechanism. The adjudicating authority has held that the appellant has already discharged liability of service tax on the work contract service on forward charge basis and there is no liability to pay service tax on reverse charge mechanism. Since the service tax paid by the appellant is on forward charge basis, the liability assessed by the appellant himself, there arises no question of any excess payment of service tax.

As regarding the imposition of penalty, as demand of Rs.9,17,338/- is held



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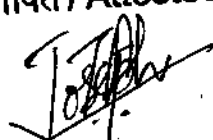
to be non-sustainable and stand set aside, the penalty imposed under Section 78 of the Finance Act, 1994 is required to be reduced to this extent. Since the other demands are confirmed, the penalty to that extent is upheld. Accordingly, I reduce the penalty under Section 78 of the Finance Act, 1994 to Rs.4,87,338/- (Rupees four lakh eight seven thousand three hundred thirty eight only). Since there is contravention of Finance Act, 1994 on the part of the appellant, the penalty imposed under Section 77(2) of the Finance Act, 1994 is also upheld.

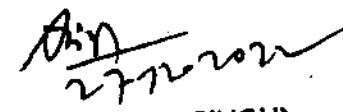
9. In view of above, I partially allow the appeal and the impugned order shall stand modified as discussed at paragraph 7.1, 7.2 and 8 above.

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

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

सत्यापित / Attested


Superintendent
Central GST (Appeals)
Rajkot


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

By R.P.A.D.

सेवा में मेस्सेर्स श्रीजीकृपा प्रोजेक्ट लिमिटेड 206, कृष्ण कॉम्प्लेक्स, राजनगर चौक, नाना मावा मईन रोड राजकोट-360 001	To M/s Shreejikrupa Project Limited, 206- Krishna Complex, Rajnagar Chowk, Nana Mava Main Road, 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) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल राजकोट-1 को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।



