::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

ी कि दिस्कि संचर्मय जयते

PLIN IS SHI

ALL MALINE VIEL AND A DURA

राजकोट / Rajkot - 360 001

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

रजिस्टर्डडाकए.डी.द्वारा

ATION

DIN- 20230364SX0000222C22

क अपील / फाइलसंख्या/ Appeal /File No.

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दिनांक/Date

GAPPL/COM/STP/383/2022

O.I.O. No. BHV-EXCUS-000-JC-PG-006 TO 007-2022-23

मूल आदेश सं /

23.11.2022

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

BHV-EXCUS-000-APP-087-2023

आदेश का दिनांक / Date of Order:

14.03.2023 जारी करने की तारीख / Date of issue:

15.03.2023

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

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

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आधुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,राजकोट / जासनगर / गांधीधाय। इ.स. उपरलिखित जारी मूल आदेश से त्रृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham:

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

M/s. SAMIRKUMAR KIRITKUMAR PATEL TRIVENI ENTERPRISE, NEAR DENA BANK,, LOKHAND BAZAR, BHAVNAGAR,

इस आदेश(अपील) े 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.

सीमा शुल्क ्केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय त्यायाधिकरण 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: -

वंगींकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाष्टिकरण की विशेष पीठ, वेस्ट ब्लॉक न 2, आर॰ के॰ पुरम, नई दिल्ली, को की जानी चाहिए I/

The special beach 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) उपरीक्त 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

Bnawan, Asarwa Anmedabad-3800100n 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 माँग, व्याज की माँग और साराया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए था 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,010/- रुपये अर्थवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की माँग और साराया रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्रापट द्वारा किया जाना चाहिए। संवंधित ड्रापट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्ट 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 Kule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1000/- Rs.5000/-, Rs.10,000/- where arrount 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 stay shall be accomparied by a fee of Rs. 500 /-

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहन तिर्धारित 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 संलग 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 तगाया गया जुर्नाना,रुपए 5 लाख था उससे कम,5 लाख रुपए था 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये से निर्धारित जमा शुल्क की प्रति संतप्र करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से तेल्सी भी सार्वजिनक क्षेत्र के बेंक द्वारा जारी रेखांकित बैंक ड्राप्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बेंक की उस शाखा में होना चाहिए जहां संवंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश स्टि ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगर /

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 less of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakis or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakis or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakies but not exceeding Rs. Fifty Lakies, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than five lakies but not exceeding Rs. Fifty Lakies, rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fity Lakies rupees, in the form of crossed bank draft in favour of the Assistent 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/-.

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केन्द्रीय उस



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उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से स्बंधित व्यापक, विस्तुत और नवीनतम प्रावधानों के लिए, अपीलाभी विभागिय वेबसाइट www.cbec.gov.in को देख सकते हैं।/ For the elaborate, detailed and latest provisions relating to filing of appeal to the lnigher appeilate authority, the appellant may refer to the Departmental website www.cbec.gov.in.

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

यश्वासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क दिकिट 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 brins of the Court Fee Act.1975, as amended.

यहि दूस आदेश में कई मुल आदेशों का समावेश है तो प्रत्येक मन आदेश के लिए शुल्क का भगतान, उपर्युक्त हंग से लिया जाना चाहिरो इस ल्यम के होते हुए भी की लिखा पही कार्य में बचन के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केदीय सर्रेकार को एव आवेदन किया जाता है। / In case, मां the ordere covers various unbers of order- in Original, fee for each O.I.O. should be paid in the aloresaid Insuner, 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 acciptoria work if excising Rs. 1 laich fee of Rs. 100/- for each.

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

प्रसिधण झोदेस के साथ निस्तिखित सिहत शुल्क की अशयभी की जानी चाहिए। जेही सेलग्न रक्त साथ लियो वाए। 1.000 - का भुरातान किया वाए। 1.000 स्वालक कुल्को किया वाए।

Aligut / 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 OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of preached ice as prescribed under Section 35-accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-accompanied by a copy of TR-6 Challan evidencing payment of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of the SA as specified under Section 35-the state of CEA, 1944, under Major Head of Account. IDSHE

उपरोक्त आवेदन की दो प्रतिन संख्या EA-8 में, जी की केन्द्रीय उत्पादन शुल्क (जरील)नियमावली,2001, के लियम 9 के अंतर्पत विनिदिष्ट है. क् आदेश के संप्रेषण के 3 माहित्त की जानी चाहित्र । उपरोक्त आवेदन के साथ मूल अदेश व अपील आदेश की यहित्त चलप्र की जानी ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की घारा 35-EE के तहत निर्धात्त शुल्क की अदायगी के साख्य के तौर पर TR-6 की प्रति संगत की जानी चातिया ४

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. 112 111

सिशित समेत के स्वार के भूगतान के भूगतान के लिए जोड़ के सम्बिक्ति के स्वार कि कि कि स्वान के साल के मह है और से आहे स गुम जियन के सार होति के सारा जिस के भूगतान के सारा 109 के सारा 109 के सार के पह समेत के सार मान के पह है और के य यह के प्रति के सारा के सारा के के सारा 100 के सारा 100 के सारा 100 के की तह तारीख अथवा समायात्री के के से पारिक

यदि उत्पद शुल्क का भगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल नियति किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of dury. (111)

भारत के बहिर किसी राष्ट्र या भारताय भर रहे नारा समय के रहे का किस के साथ रहे के सहर किसी राष्ट्र या की निर्मात के साहेर किसी राष्ट्र या की निर्मात की सरी है।) जो मारत के बहिर किसी राष्ट्र या के की निर्मात की सरी है।) In case of repete of duty of excise on goods exported to any country or territory outside India.) Institutal used in the manufacture of the goods which are exported to any country or territory outside India.

,में लगाम के (56री) के के लोगों के महत होग है। यह महत कही माल के प्रयुक्त कही माल पर मरी गई के की वाल होत के हल (11)

whether in a factory or in a warehouse

भेडार गुह में सबसे सुक्सान के मामले में, जहां तुकसान किसी माल को किसी कारखाने से भंडार गुह के पारगमन के दौरान भ किसी जन्म कारखाने या किसी किसी एक संडार गुह से दूसरे भंडार गुह पारंगमन के दौरान, पा किसी भंडार गुह में या भंडारण में माल के प्रसम्हरण के टोरान, किसी कारखाने या किसी भेडार गुह में माल के मुक्सान के मामले में।/

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

Revision spplicstion to Government of India: इस ग्राउं सरकार, भूपरीक्षणयाभिका निम्नलिखित मामलो में, केंद्रीय उत्पाह शुल्क अधिनिरम,1994 की धारा 35EE के ग्रथमपरंतुक के अंतर्गतअवर सचित, भारत सरकार, प्रत्यार को देत ईकाई, विस मंत्रालय, राजस्व विभाग, चौथी मणिल, जीवन दीप भवन, संसद मार्ग, ∺ई दिल्ली-110001, को किया भारत सरकार, प्रत्यार भारते का इंग्राई, विस मंत्रालय, राजस्व विभाग, चौथी मणिल, जीवन दीप भवन, संसद मार्ग, ∺ई दिल्ली-110001, को किया

ः मडवंगाः सरकार कोपुनरीक्षण आवेदन :

(ī)

Port an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also invade applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribural or 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 Under Central Excise and Service Tax, "Duty Demanded" shall include: (ii) amount determined under Section 11 D; (iii) amount determined under Section shall not apply to the stay application and appeals (iii) amount payable under Rule 6 of the Cenvet Teken; (iii) amount payable under Rule 6 of the Cenvet Teken; (iii) amount payable under Rule 6 of the Cenvet Teken; (iii) amount of erroneous Cenvet Credit taken; (iii) amount of erroneous Cenvet Cedit taken; (iii) amount (of the e ।। पिडि हिम प्राप्त कि मिमिक हुए सिंह साम्प्र

नाडिग्राम्ही समम के गिलशीय प्रकितिय किकी हेप्र में भार के भार 2014 ममनिशिष्ठ (द कं) समिती नावधाय के प्राय मह की इस तिवार हिता -

सकर प्रदेतनेत के अयम की मियम 6 के अंतर्गत देय रकम

शित काम हेंग कि कि माह उर्हनई (III)

मकर होग्हंध के डि 11 एगाड

उ5एक के अंतर्गत, जो की लिसीय अधिसियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में उ5एफ के अंतर्गत, जो की लिसीय अधिसियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में भौगतान किथा जाए, बशतें कि इस धारा के बंतर्गत जमा कि जाते वाली अपीक्षित देश राशि दस करोड़ रुपए से अधिक न हो। केन्द्रीय वरपाद शुक्क एव सेवाकर के अंतर्गत "मंग कि एग एर् ख्यांग एवं उधनेत है, या जुर्माता, जल केवल जुर्मांता विवादित है, का केवतान किथा जाए, बशतें कि इस धारा के 10 प्रतिशत (10%), जब मांग एवं ख्यांगत बिवादित है, या जुर्माता, जल केवल जुमीता विवादित है, का केवतान किथा जाए, बशतें कि इस धारा के 10 प्रतिशत (10%), जब मांग एवं खुमीता बिवादित है, या जुर्माता, जल केवल जुमीता केन्द्रीय वरपाद शुक्क एव सेवाकर के अंतर्गत "मंग्रा कि पाए रूल्म" में लिस कार्योड़ रुपए से अधिक न हो।

The appear in the region of the section (2) and standing and appeared of the section (2) and appeared appeared appeared appeared appeared by the formation of the section (2) and (20) and (20) and (20) appeared appeared appeared appeared appeared by a copy of order of Commissioner Central Excise (Appeared before the Appeared by a copy of order to section (2) about (20) and (20) and (20) and (20) appeared by a copy of order (2) about (20) and (20) and (20) and (20) appeared by a copy of order of Commissioner (Central Excise (Appeared before the Appeared by a copy of order (2) and (20) at the section (2) and (20) of the section (2) and (20) and

चिंस अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत रजे की गयी अपील, मेवाकर नियमवार ?, 1994, के नियम 9(2) एवं

(I)

(III)

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<u>:: अपील आदेश / ORDER-IN-APPEAL ::</u>

Shri Samirkumar Kiritkumar Patel, Bhavnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-PG-006 to 007-2022-23 dated 23.11.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, HQ Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant is engaged in business activity of clearing and forwarding agent services, site formation and clearance, excavation, earth moving and demolition services, dredging of rivers, ports harbours, backwaters, estuaries etc., works contract service & supply of tangible goods services and hold Service Tax registration No. ACTPP5864ASD002. The Income Tax Department shared the third party information/ data based on Income Tax Returns/ 26AS for the Financial year 2016-17 of the Appellant. A letter dated 27.08.2020 was issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents for the Financial year 2016-17. However, no reply was received from the Appellant. It was also observed that the Appellant has not filed Service Tax return for the period October-2016 to March-2017.

3. In absence of data/information, two show cause notices dated 20.10.2021 having different file numbers were issued to the Appellant demanding Service Tax and cess to the tune of Rs. 58,26,746/- 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 78, 77(2) and 77(1)(c) of the Act upon the Appellant.

4. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 57,26,746/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 57,26,746/- under Section 78 of the Act and also imposed penalty of Rs. 10,000/- each under Section 77(2) and 77(1)(c) of the Act. The Adjudicating Authority dropped the entire proceedings initiated by Show Cause Notice No. V/15-32/DEM/HQ/2021-22 dated 20.10.2022 being redundant for same period, amount and for same taxpayer.

5. Being aggrieved, the Appellant has preferred the present appeal on grounds that the Appellant is engaged in the business of mainly providing dredging and clearing & forwarding services in the name & style of Triveni Enterprise holding Service Tax registration No. ACTPP5864ASD002. They have provided mainly dredging services to Nirma Ltd. and also earned machine rent income from Nirma and Patel and commission income. They had disclosed unpaid Service Tax liability aggregating to Rs. 54,92,395/- in schedule 4-statutory

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liabilities in balance sheet for year ending 31.03.2017. They had discharged Service Tax liability of Rs. 55,77,704/- after end of the year through challan dated 07.04.2017, 27.06.2017 and on 24.10.2017. The Adjudicating Authority taken value from Form 26AS and determined tax liability of Rs. 57,26,746/which also includes details of reimbursement of transport expenses and the same is not liable to Service Tax. Their accountant did not furnish Service Tax return of 2nd half year ending March, 2017, however, they have discharged and paid Service Tax liability. They are not liable to any penalty as per express provisions of Section 73 of the Act as Service Tax stands paid before issuance of Show Cause Notice.

5.1 The order passed by the Adjudicating Authority is perverse, incuriam and liable to be set aside. The Show Cause Notice issued by invoking extended period of time is time barred. The Adjudicating Authority erred in taxing higher value of services being difference between value as per Form 26AS and as per income tax data tallied with audited annual accounts. The Adjudicating Authority has failed to gather Service Tax payment details from department records before confirming demand of Service Tax. He ought to have appropriated Service Tax paid of Rs. 55,77,704/-. The Adjudicating Authority has not appreciated that there is no suppression of facts, fraud etc. with intent to evade payment of tax by them. They are not liable to any penalty.

6. The matter was posted for hearing on 14/15/16.02.2023 & 21/22/23.02.2023. The Appellant vide letter dated 16.02.2023 (received on 22.02.2023) has submitted a paper book and requested to adjudicate the appeal on the basis of written submission filed with documents.

6.1 In paper book, the submission made by the Appellant is akin to statement of facts and grounds of appeals mentioned in the appeal memorandum. They further submitted that apart from Service Tax of Rs. 55,77,704/- paid during the year 2017, they have also paid Service Tax of Rs. 2,11,107/- during the material period and credit thereof has been given against tax liability in the order by the Adjudicating Authority. They clarified that the excess payment is towards interest for delayed payment of Service Tax.

7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. The main issue to be decided in the instant case is whether the service provided by the Appellant is taxable under Service Tax or otherwise. On going through the impugned order, it has been held by the Adjudicating Authority that the service provided by the Appellant is a taxable service in absence of information/ documents which were neither submitted by the Appellant nor they had filed any defense submission. The practitioner of the Appellant appeared for personal hearing and undertook to



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Adjudicating Authority and undertook to submit the written submission alognwith supporting documents on or before 10.11.2022. However, no reply was received from them by the Adjudicating Authority and thus the Adjudicating Authority decided the case in absence of any documentary evidences. The Appellant on the other hand has stated that they had disclosed unpaid Service Tax liability aggregating to Rs. 54,92,395/- in schedule 4-statutory liabilities in balance sheet for year ending 31.03.2017. It is submitted that they had discharged Service Tax liability of Rs. 55,77,704/- after end of the year through various challans dated 07.04.2017, 27.06.2017 and on 24.10.2017. It is also submitted that the Adjudicating Authority taken value from Form 26AS and determined tax liability of Rs. 57,26,746/- which also includes details of reimbursement of transport expenses and the same is not liable to Service Tax. It is stated that their accountant did not furnish Service Tax return of 2nd half year ending March, 2017. However, it is not clear that if they had discharged and paid Service Tax liability why it was not produced before the Adjudicating Authority despite sufficient time being given to them. It is not possible to verify authenticity of these challan at appeal stage. The Appellant has also not provided details of taxable values separately for the services of dredging, clearing and forwarding, renting of machinery and commission etc.

I find that the Appellant had not submitted the relevant documents/ data 8. to the Adjudicating Authority despite they attended the personal hearing before him. Appellant has come in appeal with new facts that they have shown Service Tax liability under statutory liability in their books of accounts. At the appeal stage also they have not submitted any supporting documents except copy of some pages of annual report which are not authentic in nature. It is on record that at the time of adjudication, the Appellant has failed to submit the documentary evidences in support of their claim and they have repeated the same tactics at the Appeal stage as well. It is undisputed fact that they have not paid Service Tax and also not filed the statutory Service Tax returns though they were registered Service Tax assessee. At appeal stage they have not paid mandatory pre-deposit and have made application for its waiver. These acts on their part are nothing but adoption of a very casual approach in complying with the provisions of Service Tax Act/ Rules and it shows that they are not bothered to fulfil statutory obligations casted upon them by the legislature. The Appellant is working under self-assessment regime and the legislature has put full trust upon every assessee. Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed under the Service Tax Act/ Rules. In the case on hand the Appellant not only failed to pay the Service Tax but also not

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filed the statutory Service Tax return as admitted by them. All these material ingredients suggest that the Appellant is not interested in either paying the Service Tax or filing the statutory returns and compel the department to accept their plea in whatever name. Thus, I am not inclined to accept the arguments advanced by them and reject the same being devoid of any merit.

9. In view of the above, I uphold the impugned order and reject the appeal filed by the Appellant.

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

10. The appeal filed by Appellant is disposed off as above. सत्यापित / Attested

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

आर. शेस. बोरीचा / R. S. BORIC औयुक्त (अपील)/Commissioner (Appeals) अधीक्षक / Superintendent

By R.P.A.D. व. एवं सेवा कर अपील्स, राजकोट

To, Shri Samirkumar Kiritkumar Patel, Triveni Enterprise, Lokhand Bazar, Bhavnagar.	सेवा में, श्री समीरकुमार किरीटकुमार पटेल, त्रिवेणी एंटरप्राइस, लोखंड बाजार, भावनगर ।
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प्रतिलिपि:-

- मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेत्।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेत्।
- अपर आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेत्।
- सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल, भावनगर-1 को आवश्यक कार्यवाही हेत्।
- 5) गार्ड फ़ाइल।



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