

	::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE	 सत्यमेव जयते
	द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan रेस कोर्स रिंग रोड / Race Course Ring Road राजकोट / Rajkot - 360 001 Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in	

DIN20230264SX0000611423

अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/Date
क GAPPL/COM/STP/1936/2022	BHV-EXCUS-000-ADC-VM-002-2022-23	05-05-2022

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

BHV-EXCUS-000-APP-018-2023

आदेश का दिनांक /

Date of Order:
30.01.2023

जारी करने की तारीख /

Date of issue: 01.02.2023

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

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु 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. ~~Laxmabhai~~ Merubhai Rabari,, Mayur Nagar, Avadh Society, Halvad Road, Dhrangdhra, Dist.- Surendranagar-363310

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

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

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

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

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

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above. अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, 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 रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/- Rs.10,000/- where amount of 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 सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, 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 रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 of 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 जर्माना विवादित है, या जर्माना, जब केवल जर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं

- (i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं 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 Cervat Credit taken;
(iii) amount payable under Rule 6 of the Cervat 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 की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद भग्, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/

In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी 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 समायाविधि पर या बाद में पारित किए गए हैं।/

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी 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 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 lalch fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

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. Limbahai Marubhai Rabari, Bhavnagar~~ (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-ADC-VM-002-2022-23 dated 05.05.2022 (hereinafter referred to as 'impugned order') passed by the Additional Commissioner, Central GST HQ, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department shared the third party information/ data based on Income Tax Returns/ 26AS for the Financial year 2015-16 & 2016-17 of the Appellant.

3. In absence of data/information, a Show Cause Notice dated 21.04.2021 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 1,03,67,363/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 77(1)(a), 78, 77(2) and 77(1)(c) of the Finance Act, 1994 (hereinafter referred to as 'the Act') upon the Appellant.

4. The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed Service Tax demand of Rs. 3,65,434/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 3,65,434/- under Section 78 of the Act, imposed penalty of Rs. 10,000/- each under Section 77(1)(a) and 77(2) of the Act. The Adjudicating Authority dropped the demand of Rs. 47,84,240/- for the year 2016-17 and disposed of an amount of Rs.51,49,674/- for the year 2015-16 since the same was covered by Show Cause Notice issued by Joint Commissioner, CGST Kutch Gandhidham which was adjudicated vide Order-In-Original No. 87/JC/SRV/2021-22 dated 21.03.2022

5. Being aggrieved, the Appellant has preferred the present appeal on various grounds that they had provided service for the repair and maintenance for the land development & earthwork at Dholera, as a sub contractor to M/s. Rivasa Corporation for the water canal service which is exempt vide Notification No. 25/2012-Service Tax. Further, the service provided by them for carrying out work for the exempted project as per Notification No. 25/2012-Service Tax dated 20.06.2012 Sr. No. 29(h). They rely the decision in the case of G. P. Ceramics Pvt. Ltd. Vs. Commissioner, Trade Tax, Uttar Pradesh - 200 (2) SCC 90.

5.1 They have executed works contract service to the corporation in which they are eligible for abatement as per Notification No. 30/2012 amended by Notification No. 45/2012, 10/2014 and 7/2015. Further, as per Notification No. 11/2014-Service Tax dated 11.07.2014 w.e.f. 01.10.2010 they are eligible for payment of Service Tax under partial reverse charge mechanism.



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5.2 The Show Cause Notice has been issued without pre consultation in violation of Master Circular No. 1053/02/2017-CX dated 10.03.2017. They rely on the decision in the case of Amadeus India Pvt. Ltd. Vs. Principal Commissioner, Central Excise, Service Tax and Central Tax Commissionerate reported at 2019 SCC Online Del 8437. Thus, the proceedings initiated by the Show Cause Notice are non-est in law. They further rely on the decision in the case of Back Office IT Solutions Pvt. Ltd. Vs. UOI & Others (Delhi High Court), Amadeus India Pvt. Ltd. Vs. Principal Commissioner, Central Excise, Service Tax and Central Tax (Delhi High Court). Thus, the Show Cause Notice required to be quashed and set aside.

5.3 The demand made on the basis of income tax return data for the period 2015-16 to 2017-18 (upto June-17). The department has not taken into actual details regarding they were providing exempt service as per Sr. No. 12, 14 & 29 of the Notification No. 25/2012-Service Tax dated 20.06.2012. They rely in the case reported at 2013 (31) STR 673 (Tri.-Bang), 2010 (20) STR 789 (Tri.-Mumbai), 2010 (19) STR 242 (Tri.-Ahmd.), 2009 (16) STR 63 (Tri.-Chennai), 2013 (30) STR 62 (Tri.-Ahmd.). They was doing only work of government which was exempt from Service Tax.

5.4 The entire demand is time barred since the Show Cause Notice covering period 2015-16 issued on 21.04.2021. They were filing income tax returns regularly from time to time and hence extended period of limitation cannot be invoked in the present case since there was no suppression, wilful misstatement on their part. The penalty cannot be imposed under Section 70, 77 & 78 of the Act. They rely in the case of Steel Cast Ltd. 2011 (21) STR 500 (Guj.), Hindustan Steel Ltd. Vs The State of Orissa - AIR 1970 (SC) 253, Kellner Pharmaceuticals Ltd. Vs CCE - 1985 (20) ELT 80, Pushpam Pharmaceuticals Company Vs CCE 1995 (78) ELT 401 (SC), CCE Vs. Chemphar Drugs and Liniments- 1989 (40) ELT 276 (SC). The issue involved in the present case is of interpretation of statutory provisions and thus, the penalties cannot be imposed and they rely in the case of Bharat Wagon & Engg. Co. Ltd. V Commissioner of C.Ex., Patna- (146) ELT 118 (Tri.-Kolkata), Goenka Woollen Mills Ltd. Vs Commissioner of C.Ex., Shillong - 2001 (135) ELT 873 (Tri.-Kolkata), Bhilwara Spinners Ltd. Vs. Commissioner of Central Excise, Jaipur - 2001 (129) ELT 458 (Tri.-Del.)

6. The matter was posted for hearing on 24.01.2023. CA Vipul Khandhar appeared for personal hearing in virtual mode and submitted that the appellant was providing works contract service to government agencies as sub-contractor and was exempt from Service Tax. He requested to allow 1 day time for submission of short note/ synopsis and supporting documents. He requested to decide the appeal based on these submissions and those in the appeal.

7. I have carefully gone through the case records, impugned order and



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appeal memorandum filed by the Appellant. I find that the issue to be decided in the case on hand is whether the activity carried out by the appellant is liable to Service Tax or otherwise.

8. I find that Show Cause Notice had been issued without verifying any data or nature of services provided by the Appellant as the same had been issued only on the basis of data received from the Income Tax department. However, the Adjudicating Authority at length analyzed the documentary evidences produced by the Appellant and dropped the major portion of the demand and confirmed the demand of Rs. 3,65,434/- only for which the Appellant have not submitted any documentary evidences in support of their claim. It is the contention of the Appellant that their services are covered under Notification No.25/2012-Service Tax dated 20.06.2012 under Clause 12, 14 and Clause 29.

10. I find that the Adjudicating Authority confirmed the demand on value of Rs. 14,79,028/- pertaining to service provided by the Appellant to M/s. Rivasa Corporation. The Appellant has submitted a copy of work order No. RB/03/2016-17 dated 14.04.2016 issued by M/s. Rivasa Corporation for land development & earth work at Dholera, Gujarat to the Appellant. It is the contention of the Appellant that they were providing service for the repair & maintenance for the land development & earth work at Dholera as a sub-contractor to Rivasa Corporation for the water canal service which is covered under Sr. No. 12 of the Notification No. 25/2012-Service Tax since they have provided service as a sub-contractor to the main contractor who is providing exempt service. On going through the copy of work order, it is found that there is no mention of work pertaining to water canal service but there is mention of land development & earth work at Dholera, Gujarat, which is not covered under exemption Notification 25/2012-Service Tax dated 20.06.2012. Thus, the contention of the Appellant is devoid of any merits and liable to be rejected.

11. For remaining service value of Rs. 9,57,201/-, the Appellant has not produced any documentary evidence and thus it is implied that they have accepted their Service Tax liability. Therefore, I hold that they are liable to pay Service Tax on this amount.

12. It is the contention of the Appellant that the Show Cause Notice for the period 2016-17 issued on 21.04.2021 is time barred. On this I find that the Government vide THE TAXATION AND OTHER LAWS (RELAXATION OF CERTAIN PROVISIONS) ORDINANCE, 2020 dated 31.03.2020 has extended the due date upto 30.06.2020. However, Hon'ble Apex Court vide order dated 10.01.2022 in Miscellaneous Application No. 21 of 2022, has ordered that:

"1. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand



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excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasijudicial proceedings.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

Thus, the time-limit was extended upto 28.02.2022. The Show Cause Notice in the instant case was issued on 21.04.2021. Moreover, the due date of filing S.T.-3 return for the first half of 2016-17 was 25.10.2016 and as per provisions of Section 73(1), the period of 5 years ends on 24.10.2021, whereas the Show Cause Notice has been issued on 21.04.2021 which is well within the time. Thus, I of the considered view that the demand for the period 2016-17 is well within the period prescribed under Section 73(1) covering the period of 5 years and hence the contention of the Appellant do not hold good.

13. As regarding the contention of the appellant that demand is time barred as there is no suppression of facts etc., I find that once the threshold limit is crossed, every assessee is required to get registration and pay the Service Tax. Undoubtedly, the Appellant has abused the facility of self-assessment provided under Section 70, which directs that every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall furnish the periodical returns as prescribed. Thus, the afore mentioned statutory provisions of service tax cast an obligation upon the Appellant to get registration, to pay service tax, and to file proper periodical returns. All these facts narrated above go to show that the Appellant did not discharge the obligations cast upon them by the statutory provisions. When the Appellant is providing services and if he is not sure about the taxability of his services, he could have asked the Service Tax authority for guidance. Hence, it is obvious that the Appellant has not obtained Service Tax registration with an ulterior motive to evade payment of Service Tax. Not only they have not filed any ST-3 returns during the period under question. Such acts amount to positive act of suppression on part of the Appellant. Unless a return is filed under Service Tax, the figures recorded in their books of accounts and declared before the Income Tax authority are not accessible to the Service Tax authority. Income Tax department and Central Excise & Service Tax department are both separate and independent entity and lower authority cannot access data of Income Tax Department unless the Income Tax Department provides the data to the Central Excise & Service Tax department on case to case basis. Had Income Tax



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department not provided the data, 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.

14. It is the contention of the Appellant that they have provided works contract service. However, they have failed to produce documents in support of their claim. Thus, I am of the considered view that in absence of any evidences, the claim of Appellant is not tenable.

15. In view of discussions and finding, I upheld the impugned order and reject the appeal filed by the Appellant.

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

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

सत्यापित / Attested

[Signature]

[Signature]
20-01-2023

(शिव प्रताप सिंह)/(Shiv Pratap Singh),

आयुक्त (अपील)/Commissioner (Appeals)

Superintendent

By R.P.A.D. Central GST (Appeals)
Rajkot

To, M/s. Limbabhai Merubhai Rabari, Mayur Nagar, Avadh Society, Halvad Road, Dhrangadhra, Dist. Surendranagar-363310.	सेवा में, मे. लिबाभाई मेरुभाई रबारी, मयूर नगर, अवध सोसाइटी, हलवद रोड, Dhrangadhra, जिल्ला: सुरेन्द्रनगर - 363310 ।
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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, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल, सुरेन्द्रनगर को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।



