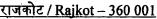


े: : आयुक्त (अपील्स) का कार्यालय , वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

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



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



रजिस्टर्डडाकए.डी. द्वारा :-

DIN-20230264SX0000000CE21

अपील / फाइलसंख्या/ Appeal /File No. **क** '

मूलकादेशसं / OIO No.

58/JC(MAN)/2021-22

दिनांक/

Date

22-03-2022

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

RAJ-EXCUS-000-APP-006-2023

आदेश का दिनांक / Date of Order:

V2/65/RAJ/2022

31.01.2023

जारी करने की तारीखं/

Date of issue:

02.02.2023

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

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

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

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

M/s. Iron Triangle Limited (Formerly Known as Backbone Enterprise Limited). M-43, Backbone House, Kalawad Road, Rajkot-360001.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समझ 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 न्यायाधिकरण के प्रति अपील केन्द्रीय उत्पाद शुल्क अधिनियम , 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखि+त जगह की जा सकती है।/ (A)

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

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

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 असावा अहमदाबाद- ३८००१ ६को 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 त्यायाधिकरण 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 हैं 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 सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक द्वारा किया जाना चाहिए। संबंधित ब्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर्) 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.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 stay shall be accompanied by a fee of Rs. 500/-.

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियों में की जा सकेगी एवं उसके साथ अहंश 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 , ज्याज 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 कमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भूगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का मुगतान, 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 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/-.

न्द्रीय उत्प

(B)

- वित्त अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुक्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुक्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुक्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साह 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 Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal. (i)
- 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 रक्म

 (ii) सेनवेट जमा की 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 पर्व किसी अपीलीय पाधिकारी के समाध किनाराधीन (ii)

- बंशतें यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरम से पूर्व किसा अपालाय प्राधिकारों के समक्ष विचारिक्षान स्थान अज़ी 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.

मारत सरकार कोपनिक्षण व्यवस्था क्रिक्ट :
Revision application to Government of India:
इस आदेश की पुनरीक्षण मोने कि निम्निक्षित 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: (C)

यदि माल के किसी नुक्सान 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 नुकसान के मानले में! In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse (i)

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

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

सुनिश्चित उत्पाद के उत्पादन शुल्क के भगतान के लिए जो इब्रूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न॰ 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. (iv)

उपरोक्त आवेदन की दो प्रतियां प्रपत्न 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. (v)

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

यदि इस आदेश में कई 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 यथास्थित अपीलीय नयाधिकरण को एक अपील या केदीय 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 lakh fee of Rs. 100/- for each. (D)

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

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

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 (G)



अपील आदेश /ORDER-IN-APPEAL

M/s Iron Triangle Limited, M-43, Backbone House, Kalawad Road, Rajkot-360 001 (hereinafter referred to as the appellant) have filed Appeal No. V2/65/RAJ/2022 against Order-in-Original No.58/JC (MAN)/2021-22 dated 21.03.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Rajkot (hereinafter referred to as 'adjudicating authority').

- 2. Brief facts of the case are that an investigation initiated by the DGGI revealed that the appellant has not paid service tax, under reverse charge mechanism, on the payment of Royalty paid to Government of Odisha for assignment of right to use natural resources for the period April 2016 to June 2017. Therefore, a show cause notice was issued on 22.10.2021 demanding service tax of Rs.82,87,603/-and proposing to impose penalty under Section 77 and 78 of the Finance Act, 1994. Vide impugned order, the adjudicating authority confirmed the demand and imposed penalty of Rs.82,87,603/- under Section 78 of the Finance Act, 1994 and Rs.10,000/- under Section 77 ibid.
- 3. Being aggrieved, the appellant filed the present appeals wherein they, *inter-alia*, contended that the adjudicating authority has erred in law by not considering Royalty as tax and confirming the demand of service tax and by imposing penalty.
- 4. Chartered Accountant Darshan Belani appeared for personal hearing on 12.01.2023 and handed over additional written submissions with relevant documents. He reiterated the submissions therein and those in the appeal. He submitted that as per the Supreme Court 7 judge bench order in case of India Cement Ltd Vs State of Tamilnadu (1990 AIR 85, 1989 SCR Supl(1) 692, the royalty amount is in the nature of tax. Therefore, no service tax is leviable on this amount. He submitted that the appellant was being subjected to yearly audit by the department. Therefore, all facts and records were in the knowledge of the department. The matter being related to interpretation of law, no suppression, fraud etc can be alleged. Therefore, extended period cannot be invoked. He submitted that vide email dated 1010.2021 (pg.29) they had requested to share the link for pre-SCN consultation meeting in virtual mode but no link was sent to them. Therefore, he requested to set aside the order-in-original and allow the appeal.
- 4.1 In the written submission, the appellant submitted that the adjudicating authority has erred in law and on facts by not appreciating that the show cause as issued after due time which is not valid in eyes of law. They that the books of account and service tax returns of the appellant

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were regularly audited by the department since 2005. The appellant submitted that the judgment of M/s Laxmi Narayan Sahu-2008 (19) GSTL.626 (Gau) is totally different from the case of appellant. They contended that show cause notice issued after expiry of 30 months from the relevant date. The appellant submitted that extended period of limitation is applicable only in the situations of fraud, collusion, misstatement, concealing information with wilful intent to defraud revenue and not following any provisions of law. The show cause notice is silent on any instance or details citing any of the above elements. They contended that Apex Court in the case of Cosmic Dye Chemical-1995 (75) ELT.721 (S.C) hled that the burden is on the revenue to prove any of the above elements of uphold validity of extended period.

- 4.2 The appellant submitted that the adjudicating authority has not appreciated the decision of Supreme Court in the case of *India Cement Ltd* (supra) wherein it is held that mining royalty is a tax and therefore, service tax cannot be imposed on mining royalty.
- 5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made by the Appellant. The matter to be decided is whether the impugned order confirming the demand of service tax on royalty paid by the appellant is proper and whether the demand is hit by limitation.
- 6. First of all, I would like to take up the issue of limitation. The appellant contended that their books of account were subjected to regular audit by the department and extended period of limitation is applicable only in the situations of fraud, collusion, misstatement, concealing information with wilful intent to defraud revenue and not following any provisions of law. The Board in its Circular No. 1053/2/2017-CX., dated 10-3-2017 has clearly mentioned that onus of establishing that the ingredients for invoking extended period are present in a given case is on the revenue and these ingredients need to be clearly brought out in the show cause notice. The board, at paragraph 3.2 of the circular, clarified as under:
 - 3.2 Ingredients for extended period: Extended period can be invoked only when there are ingredients necessary to justify the demand for the extended period in a case leading to short payment or non-payment of tax. The onus of establishing that these ingredients are present in a given case is on revenue and these ingredients need to be clearly brought out in the Show Cause Notice alongwith evidence thereof. The active element of intent to evade duty by action or inaction needs to be present for invoking extended period.
- 6.1 In the present case, the show cause notice has not brought out the ingredients for invoking extended period. Hon'ble Supreme Court in various decisions had held that mere failure to give information is not suppression. There should be some positive misstatement with an intention to evade payment of duty.

the the case of Continental Foundations Jt. Venture - 2007 (216) E.L.T. 177 (S.C)



the Apex Court has held that;

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10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.

6.2 In the case of **Mysore Kirloskar Ltd - 2008 (226) E.LT.161 (S.C)**, Hon'ble Supreme Court has held that on the basis of vague allegation neither the larger period could have invoked nor the penalty could have imposed. In the said order Apex Court held that;

"The order of the Commissioner does not indicate adequate reasons to invoke proviso to Section 11A(1). On the basis of vague allegations made in the show cause notice neither the proviso to Section 11A(1) could have been invoked nor penalty could have been imposed upon the respondent under Rule 173Q of the Central Excise Rules."

6.3 It is held by Hon'ble Supreme Court that there should be intent to evade payment of duty so as to invoke extended period of limitation. In the case of **Cosmic**Dye Chemical + 1995 (75) E.L.T.721 (S.C) Hon'ble Supreme Court has held that;

"6.Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word "willful" preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not willful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be willful."

- 6.4 Hon'ble Supreme Court in the case of **H.M.M Limited 1995 (76) E.L.T.497** (S.C) held that the show cause notice must put the assessee to notice which of the various commissions or omission stated in the proviso is committed to extend the period to 5 years. In the present case there is no mention of omissions or commissions made by the appellant with intent to evade tax. The appellant filed periodical returns and the same were subjected to scrutiny by the department.
- 6.5 Further it is observed that the department has audited the records of the appellant for the period March 2005 onwards. The appellant submitted copies of Final Audit Report No.181/2008-09 for the period March 2005 to March 2008, Audit Report No.C-/2009-10 for the period April 2008 to September 2009, Final Audit Report No.A-357/2010-11 for the period October 2009 to January 2011, Final Audit Report No.P-C 578/2013-14 for the period February 2011 to March 2013, Final Audit Report No. AUDIT-III/RJT/IV/20/887/2016-17 for the period April 2015 to March 2016 and Final Audit Report No.AUDIT/RJT/1/5/22/2018-19 for the period April 2016 to June 2017. Thus it is as clear as day light that the

pt cannot allege that the appellant has suppressed anything from the

19.7

- In view of the above, it is clear that the department has failed to establish 6.6 that the ingredients for invoking extended period are present in the present case with evidences as per Circular No. 1053/2/2017-CX., dated 10-3-2017 and the settled position of law as laid down in the aforementioned case laws of the Apex Court. Therefore, the demand beyond the normal period of limitation under Section 73 of the Finance Act 1994 is time barred and not sustainable. As per facts available on record, the show cause notice was issued on 22.10.2021 for the period from April 2016 to June 2017. As per Section 73, the demand is to be served on the person within 30 months from the relevant date. The 'relevant date' under Section 73(6)(1) is the date on which periodical return is filed. Therefore, the demand is beyond the normal period of limitation and hence not sustainable.
- Now coming to the merits of the case, I find that the demand of service tax 7. has been made under reverse charge mechanism on the royalty charges paid to Government of Odisha for assignment of right to use natural resources. The appellant, in this regard, contended that royalty charge is tax as held by Hon'ble Supreme Court in the case of India Cement Ltd (supra) and hence service tax is not leviable. In this regard, I find that the issue, 'whether 'royalty' determined under Sections 9/15(3) of the Mines and Minerals (Regulation & Development) Act, 1957 (Act 67 of 1957, as amended) is in the nature of tax', is under consideration of Hon'ble Supreme Court in the case of Mineral Area Development Authority Vs M/s Steel Authority of India & others in Civil Appeal No.4056-4064 of 1999. Since the matter is sub judice before the Apex Court, I do not delve into the merits of the case. However, as the demand is not sustainable on limitation, the impugned order required to be set aside.
- In view of above, I set aside the impugned order and allow the appeal. 8.
- अपीलकरता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है । 9.

The appeal filed by the Appellant is disposed off as above. 9.

सत्यापित / Attested

Superint#ndent

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

By R.P.A.D.

Raikot

आइरन ट्रायंगल लिमिटेड M-43, बक्कबोन हाउस कलावाड रोड, राजकोट-360 001

M/s Iron Triangle Limited, M-43, Backbone House, Kalawad Road, Rajkot-360 001

प्रतिलिपि:-

1) मुख्य आयुक्त,वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद ।

2) प्रधान आयुक्त,वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट ।

3) सहायक आयुक्त, वृस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल राजकोट-। ।

४) गार्ड फ़ाइल। 🍃

