



::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

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20230264SX0000111B15

| | | | |
|---|--|--------------------------|-----------------|
| क | अपील / फाइल संख्या/ Appeal / File No. | मूल आदेश सं / OIO No. | दिनांक/ Date |
| | GAPPL/COM/STP/1631/2022 | 73/AC/NS/2021-22 | 30-03-2022 |

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

RAJ-EXCUS-000-APP-44-2023

| | | | |
|------------------------------------|-------------------|--|-------------------|
| आदेश का दिनांक / Date of Order: | 15.02.2023 | जारी करने की तारीख / Date of issue: | 17.02.2023 |
|------------------------------------|-------------------|--|-------------------|

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

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

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

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

M/s. Galaxy Modelling Studio, Amira Ploting, Juna Panchpipla Road, Jetpur.

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 मूल्यंकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर० के० 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 (सिस्टम) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

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

(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, जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रूपये 5 लाख या उससे कम, 5 लाख रूपये या 50 लाख रूपये तक अथवा 50 लाख रूपये से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रूपये का निर्धारित शुल्क जमा करना होगा। /

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

(B) अपीलीय न्यायाधिकरण के समक्ष अपील वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा 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, जहाँ सेवाकर की माँग, ब्याज की माँग और लगाया गया जुर्माना, रूपये 5 लाख या उससे कम, 5 लाख रूपये या 50 लाख रूपये तक अथवा 50 लाख रूपये से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रूपये 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 fifty lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than fifty 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 नियमावली, 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 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 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" 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 विनियम (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्ज 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 को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश को 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 (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहाँ 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 क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 को धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं।।

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

- (v) उपरोक्त आवेदन की दो प्रतियाँ 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 प्रतियाँ 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 को 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 को ध्यान में रखते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।। In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 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 रुपये 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 वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।। Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दायित्व करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं।।

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

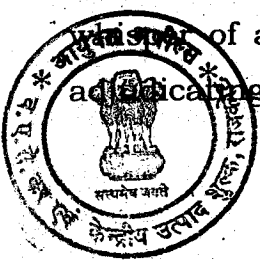
M/s Galaxy Modelling Studio (Prop. Sagar S. Rupapara), Amir Plotting, Juna Pachpipla Road, Jetpur (hereinafter referred to as the appellant) have filed Appeal No. GAPPL/COM/STP/1631/2022 against Order-in-Original No.73/AC/NS/2021-22 dated 30.03.2022 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST, Division-II, 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 2015-16. It appeared that the appellant had not obtained Service tax registration and did not pay service tax. Therefore, a show cause notice dated 23.04.2021 was issued to the appellant demanding service tax of Rs.18,65,953/- and proposing penalties under Sections 77 and 78 of the Finance Act, 1994. The adjudicating authority, by the impugned order, confirmed the demand along with interest under Section 75 of the Finance Act 1994 and imposed penalty of Rs.18,65,953/- under Section 78 of the Finance Act 1994. He also imposed penalties of Rs.10,000/- under Section 77(1)(a), 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 filed the present appeals wherein they, *inter alia*, contended that the show cause notice and consequential order has been issued without investigation and only based on the data provided by Income tax department as per TDS and IT return is not sustainable in law.

3.2 The appellant submitted that Income Tax authorities have shared the data for verification whether the income shown in their returns are taxable under Service Tax or otherwise. For that the department ought to have conducted inquiry in this regard. The CBIC in the letter dated 26.10.2021 has instructed that show cause notice should be issued only after proper verification of facts. They contended 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 service tax was demanded without any verification and based only on the data provided by the Income Tax authorities. The appellant also submitted that Hon'ble Commissioner (Appeals), CGST & Central Excise, Rajkot in his Order-in-Appeal No.BHV-EXCUS-000-APP-022-2021-22 dated 31.03.2022 had also endorsed the same view.

3.3 The appellant also submitted that there was no mention of the nature of services provided, no service wise and year-wise bifurcation of the income and no
of any verification or investigation carried out by the department. The
adjudicating authority has filed to recognize the name of the service and has not



Handwritten signature

mentioned as to which service was provided by the appellant and how it was taxable. He had just mentioned that service tax is required to be paid as per Section 66B of the Finance Act, 1994.

3.4 The appellant submitted that the adjudicating authority had ignored the instruction issued by the Board and without verifying the facts and acting against the spirit and direction of the instruction issued by the Board had issued the impugned order. He had mentioned such facts and taken such grounds which was never a part of the show cause notice. Appellant submitted that 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 the order. They relied upon the following case laws:

- a) *Huhtamaki PPI Ltd-2021 (50) GSTL.309 (Tri-Ahmd)*
- b) *Ramadas-2021 (44) GSTL.258 (Mad)*
- c) *Mackintosh Burn Ltd-2020 (35) GSTL.409 (Tri-Kol)*
- d) *Swpne Nagari Holiday Resort-2019 (21) GSTL.559 (Tri-Mum)*

3.5 The appellant submitted that they are engaged in activities of preparing small posters by taking photographs of sarees provided by the saree manufacturers and printing of the same. For the purpose of designing and printing, it was getting the work done on job work basis. The appellant contended that photographs are specifically included in Central Excise Tariff Heading No.4911 and contended that the processes on which Central Excise duty is leviable are outside the service tax net as per Section 66D (f) of the Finance Act, 1994.

3.6 The appellant further contended that the value arrived for demand of service tax by resorting to Section 72 of the Finance Act, 1994 is in gross violation of the mandate and procedures mentioned in Section 72 itself. They relied upon the following case laws:

- a) *Creative Travel Pvt Ltd-2016 (45) STR.33 (Del)*
- b) *Carlsberg India Pvt Ltd-2016 (42) STR.55 (Tri-Del)*
- c) *Coca Cola (I) Pvt Ltd-2015 (40) STR.547 (Tri-Del)*
- d) *NBC Corporation Ltd-2014 (33) STR.113 (Del)*

3.7 The appellant submitted that the show cause notice and consequential order was issued on the basis of information and details filed by the appellant with Income Tax department and there was no suppression at all and as such the show cause notice was time barred. They relied upon the following case laws:

- a) *Oriental Insurance Co Ltd-2021-TIOL-307-CESTAT-DEL*
- b) *Backstone Polymers-2014 (301) ELT.657 (Tri-Del)*
- c) *Kirloskar Oil Engines Ltd-2004 (178) ELT.998 (Tri-Mumbai)*
- d) *Hindalco Industries Ltd-2003 (161) ELT.346 (Tri-Del)*

3.8 The appellant also relied upon Circular No.1053/02/2017-CX dated 10.03.2017 laying down guidelines for issuance of show cause notice.

3.9 The appellant further contended that in the case of interpretation of law, no penalty is imposed considering several judgments of the Tribunal and High



(Signature)

Courts. They contended that the matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the case of *Hindustan Steel Ltd-1978 ELT (J159)* wherein it is held that penalty should not be imposed merely because it was lawful to do so.

4. Shri R. C. Prasad, consultant appeared for personal hearing held on 24.01.2023 and handed over a written submission note. He reiterated the contentions made therein and those in the appeal. He submitted that the appellant was preparing posters of sarees provided by saree manufacturers. The said activity amounts to manufacture and hence not liable to service tax. Even if it is denied to be manufacturing activity, the same is still not liable to service tax being job work not amounting to manufacturing. In view of this, he requested to set aside the order-in-original.

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

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



Shri

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.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."

6.3 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.

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

7. 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 law as laid down in the aforementioned case laws of the Apex Court.



A. N. T.

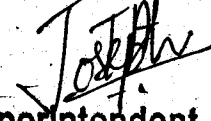
Therefore, the demand beyond the normal period of limitation under Section 73 of the Finance Act 1994 is time barred and not sustainable. As the demand is not sustainable on limitation, the impugned order required to be set aside without going to be merits of the case.

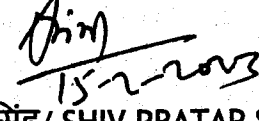
8. In view of above, I set aside the impugned order and allow the appeal.

9. 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.

सत्यापित / Attested


Superintendent
Central GST (Appeals)
Rajkot


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

By R.P.A.D.

| | |
|--|--|
| सेवा में मेस्सेर्स गैलक्सि मोडेलिंग स्टुडियो (प्रो सागर एस रूपापरा) अमीर प्लॉटिंग, जूना पचपिपला रोड जेतपुर | To M/s Galaxy Modelling Studio (Prop. Sagar S. Rupapara), Amir Plotting, Juna Pachpipla Road, Jetpur |
|--|--|

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-II।
- 4) मॉर्ड फाइल।



