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

सत्यमेव जयते

रजिस्टर्डडाकए.डी.द्वारा

DIN- 20230364SX0000813888

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/Date
	GAPPL/COM/STD/252/2022	456/SERVICE TAX/DEMAND/2022-23	09-08-2022

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

BHV-EXCUS-000-APP-080-2023

आदेश का दिनांक / Date of Order:	13.03.2023	जारी करने की तारीख / Date of issue:	14.03.2023

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Shiv Pratap Singh**,Commissioner (Appeals),Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham:

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

M/s. Palitana Sugar Mills Pvt. Ltd & Others, 2590, Diamond Chowk, Bhavnagar364001 ,

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

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

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

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

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

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

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of dutydemand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना,रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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

(i) वित्त अधिनियम,1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 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।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं 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.

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

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

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

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

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

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

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

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

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

(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 ::

The Assistant Commissioner, CGST Division, Bhavnagar-1 has filed Appeal No.GAPPL/COM/STD/252/2022 behalf of the Commissioner, Central GST & Central Excise, Bhavnagar (hereinafter referred to as "Appellant-Department") in pursuance of the direction and authorization issued under Section 84 of the Finance Act, 1994 (hereinafter referred to as 'Act') against Order-in-Original No. 456/SERVICE TAX/DEMAND/2022-23 dated 09.08.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Bhavnagar-1 (*hereinafter referred to as* 'adjudicating authority') in the case of M/s. Palitana Sugar Mills Pvt. Ltd., Bhavnagar (*hereinafter referred to as* 'Respondent').

2. The facts of the case, in brief, are that the information shared by Central Economic Intelligence Bureau, New Delhi (hereinafter referred to as "CEIB") with Directorate General of Goods & Services Tax Intelligence (hereinafter referred to as "DGGI") inter-alia indicated that search and seizure proceedings were conducted by DGIT (Inv.), Unit-1 (3), Income-Tax, Ahmedabad on 25.02.2016 at M/s. J. P. Iscon Group and reportedly unearthed evidences of receipt of Rs. 3229.04 Crores and more. It was further reported that evidences of receipt of substantial cash by the group were unearthed indicating that in respect of sale of units, the group was receiving sale consideration in cash in addition to the amount received by cheque and the sale deeds for the same were made only for the amount paid through cheque. The information further revealed that only the amount paid through cheque was accounted for in the books of account of the firms of M/s. J. P. Iscon Group and the cash component was never recorded in their books of account. Information further indicated that the Respondent was one of the companies of M/s. J. P. Iscon Group, covered during the above search and seizure proceedings on 25.02.2016 and evidences of cash receipts were also found and seized in respect of the Respondent.

2.1 Information shared by the CEIB indicated that the Respondent had evaded Service Tax by way of adopting the modus of recovering of substantial part of the taxable value of their services in cash from their clients and not accounting the same in their regular books of accounts. Consequently, such unaccounted receipts were neither considered for computing the taxable value for filing their S.T.-3 returns not the applicable Service Tax was paid on such cash receipts. It was also verified that the Respondent were not registered under the erstwhile Service Tax regime and had not filed their statutory S.T.-3 returns resulting into non-payment of applicable Service Tax even on the valued accounted for and recorded in their books of accounts. Accordingly, inquiry was initiated against the Respondent by DGGI, Ahmedabad Zonal Unit and an inspection of records

was conducted at their office premises on 08.07.2019.

2.2 The Income Tax Department had provided the documents/ evidences including soft coy of excel files seized by them during search proceedings conducted at M/s. J. P. Iscon Group on 25.02.2016. Scrutiny of documents/ evidences received from Income Tax department revealed that the Respondent had received amount in cash to the tune of Rs. 4,02,85,875/- from their buyers for sale of units in their project 'Iscon Parasmani', which was not accounted by them in their books of accounts. Scrutiny of records submitted by the Respondent during investigation revealed that they had collected amount as 'advance' to the tune of Rs. 1,19,89,337/- during the period October-14 to June-17 from their buyers for sale of units in their project 'Iscon Parasmani' as recorded in their books of account. It was revealed that the above amount was collected by the Respondent for providing taxable services by way of 'Construction of complex, building, civil structure or a part thereof' in respect of sale of units in their project 'Iscon Parasmani', wherein booking amount was received prior to obtaining 'building usage' ("BU") permission from the competent authority.

2.3 Investigation revealed that the Respondent had rendered taxable service to the tune of Rs. 3,79,58,237/- during the period October-14 to June-17 by way of "Construction of complex, building, civil structure or a part thereof" which included amounts collected in cheque as well in cash from their buyers in respect of sale of units in their project 'Iscon Parasmani'. Substantial part of consideration was received prior to obtaining 'building usage' permission from the competent authority. Despite rendering the above taxable services, the Respondent failed to get themselves registered with the erstwhile Service Tax department and thereby, evaded payment of applicable Service Tax to the tune of Rs. 13,43,931/- on the above taxable services rendered by them during the period October-14 to June-17. Investigation further revealed that the Respondent had received taxable services namely "Legal Consultancy Services" and "Security Services" totally valued at Rs. 19,51,480/- and Rs. 2,58,750/- respectively during the period October-2014 to June-2017 on which they were required to pay Service Tax amounting to Rs. 2,71,589/- and Rs. 32,351/- respectively under reverse charge mechanism in terms of Notification No. 30/2012-Service Tax dated 20.06.2012.

2.4 During the course of investigation, a statement of Shri Venkataramana Ganesna, authorized signatory of the Respondent was recorded wherein he inter-alia admitted on behalf of the Respondent that the evidences provided by the Income Tax department pertains to their project 'Iscon Parasmani', seized by the Income Tax from the office premises of 'Iscon Parasmani' during search

proceedings conducted on 25.02.2016. He admitted receipt of cheque amount shown in the evidences with some variations but denied receipt of cash amounts shown in the evidences. He also admitted the failure of payment of Service Tax liability in respect of the amount received from their buyers from sale of units in the project 'Iscon Parasmani' as recorded in their books of account and Service Tax payable under reverse charge mechanism in respect of "Legal Consultancy Service" and "Security Service" for the period from October-2014 to June-2017.

3. The investigation culminated into issuance of a Show Cause Notice dated 26.09.2020 by Deputy Director, DGGI, Ahmedabad to the Respondent, demanding Service Tax and cess to the tune of (i) Rs. 13,43,931/- on 'Construction of complex, building, civil structure or a part thereof', (ii) Rs. 2,71,589/- on "Legal Consultancy Services" and (iii) Rs. 32,351/- on "Security Services" under proviso to 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 78, 77(1)(a), 77(1)(b), and 77(1)(c) of the Act upon the Respondent. It was also proposed to impose penalty under Section 78A of the Act upon Shri Pravin T. Kotak and Shri Jayesh T. Kotak, both directors of the Respondent.

4. The adjudicating authority vide the impugned order confirmed the demand of (i) Rs. 3,26,152/- on 'Construction of complex, building, civil structure or a part thereof', (ii) Rs. Rs. 2,71,589/- on "Legal Consultancy Services" and (iii) Rs. 32,351/- on "Security Services" under proviso to Section 73(1) of the Act along with interest under Section 75 of the Act, imposed penalty of Rs. 6,30,092/- under Section 78 of the Act, imposed penalty of Rs. 5,000/- each under Section 77(1)(a) & 77(1)(b) of the Act. The Adjudicating Authority dropped the penalty under Section 77(1)(c) of the Act and also dropped the penalty under Section 78A of the Act upon Shri Pravin T. Kotak and Shri Jayesh T. Kotak, both directors of the Respondent.

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

(i) The Adjudicating Authority erred in dropping Service Tax demand of Rs. 9,19,780/- erroneously since the evidence shared by the Income Tax i.e. Excel File titled "Iscon Parasmani" stated dated 23.02.2011.xls comprising of excel sheet record by the Income Tax Department during such proceeding conducted on 25.02.2016 suggest that the Respondent had received substantial part of consideration in cash from the buyers for sell of unit in their project "Iscon Parasmani" which is shown as "CASH AMT" and "CHEQUE AMT", the said sheet contain summary of all units of their project "Iscon Parasmani" which represent total gross taxable value of unit received bifurcated into two equal parts. i.e.

cash & cheque and produced scanned image of said excel sheet.

(ii) Details contained in the excel sheet are matching with the detail available in the corresponding sale deed for the respective unit; that amount shown in the cheque amount column also matching with the corresponding unit ledger except some variations. Investigation carried out suggest that Shri Venkataramanan Ganesna admitted in his statement before the proper officer that the statement was prepared by their ex employee Shri Alok Upadhyay for their project "Iscon Parasmani" at the time of commencement of the said project; that cheque amount refers to the amount receivable by the Respondent through cheque from the buyers for sale of unit in the said project. Investigation further suggest that details contained in the Excel sheet were also verified ledger/ sale deed in the cash amount is nothing but the amount receipt in cash from buyer of the unit in the said project in lieu of taxable services provided by them; that similar evidence was seized by the Income Tax Department in respect to the project Iscon Platinum Phase I, developed by M/s. J. P. Iscon Pvt. Ltd. (main concern of J. P. Group); statement of Shri Venkataramanan Ganesna recorded to this effect and which are part of the Show Cause Notice corroborate the similar modus operandi. Therefore, it is beyond doubt that amount received as mentioned in the excel sheet as detailed in the Annexure-A to Show Cause Notice which are not recorded in the books of account form part of the gross amount charged by the Respondent from their buyers. As per the provisions of Section 67 of the Act, gross amount charged include payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment and any amount credited or debited, as the case may be to any account, whether called suspense account or by any other name in the books of account of a person liable to pay Service Tax, where transaction of taxable service is with any associated enterprise. Therefore, the Adjudicating Authority appears to have grossly erred in not including the amount shown in the Annexure-A of the Show Cause Notice as amounts not recorded in the books of account and fasten levy of Service Tax on the said amount. Despite the fact that Annexure-A to the Show Cause Notice clearly shows that an amount of Rs. 2,59,68,900/- had to be included in the gross taxable value, the Adjudicating Authority erred in holding otherwise and Service Tax amounting to Rs. 9,19,780/- has been erroneously dropped.

(iii) The Adjudicating Authority has also erred while not imposing any penalty on the directors of the Respondent, as non-payment of Service Tax, by not getting themselves registered under Service Tax and thereby not filing S.T.-3 returns resulted in evasion of payment of Service Tax under the directions of both the Directors of the Respondent. All these acts of omission and commission on the part of Shri Pravin T. Kotak and Shri Jayesh T. Kotak constitute an

offence punishable under the provisions of Section 78A of the Act. The Appellant-Department argued that the impugned order passed by the Adjudicating Authority to the extent of dropping the demand of Service Tax of Rs. 9,19,780/- in respect of income earned and not imposing penalty on both Directors is not proper, correct and legal and hence liable to be set aside.

6. The Respondent filed Cross Objection vide email dated 16.5.2022, *inter alia*, contending that,

6.1 Appeal against the OIO without proper reasoning and grounds is not maintainable as the same doesn't contain any bona-fide or sound reasons and grounds how the amount received by cheque by respondent are taxable, where, the reason and evidence is soul of any demand. The appeal is sought without considering any submission. Therefore, the non-speaking Appeal without proper reasons being spelt out would be bad in law and would be liable to be quashed. They relied on following case laws:

- COMMUNICATION WORLD VERSUS COMMISSIONER, TRADE AND TAXES AND ANR. [2016 (8) TMI 25 - DELHI HIGH COURT]
- AMRIT FOODS VERSUS COMMISSIONER OF CENTRAL EXCISE, UP [2005 (10) TMI 96 - SUPREME COURT]
- M/s Shubham Electricals Vs. Commissioner of Service Tax, Rohtak
- M/S. JEEVAN DIESELS AND ELECTRICALS LTD. VERSUS THE COMMISSIONER OF CENTRAL EXCISE, THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL [2018 (11) TMI 224 - MADRAS HIGH COURT]
- COMMISSIONER OF CENTRAL EXCISE, MADURAI VERSUS FENNER (INDIA) LTD. [2013 (12) TMI 1460 - MADRAS HIGH COURT]

In nutshell, the contention of the Respondent is that allegation of cash amount receipt without any proper reasoning or evidence is not sustainable.

6.2 No corroborative evidence is produced by the Department to show that the Respondents have received unaccounted cash towards provision of construction service during the disputed period. The above demand has been raised on the basis that the respondent had collected a cash amount of Rs. 4,02,85,875/- during the period from October 14 to June 17 in respect of the project "Iscon Parasmani" and no service tax was paid on such cash amount. While coming to the said conclusion, the revenue has relied on the .xls sheets provided by Income Tax department. They deny the allegations in the show cause notice regarding the cash receipts and additional cheque amount. The revenue has relied upon the proceedings initiated by the Income Tax department. The most outstanding fact to be noted is that there was no unaccounted cash seizure during the search conducted by the Income Tax

department. When a charge of collection of a cash amount is under consideration, it is strange that not a single rupee of unaccounted cash was found during the search operations conducted by the Income Tax department. This fact points out to the inescapable conclusion that Respondent had not indulged in any sort of cash dealing with the customers. The records maintained in the computer are not admissible as evidence in absence of any corroborative evidence regarding receipt of on-money. In the facts of the case, leave alone other corroborative evidence, even the so-called author of said .xls sheets has not been examined and no statement of the author of .xls sheet has been recorded by the investigating officers. It is also noteworthy that the .xls sheets mentions the names of the buyers' and in such a situation, the investigating officers could very well have extended the inquiry at the customer's end. It is pertinent to note that the investigating officers have not attempted to contact any of the customers' and no statements of the customers have been recorded. Without such exercise, the .xls sheets cannot be taken at their face value. Hence, they strongly deny any receipt of cash and any additional receipt in cheque as alleged in the show cause notice. It is very strange that the department added value of Rs. 51.40 Lacs as additional cheque amount without pointing out any receipt entry in bank account or books of account. Such allegation can be made only based on proof and corroborative evidence, merely on the basis of xls sheet, how can additional cheque amount which is not received anywhere in books of account can be considered in the taxable value.

6.3 As mentioned above, the search was undertaken on entities of J P Iscon group entities and, similar excel sheet as well as loose papers were seized by the Income Tax Authorities. In J.P. Iscon Pvt. Ltd. Appeal at Appellate Tribunal was sought and the said matter has achieved finality in favour of J P Iscon in the case of J.P. ISCON PVT LTD, JATEEN GUPTA, JAYESH K KOTAK, AMIT B GUPTA, AND PRAVIN T KOTAK VERSUS C.C.E. -AHMEDABAD-I [2022 (3) TMI 1320 - CESTAT AHMEDABAD].

6.4 The judicial principles regarding the evidentiary value of such documents have been clearly spelt out in the following case laws:

Kashmir Vanaspati P Ltd. as reported at 1989 (39) ELT 655 (T)

Laxmi Engg. Works reported at 2001 (134) ELT 811 (T)

The above judgment was approved by the High Court of Punjab & Haryana as reported at 2010 (254) ELT 205 (P&H)

Gurpreet Rubber Industries reported at 1996 (82) ELT 347 (T)

Universal Polythelene Ind. reported at 2001 (130) ELT 228 (T)

The above case was affirmed by the Patna High Court as reported at 2011 (270)

ELT 168 (Pat) which was further affirmed by the Supreme Court as reported at 2016 (342) E.L.T. A226 (S.C.)

All the above cases point out to the single fact that entries in the .xls sheets cannot be considered as evidence in absence of corroborative evidence. In the facts of the case, not a single statement of the customers whose names are appearing in the .xls sheets has been recorded so as to corroborate the theory that the amount as shown in cash has been indeed remitted in cash to us. The revenue has merely jumped to the conclusion that we are in receipt of cash amount without even bothering to get a confirmation from a single customer. Also, the statement of the author of the .xls sheets has not been recorded. Thus, the .xls sheets cannot be considered as evidence. As regards the statement of Shri Venkataraman Ganesna is concerned, he has categorically denied about any payment received in cash towards consideration for the project "Iscon Parasmani".

They placed reliance on the decision in the case of Common Cause & Others v. Union of India & Others, passed in IA No. 3 and 4 of 2017 in W.P. (Civil) No. 505 of 2015.

In light of the above, they submitted that the entire case of the Department of unaccounted cash receipts by the Respondents, which has been based on loose papers recovered by the IT Department in their investigation is wholly arbitrary and bad in law. The Respondents place reliance on the decision of Samta Khinda v. Asst. Commr. of IT reported at 2016 (11) TMI 1366 - ITAT Delhi. Reliance is also placed on the following cases:

- Ruby Chlorates (P) Ltd. v. CCE, 2006 (204) ELT 607 (Tri-Chennai)
- Charminar Bottling Co. (P) Ltd. v. CCE, 2005 (192) ELT 1057
- Nagubai Ammal & Others v. B. Shama Rao, AIR 1956 SC 593
- CCE v. Ravishankar Industries Ltd. 2002 (150) E.L.T. 1317 (Tri. - Chennai)
- Kashmit Vanspati (P) Ltd v, CCE 1989 (39) E.L.T. 655 (Tribunal)
- Shabroc Chemicals v. CCE 2002 (149) E.L.T. 1020 (Tri. - Del.)
- T.G.L. Poshak Corporation v. CCE 2002 (140) E.L.T. 187 (Tri. - Chennai)

6.5 The demand of service tax cannot be confirmed merely on the basis of a statement of the employee of the Respondents' company. There is no corroborative evidence produced by the Department to show that the Respondents have received unaccounted cash towards provision of alleged construction services during the disputed period. In this regard, the Respondents

place reliance on the decision of Godavari Khore Cane Transport Co. v. CCE reported in 2013 (29) STR 31 (Bom.). In light of the above, it is submitted that merely on the basis of statements of employee of the Respondents' company, the demand of service tax cannot be confirmed against the Respondents.

6.6 Service Tax demand cannot be proposed to be recovered merely on the basis of investigation done by the Income Tax Department against the Respondents without an independent investigation to establish that the amount is towards taxable services provided by the Respondents. Reliance in this regard is placed on the recent decision in the case of N.R. Agarwal Industries Ltd. v. CCE & ST, Surat reported in 2021 (11) TMI 243 - CESTAT Ahmedabad, Deltax Enterprises v. CCE, Delhi-I, 2018 (10) GSTL 392 (Tri-Del.), Kipps Education Centre, Bathinda v. C.C.E., Chandigarh - 2009 (13) S.T.R. 422 (Tri.-Del.), Commissioner v. Mayfair Resorts - 2011 (21) S.T.R. 589 (T), Commissioner v. Mayfair Resorts, 2011 (22) S.T.R. 263 (P & H), CCE, Ludhiana v. Zoloto Industries, 2013 (294) E.L.T. 455 (Tri.-Del.), Further reliance is also placed on the following cases in this regard:

- Trikoot Iron and Steel Casting Ltd. v. Commissioner, 2015 (315) ELT 65
- CCE v. Havukal Tea & Produce Co. (P) Ltd., 2011 (267) ELT 162 (Mad.)
- Commissioner v. Havukal Tea & Produce Co. (P) Ltd., 2018 (361) E.L.T. A82 (S.C.)
- Girdhari Lal Nannelal v. Sales Tax Commissioner, (1976) 3 SCC 701

In light of the above, they submitted that the service tax demand based on Income Tax assessment order is erroneous and unsustainable in eye of law. The position that service tax liability was based on receipt of consideration for service is an accepted legal position.

6.7 The onus of proof lies on the Department to prove that the Respondents have received alleged cash receipts from buyers during the disputed period. This onus has not been discharged by the Department in the present case.

6.8 Entire consideration received after issuance of completion certificate are not taxable. As per Clause (b) of Section 66 E of Finance Act, Service tax is payable on the construction of complex services only if whole or part consideration is received prior to the issuance of completion certificate by the competent authority. Hence, where the entire consideration is received after issuance of completion certificate, no service tax is required to be paid on such consideration. Proportionate Exemption (Abatement) on account of Land Value included in the consideration for construction services to be excluded. Central Government has exempted taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable

thereon under section 66B of the said Finance Act. The threshold exemption, which was available to all service providers vide Notification No. 6/2005-ST dated 1.3.2005 as amended from time to time and last amended vide Notification No. 33/2012- ST dated 20/06/2012. Where during any financial year value of taxable service does not exceed Rs. 10 Lacs, no service tax is required to be paid. As per above calculation, value of taxable supplies is calculated as Rs. 5.90 Lacs and hence, there can be no service tax on outward construction services provided. Reliance is place by respondent in this regard on Ranjeet Sharma Vs Commissioner of Central Excise & ST, Raipur vide 2019 (7) TMI 68 - CESTAT NEW DELHI.

1. *Shri Ashok Kumar Mishra vs. CCE &ST, Allahabad [Final Order No. 71841/2017-Cu(DB) dt. 01/12/2017];*
2. *M/s. Aryavrat Housing Construction (P) Ltd. vs. CCE & ST, Bhopal [Final Order No. 50672-50673/2018 dt. 15.01.2018];*
3. *Alok Pratap Singh and others vs. CCE, Allahabad [Final Order No. 72407-72411/2018 dt. 5.10.2018]*

6.9 Service tax on Reverse Charge Mechanism on Legal Services. As demanded in show cause notice, service tax of Rs. 2,71,589/- is demanded on legal expenditure of Rs. 19,51,480/- incurred during the year 2014-15, 2015-16 and 2016-17. It is submitted that as per clause no 6 (b) of mega exemption notification no 25/2012-ST dated 01-07-2012, services provided by an advocate is exempted for any business entity having turnover of less than Rs. 10 Lacs in preceding financial year. As submitted, taxable turnover of the respondent has not exceeded Rs. 10 Lacs in any of the year from 2014-15 to 2015-16, legal service received from advocates or firm of advocate will be exempted from service tax.

6.10 Considering our above entire submission, it can be deduced that the respondent is not required to make payment of service tax on construction services and legal services. Hence, the respondent is liable to make payment of service tax under reverse charge on security services.

6.11 The SCN has to be adjudicated within a maximum period of 1 year. Since the present SCN has not been adjudicated within one year from the date of notice i.e. 29.06.2020, the present SCN cannot be adjudicated at this stage. Reliance in this regard is placed on the decision of Sunder System Pvt. Ltd. v. Union of India & Ors. reported in 2020 (1) TMI 199 - Delhi High Court. The Respondents submit that the impugned appeal shall be liable to be set aside on this ground alone.

6.12 In the present case, the classification of the activity of construction of

commercial units/shops undertaken by the Respondents as 'construction of complex service' in terms of Section 66E(b) of the Finance Act, 1994 is not sustainable.

6.13 Since the demand of service tax is raised under erroneous category, the same is not sustainable. In this regard, reliance is placed on the decision of Real Value Promoters Pvt. Ltd. v. Commissioner of GST & C.Ex, Chennai, reported in 2018 (9) TMI 1149. In light of the above, they submitted that the demand of service tax in the present case raised without identifying the proper category of service is bad in law.

6.14 Without prejudice to the above, they submitted that irrespective of the classification under 'works contract service' or 'construction of industrial and commercial complex service', the demand of service tax on the amount charged by the Respondents for sale of flats/shops is not sustainable in view of the decision of the Hon'ble Delhi High Court in the case of Suresh Kumar Bansal v. Union of India, 2016 (43) STR 3 (Del). They submit that the liability of the Respondents is to be computed by assuming the value of land as 70% of the amount allegedly collected by them as advances during the disputed period.

6.15 Without prejudice to above demand is barred by limitation. No suppression of facts by the Respondents. In this regard, the placed reliance on the following cases:

- Padmini Products v. CCE 1989 (43) ELT 195 (SC)
- CCE v. Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC)
- Gopal Zarda Udyog v. CCE 2005 (188) ELT 251 (SC)
- Lubri-Chem Industries Ltd. v. CCE 1994 (73) ELT 257 (SC)

Anand Nishikawa Co Ltd v. CCE, 2005 (188) ELT 149 (SC), wherein the court held as under:

Padmini Products Limited v CCE, 1989 (43) ELT 195 (SC).

In light of the above, they submitted that the entire demand is beyond the period of limitation under Section 73 of the Finance Act, 1994. The extended period of limitation is not invokable in the present case.

6.16 No penalty under Section 78 is applicable. They submitted that for imposing penalty under Section 78 of the Finance Act, 1994 there should be an intention to evade payment of service tax, or there should be suppression or concealment of material facts. The Respondents have provided all the details as and when desired by the Department vide the letters to the Department and the Respondents at no point of time had the intention to evade service tax or suppressed any fact wilfully from the knowledge of the Department. They *inter*

alia place reliance upon the following decisions to submit the information is available on record, no suppression can be alleged on the assessee;

(a) Suvikram Plastex Pvt. Ltd. v. CCE, Bangalore - III 2008 (225) ELT 282 (T)

(b) Rallis India Ltd. v. CCE, Surat 2006 (201) ELT 429 (T)

(c) Patton Ltd. v. CCE, Kolkata - V 2006 (206) ELT 496 (T)

(d) CCE, Tirupati v. Satguru Engineering & Consultants Pvt. Ltd. 2006 (203) ELT 492

(e) Indian Hume Pipes Co. Ltd. v. CCE, Coimbatore 2004 (163) ELT 273 (T)

Akbar Badruddin Jiwani v. Collector of Customs reported at 1990 (047) ELT 0161 SC

6.17 Interest is not recoverable from the Respondents. It is a settled principle of law that in cases where the original demand is not sustainable, interest cannot be levied. In view of the aforesaid submissions, it is clear that the demand itself is not sustainable and hence, the question of imposing interest does not arise.

6.18 They submitted that present issue involves interpretation of complex legal provisions. Therefore, imposition of penalty is not warranted in the present case. In this regard, reliance is placed on the following judgments:

- Ispat Industries Ltd. v. CCE 2006 (199) ELT 509 (Tri.-Mum)
- Secretary, Twon Hall Committee v. CCE 2007 (8) S.T.R. 170 (Tri. - Bang.)
- CCE v. Sikar Ex-serviceman Welfare Coop. Society2006 (4) S.T.R. 213 (Tri. - Del.)
- Haldia Petrochemicals Ltd. v. CCE 2006 (197) E.L.T. 97 (Tri. - Del.)
- Siyaram Silk Mills Ltd. v. CCE 2006 (195) E.L.T. 284 (Tri. - Mumbai)
- Fibre Foils Ltd. v. CCE 2005 (190) E.L.T. 352 (Tri. - Mumbai)
- ITEL Industries Pvt. Ltd. v. CCE 2004 (163) E.L.T. 219 (Tri. - Bang.)

Further, there is no suppression, wilful misstatement etc. on the part of the Respondents with intent to evade payment of tax and therefore, no penalty can be imposed under Section 77 or 78 of the Finance Act, 1994 on the Respondents.

6.19 Section 80 of the Finance Act, 1994 is in their favour. They placed reliance on the following judgments:

- ETA Engineering Ltd. vs. CCE, Chennai, 2004 (174) E.L.T 19 (T-LB)
- Flyingman Air Courier Pvt. Ltd. vs. CCE 2004 (170) ELT 417 (T)
- Star Neon Singh vs. CCE, Chandigarh, 2002 (141) ELT 770 (T)

7. Personal hearing in the matter was held on 23.02.2023. CA Shri Abhishek

P. Doshi appeared for personal hearing and reiterated the submissions made in their reply dated 27.01.2023. He submitted that the Adjudicating Authority has passed a well reasoned order after proper appreciation of all the facts and evidence. The Appeal by department in respect of the demand dropped by the Adjudicating Authority is not tenable in the absence of any supporting evidence to the contrary to that submitted by the assessee. Therefore, he requested to uphold the Order-In-Original and reject the appeal. No one appeared for personal hearing from the side of appellant-department.

8. I have carefully gone through the case records, Show Cause Notice, impugned order, appeal memorandum filed by the Appellant-Department and cross objections filed by the Respondent and the submissions made during personal hearing. I find that the main issue that is to be decided in the instant case is whether the cash amount mentioned in the Excel Sheet can be included in taxable value and Service Tax can be demanded on that or otherwise. The taxable value of units sold by the Respondent mentioned as time barred by the Adjudicating Authority is correct or otherwise. Whether dropping of penalties on the Directors of the Respondent is proper or otherwise.

9. It is the contention of the Respondent that no corroborative evidence is produced by the Department to show that they have received unaccounted cash towards provision of construction of service during the disputed period. On other hand, the Appellant-Department contested that the Income Tax department shared Excel file titled "Iscon Parasmani" statement dated 23.02.2011 suggest that the Respondent had received substantial part of consideration in cash from the buyers. It is seen from the case records that the said Excel Sheet is not backed by any further investigation or any other independent documentary evidences to prove its credential. The authorized signatory of the Respondent has categorically admitted receipts of cheque amount shown in the evidences with some variations but denied receipt of cash amounts shown in the evidences. Further, to establish receipt of cash, no corroborative statements of the buyers of the units located in "Iscon Parasmani" have been recorded for confirmation of receipt of such cash amount by the Respondent. Thus, in absence of any corroborative evidences, the Adjudicating Authority has dropped the demand on cash amount reflected only in the Excel Sheet. However, the Appellant-Department submitted that Shri Venkataramanan Ganesna admitted in his statement before the proper officer that the statement was prepared by their ex-employee Shri Alok Upadhyay for their project "Iscon Parasmani" at the time of commencement of the said project; that cheque amount refers to the amount receivable by the Respondent through cheque from the buyers for sale of unit in the said project. Investigation further suggest that details contained in the Excel sheet were also verified ledger/ sale deed in the cash amount is nothing but the

amount receipt in cash from buyer of the unit in the said project in lieu of taxable services provided by them; that similar evidence was seized by the Income Tax Department in respect to the project Iscon Platinum Phase I, developed by M/s. J. P. Iscon Pvt. Ltd. (main concern of J. P. Group); statement of Shri Venkataramanan Ganesna recorded to this effect and which are part of the Show Cause Notice corroborate the similar modus operandi. Therefore, it is beyond doubt that amount received as mentioned in the excel sheet as detailed in the Annexure-A to Show Cause Notice which are not recorded in the books of account form part of the gross amount charged by the Respondent from their buyers. However, it is also evident that the Authorized Signatory of the Respondent has accepted the cheque amount mentioned in the Excel Sheet forwarded by the Income Tax Department but denied the receipt of cash amount as mentioned in the said Excel Sheet and thus, I am of considered view that the Service Tax can be demanded on the cheque amount mentioned in the said Excel Sheet.

10. The services provided by the Respondent are covered under declared services which are taxable since the same are neither covered under negative list nor exempt by any exemption Notification. The relevant excerpts of provisions of Section 66E are as under:

> *"**SECTION 66E. Declared services.** — The following shall constitute declared services, namely:—*
>
> *(a) renting of immovable property*
>
> *(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority."*

On plain reading of the above provisions, there is mention of exemption in case where the entire consideration is received after issuance of completion-certificate by the competent authority. In the case on hand the completion-certificate (BU) was issued by the Bhavnagar Municipality on 27.01.2015 to the Respondent. With regard to demand of Service Tax set aside by the Adjudicating Authority by stating that the amount received prior to period covered under Show Cause Notice is time barred, no Service Tax can be demanded on the amount received after completion certificate (BU), I find that the Adjudicating Authority has erred in interpreting the statutory provisions. The only exemption in Section 66E is that the entire consideration should be received after issuance of completion certificate. This means any amount received prior to completion certificate, the entire amount received for the said service is liable to Service Tax. Therefore, I find that the demand dropped by the Adjudicating Authority at para 59 & 60 are not proper and legal. Further, amount taken as consideration for other unit is also not as per the Annexure-A to the Show Cause Notice. Thus, the correct Service Tax liability is as under:

10.1 For office No. 101, the Adjudicating Authority confirmed the demand on abated value of Rs. 68,28,600/-. The same is not correct since the Respondent received an amount of Rs. 43,71,400/- through cheque as per Excel Sheet forwarded by the Income Tax department. Further, an amount of Rs. 68,28,600/- (between 01.10.2014 to 31.05.2015) has been recorded in the books of accounts of the Respondent as per customer ledger. Thus, the total consideration received is Rs. 1,12,00,000/- towards office No. 101. Thus the same cannot be considered as received after issuance of completion certificate dated 27.01.2015 since the part amount was received prior and after the completion certificate. Thus, the Respondent is liable to pay Service Tax on entire amount in terms of provisions of Section 66E of the Act. The demand confirmed by the Adjudicating Authority on amount of Rs. 68,28,600/- is mis-interpreted as the Respondent is liable to pay Service Tax on amount of Rs. 1,12,00,000/- after deducting the abatement.

10.2 For flat No. 203, the Adjudicating Authority demanded Service Tax on abated value of an amount of Rs. 5,50,000/- which is not correct. The Respondent received an amount of Rs. 26,50,000/- prior to 01.10.2014 as per customer ledgers which has been recorded in the books of account of the Respondent. Thus, the total consideration for Flat No. 203 would be Rs. 32,00,000/- and not Rs. 5,50,000/- as recorded by the Adjudicating Authority. Thus, I hold that the Respondent is liable to pay Service Tax on abated value of Rs. 32,00,000/- for flat No. 203.

10.3 For flat No. 204, the Adjudicating Authority has dropped the demand by stating that the said amount of Rs. 18,00,000/- was received on 01.04.2014 i.e. prior to the period covered under Show Cause Notice. On verification of Annexure-A to the Show Cause Notice, it is seen that the Respondent received an amount of Rs. 7,68,750/- through cheque, as per Excel Sheet forwarded by the Income Tax Department and confessed by the Authorized Signatory of having received the said amount. The Respondent also received an amount of Rs. 18,00,000/- prior to 01.04.2014. Thus, the entire amount of Rs. 7,68,750/- plus Rs. 18,00,000/- was received prior to issuance of completion certificate and hence I find that as per the provision of Section 66E, the Respondent is liable to pay Service Tax on total amount of Rs. 23,68,750/- after allowing eligible abatement.

10.4 For flat No. 302, the Adjudicating Authority has confirmed the Service Tax on an amount of Rs. 18,10,737/- which is not correct since the Respondent has received an amount of Rs. 3,08,000/- prior to 01.04.2014 and same has been recorded in books of accounts as per customer ledger of the Respondent. Therefore, the Respondent is liable to pay Service Tax on total consideration of

Rs. 21,18,737/- after allowing eligible abatement.

10.5 For flat No. 304, the Adjudicating Authority has dropped the demand on Rs. 28,00,000/- by stating that the same was received after the completion certificate dated 27.01.2015. Since, there is no documentary evidence of having received any amount prior to completion certificate, I find that the Adjudicating Authority has rightly dropped the demand on the consideration of Rs. 28,00,000/- received by the Respondent after issuance of completion certificate.

11. With regard to confirmation of demand of Service Tax on 'Legal consultancy services' and 'security services', I find that the Adjudicating Authority has rightly confirmed the demand on both the services since the Respondent is receiver of services liable to pay Service Tax on 100% of consideration. It is the contention of the Respondent that since the taxable value is below Rs. 10 Lakh, they are not liable to pay Service Tax on both these services. However, the contention of the Respondent is not tenable in terms of findings recorded at Para 10.1 to 10.4 supra.

11.1 With regard to penalty upon the Directors of the Respondent, I find that the same was rightly proposed in the Show Cause Notice. The relevant excerpts of the provisions are as under:

> ***SECTION 78A. Penalty for offences by director, etc., of company*** *— Where a company has committed any of the following contraventions, namely :—*
> *(a) evasion of service tax; or*
> *(b) ....; or*
> *(c) ....; or*
> *(d) .....then*
> *any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees.*

Since the Respondent in the case on hand has evaded the Service Tax in respect of services provided/ received by them, the Directors of the Respondent are responsible for the said act and hence penalty under Section 78A of the Act is imposable upon both the Directors. The vague findings recorded by the Adjudicating Authority for not imposing any penalty upon the Directors of the Respondent are not sustainable since both are directly involved in evasion of Service Tax under three categories as services rendered/ received as discussed in the preceding paragraphs.

12. The next contention of the Respondent is that the demand is time barred as there was no suppression of facts by them. On this, I find that the period covered under the Show Cause Notice is from October-2014 to June-2017 and the Show Cause Notice was issued on 29.06.2020. In this regard, 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.

13. As regarding the contention of the Respondent that demand is time barred as there is no suppression of facts etc., I find that the Respondent was aware of the taxability and 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. On plain perusal of the arguments advanced by them, it is evident that they are having basic knowledge of Service Tax. Undoubtedly, the Respondent 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 Respondent to get registration, to pay service tax, and to file proper periodical returns. All these facts narrated above go to show that the Respondent did not discharge the obligations cast upon them by the statutory provisions. When the Respondent 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 Respondent has not obtained Service Tax registration with an ulterior motive to evade payment of Service Tax. Not only they have not filed any ST-2 returns during the period under question, they have adopted delay tactics in submitted documents in response to the various letters/ summons issued to them. Such acts amount to positive act of suppression on part of the Respondent. Unless a return is filed under Service Tax, the figures recorded in their books of accounts are not accessible to the Service Tax authority. Had inquiry not been conducted by the department based on information provided by the Income Tax Department, the violation and contravention of law by the Respondent would not have come to the notice of the department. Hence the extended period of limitation has been correctly invoked.

14. 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 –

(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 Respondent 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 October-2014 to March-2015, the ST-3 return for the said period was required to be filed by 25th of April 2015. As such, the show cause notice was required to be served latest by 24th of April 2020, but in the present case notice was served on 29.06.2020. However, 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. The Show Cause Notice in the instant case was issued on 29.06.2020 and hence, I of the considered view that the demand for the period from October-2014 to June-17 is well within the period prescribed under Section 73(1) covering the period of 5 years.

15. Thus, I hold that the demand from October-2014 to June-17 has been made within time limit and is rightly confirmed alongwith interest barring modifications required in view of observations made at para 10.1 to 10.5 and para 11.1 supra. I uphold the penalty under Section 77(1)(a) and 77(1)(b) of the Act. I direct the Adjudicating Authority to re-calculate the Service Tax amount and penalty under Section 78 in view of the observations at Para 10.1 to 10.5 and Para 11.1 within 30 days from the date of receipt of this order following principles of natural justice. The penalty under Section 78 of the Act will be equal to the Service Tax so re-calculated by the Adjudicating Authority. However, I extend the benefit of reduced penalty as envisaged under second proviso to Section 78 of the Act subject to adherence to the conditions enumerated therein and payment within the period stipulated therein.

16. In view of the above, I set aside the impugned order and remand the matter back to the original authority for fresh determination of the demand of

service tax and penalty discussed at Para 9, 10.1 to 10.5 and Para 11.1 and Para 15 above.

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

17. The appeal filed by Appellant-Department is disposed off as above.

सत्यापित / Attested

आर. एस. बोरीचा / R. S. BORICHA
अधीक्षक / Superintendent
केन्द्रीय कर एवं सेवा कर अपील्स, राजकोट
CGST Appeals, Rajkot

13.3.2023

(शिव प्रताप सिंह)/(Shiv Pratap Singh)
आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

To, M/s. Palitana Sugar Mills Pvt. Ltd., 2590, Diamond Chowk, Bhavnagar-364 001.	सेवा में, मे॰ पालिताणा शुगर मिल्स प्राइवेट लिमिटेड, 2590, डायमंड चोक, भावनगर-364 001 ।

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/सयुंक्त 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, भावनगर-I को आवश्यक कार्यवाही हेतु।
5) गार्ड फ़ाइल।