



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

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

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



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN- 20230464SX0000270932

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक / Date
	GAPPL/COM/STP/556/2023	94/D/AC/2021-22	01-11-2022

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

RAJ-EXCUS-000-APP-086-2023

आदेश का दिनांक / Date of Order:	31.03.2023	जारी करने की तारीख / Date of issue:	06.04.2023
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श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

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

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

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

**M/s. Mayur Sanatory Mart S. M. Ltd., Matru Krupa, Amarnath park-77, 16-
Parasana Nagar, Jamnagar Road, Rajkot-360001. Gujarat**

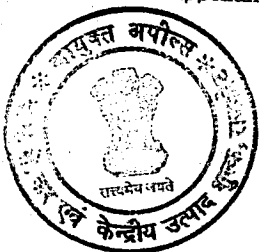
इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 360016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- (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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/- Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
The appeal under sub section (1) of Section 86 of the Finance Act, 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is 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 प्रतियां संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 of the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना 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" में 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 (मं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्ज़ी एवं अपील को लागू नहीं होगा।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर 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 (i) 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 छूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं० 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख 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 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 पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रूपये का न्यायालय शुल्क टिकट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-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 बर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकषित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in



अपील आदेश /ORDER-IN-APPEAL

M/s Mayur Sanatary Mart Sahakari Mandali Ltd., Matru Krupa, Amarnath Park 77, Jamnagar Road, 16 Parsana Nagar, Rajkot (hereinafter referred to as the appellant) have filed Appeal No. GAPPL/COM/STP/556/2023 against Order-in-Original No.94/D/AC/2021-22 dated 30.11.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Division-I, Rajkot (hereinafter referred to as 'adjudicating authority').

2. Facts of the case, in brief, are that as per data received from the Income Tax department, the appellant appeared to have received various amounts as consideration for providing taxable service during the period 2014-15. It appeared that the appellant had obtained Service tax registration but failed to pay proper Service Tax on taxable services. Therefore, a show cause notice dated 30.12.2020 was issued to the appellant demanding service tax of Rs.7,01,495/- with interest under Section 75 and proposing penalties under Sections 77(1)(c), 77(2) and 78 of the Finance Act, 1994. The adjudicating authority, by the impugned order, confirmed the demand of Rs. 1,89,460/-, dropped the demand of Rs. 5,12,035/- along with interest under Section 75 of the Finance Act 1994 and imposed penalty of Rs.1,89,460/- under Section 78 of the Finance Act 1994. He also imposed penalties of Rs.10,000/- under Section 77(1)(c) and Rs.10,000/- under Section 77(2) of the Finance Act,1994.

3.1 Being aggrieved, the Appellant has preferred the present appeal on various grounds as stated below.

(i) The Show Cause Notice and impugned order has been issued without investigation and only based on the data provided by income tax department as per TDS and Income Tax return is not sustainable in law as no investigation and effort to know whether the said amount is towards providing service or if there is any service then which type of service has been provided by them and whether Service Tax is payable or otherwise on such services. The CBIC has issued advisory not to issue notices without any verification and notices must not to be given due to ITR-TDS and Service Tax amounts are distinct. They placed reliance on Ravindra Pratap Thareja Vs. ITO reported as TS-657-ITAT-2015(JAB), Court on its own motion Vs. CIT (2013) 352 ITR 273, CCE Vs. Mayfair Resorts (2011) 22 STR 263 and Synergy Audio Visual Workshop P. Ltd. Vs. Commissioner of S. T. Bangalore 2008 (10) STR 578, Amrish Ramesh Chandra Shah Vs. UOI and Others - 2021-TIOL-583-HC-MUM-ST. They also relied upon CBIC instruction dated 26.10.2021 and Order-In-Appeal No. BHV-EXCUS-000-APP-022-2021-22 dated 31.03.2022 issued by the Commissioner (Appeals), Rajkot. They further stated that Hon'ble CESTAT in the case of M/s. Luit Developers Pvt. Ltd. Vs. Commissioner of CGST &



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C. Ex., Dibrugarh reported in 2022-TIOL-180-CESTAT-KOL.

(ii) The difference benches of CESTAT and High Court had consistently taken view that no demand of Service Tax can be made on the basis of data provided by income tax authorities, 26AS, Balance sheet of ITR and they relied on the decisions in the case of Vatsal Resources Pvt. Ltd. Vs. CCE, Surat - 2022-TIOL-681-CESTAT-AHM, Reynolds Petro Chem Ltd. Vs. CCE, Surat-2022-TIOL-731-CESTAT, AHM. Shresth Leasing and Finance Ltd. Vs. CCE, Surat-2022-TIOL-711-CESTAT-AHM, Quest Engineers & Consultant Pvt. Ltd. Vs. Commissioner of CGST & C. Ex., Allahabad-2022-(58) GSTL 345 (Tri.-All.), Ganpati Mega Builders (I) Pvt. Ltd. Vs. Commissioner of Cus., C. Ex. & S.T. Agra-2022(58)GSTL324 (Tri. All.). Further there was no mention of nature of services provided by them and no service wise and year-wise bifurcation of the income, no whisper of any verification or any investigation carried out by the department.

(iii) The Adjudicating Authority has not issued impugned order on the basis of any material evidence available on records or any investigation in this regard but just negating the submissions made by them. Even in the impugned order, it is not mentioned as to which service was provided by the Appellant. The Show Cause Notice is the culmination of efforts from the beginning of investigation/ proceedings for contravention of provisions of the tax statute(s) till conclusion of investigation/ proceedings by way of a formal issuance of a written notice to the Appellant. Issuance of Show Cause Notice is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be taken for contravention of provisions of Service Tax laws and or allied laws, which are required to be enforced by the departmental officer. The Adjudicating Authority has ignored the instructions issued by the Board and without verifying the facts and acting against the spirit and direction of the instructions issued by the Board had issued the impugned order. There is an established principle that the facts and allegations which have not been mentioned in the Show Cause Notice, should not be a part of Order-In-Original. The impugned order has travelled beyond the scope of Show Cause Notice and they rely on Huhtamaki PPL Ltd. Vs. C. Ex. & S.T., Surat-I reported in 2021(50) GSTL 309 (Tri.-Ahmd.), R. Ramadas vs. Joint Commissioner of C. Ex., Puducherry-2021 (44) GSTL 258 (Mad.), Mackintosh Burn Ltd. Vs. Commissioner of Service Tax, Kolkata-2020 (35) GSTL 409 (Tri.-Kolkata), Swapne Nagari Holiday Resort Vs. Commissioner of C. Ex. Raigad-2019 (21) GSTL 559 (Tri.-Mumbai), ST Electricals Pvt. Ltd. Vs. Commissioner of Central Excise, Pune-I-2019 (20) GSTL 273 (Tri.-Mumbai), Ajanta Manufacturing Ltd. Vs. Commissioner of Customs, Kandla-2019 (369) ELT 1067 (Tri.-Ahmd.).

(iv) The charge of non-disclosure of true and correct details is baseless and period cannot be invoked. They placed reliance in the case of Oriental



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Insurance Company Ltd. Vs. Commissioner, LTU, New Delhi-2021-TIOL-307-CESTAT-DEL, Blackstone Polymers Vs. Commissioner of Central Excise, Jaipur-II-2014 (301) ELT 657 (Tri. -Del.), Kirloskar Oil Engines Ltd. Vs. Commissioner of Central Excise, Nasik- 2014 (178) ELT 998 (Tri. -Mumbai), Hindalco Industries Ltd. Vs. Commissioner of C. Ex., Allahabad-2003 (161) ELT 346 (Tri. -Del.), Circular No. 1053/02/2017-CX, F. No. 96/1/2017-CX. I dated 10.03.2017.

(v) No penalty imposable under Section 77(2) and 78 of the Act in the case of interpretation of law and they relied on judgment in the case of ITEL INDUSTRIES PVT. LTD. as reported at 2004 (163) ELT 219 (Tri.-Bang.), Hindustan Steel Ltd. reported in 1978 ELT (J159), Tamilnadu Housing Board Vs Collector of Central Excise, Madras as reported at 1994 (74) ELT 9 (SC), Commissioner of C. Ex., Mysore Vs. Town Hall Committee, Mysore City Corporation-2011 (24) STR 172 (Kar.), BSNL Vs. Commissioner of Service Tax, Bangalore - 2008 (9) STR 499 (Tri.-Bang.), Commissioner of C. Ex., Ludhiana Vs. Instant Credit-2010 (17) STR 397 (Tri.-Del.)

4. Shri R. C. Prasad, consultant appeared for personal hearing held on 23.03.2023 and handed over a written submission note. He submitted that the service tax demanded in the impugned order is in respect of housekeeping services provided to Rajkot Rajpath Ltd., which is 100% owned by Rajkot Municipal Corporation and is discharging municipal functions falling under Article 243 W of the constitution. The same are exempt from levy of Service Tax. The Adjudicating Authority had dropped major portion of demand but confirmed this minor portion of demand only due to lack of documentary evidence. The same are provided with appeal. He requested to set aside the Order-in-Original in view of submissions in the appeal and additional written submissions handed over at the time of personal hearing.

5. I have carefully gone through 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 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. I find that the period covered under the Show Cause Notice is 2014-15 and the Show Cause Notice was issued on 30.12.2020. 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) Willful mis-statement; or

(d) Suppression of facts; or



Prasad

(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.

6.1 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 willful intent to defraud revenue by not following 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 along with evidence thereof. The active element of intent to evade duty by action or inaction needs to be present for invoking extended period.

6.2 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. In the case of *Continental Foundations Jt. Venture - 2007 (216) E.L.T.177 (S.C)* the Apex Court has held that;

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.

6.3 In the case of *Mysore Kirloskar Ltd - 2008 (226) E.L.T.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."

6.4 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



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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."

6.5 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.

6.6 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.]"

6.7 In the present case, the appellant 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 April 2014 to September 2014 the ST-3 return for the said period was required to be filed by 25th of October 2014. As such, the show cause notice was required to be served latest by 24th of October 2019, but in the present case notice was served on 30.12.2020 and hence the demand for the period from April 2014 to September 2014 is clearly hit by limitation of time under Section 73 ibid even if extended period is invoked.

7 Further, I observe that the adjudicating authority has not determined the nature of service. The service tax liability is determined on the nature of service provided by a supplier of service. CBIC in the letter dated 26.10.2021 has instructed that show cause notice should be issued only after proper verification of facts. I find that High Court of Bombay in the case of *Amrish Rameshchandra Shah-2021-TIOL-583-HC-MUM-ST* had quashed identical show cause notice in which tax was demanded without any verification and based only on the data provided by the Income Tax authorities. I also find that identical view has taken by



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this office in Order-in-Appeal No.BHV-EXCUS-000-APP-022-2021-22 dated 31.03.2022.

8. In view of the above, it is clear that the department has failed to determine the nature of service provided and thus failed to establish that the appellant has provided taxable service. The department also failed to establish 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 is not only beyond the normal period of limitation under Section 73 of the Finance Act 1994 but also beyond maximum permissible extended period of 5 years. The same is clearly time barred and not sustainable. As the demand is not sustainable on limitation, the impugned order is required to be set aside, without going into the merits of the case.

9. In view of above, I set aside the impugned order and allow the appeal.

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

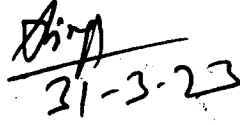
10. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested



आर. एस. बोरीचा / R. S. BORICHA
अधीक्षक / Superintendent
के. व. एस. सेवा कर अपील्स, राजकोट

By R.P.A.D. CGST Appeals, Rajkot



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

सेवा में, मैसर्स मयूर सेनटरी मार्ट सहकारी मंडली लिमिटेड "मातृ कृपा", अमरनाथ पार्क -77, 16- परसाना नगर, जामनगर रोड, राजकोट	To M/s Mayur Sanatary Mart Sahakari Mandali Limited "Matru Krupa", Amarnath Park -77, 16- Parsana Nagar, Jamnagar Road, Rajkot
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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, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल राजकोट-1।
- 4) गार्ड फाइल।

