
 केंद्रीयकर आयुक्त (अपील)		
<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX</b>		
वस्तु एवं सेवा कर भवन	GST Building, 7 Floor Near Polytechnic Ambavadi, Ahmedabad-380015	
सातवीं मंजिल पालिटेक्निक के पास आम्बावाडी, अहमदाबाद-380015		380015
079-26305065		टेलीफैक्स: 079-26305136

क फाइल संख्या : File No : **V2(BCS)20/AHD-III/2017-18** / 6048 & 6051

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0143-17-18**

दिनांक Date : **27.10.2017** जारी करने की तारीख Date of Issue: 12-11-17

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

*A. file*

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :  
**AHM-STX-003-ADC-AJS-062-16-17** दिनांक : **29.03.2017** से सृजित

Arising out of Order-in-Original: **AHM-STX-003-ADC-AJS-062-16-17**, Date: **29.03.2017**  
Issued by: Additional Commissioner, Central Excise, Div: Gandhinagar,  
Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

**M/s. Shyam Shukan Corporation**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्ता धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

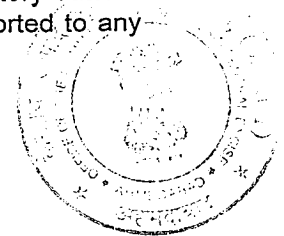
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.



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

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- एबी/35-इ के अंतर्गत:-

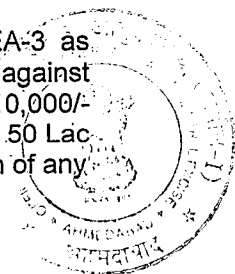
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे 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 adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, 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 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

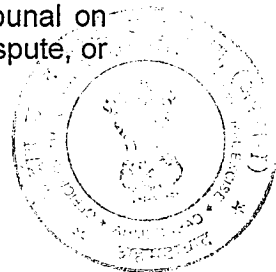
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, 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."



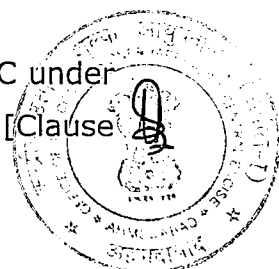
### ORDER IN APPEAL

1 M/s . Shyam Shukan Corporation (M/S SSC in brief), Gandhinagar- Koba Road, Shyam Shukan Residency, Bhajipura Patiya, Gandhinagar (hereinafter referred to as 'appellants' or 'M/S SSC') holding Service Tax Registration No. ABQF S1586E SD002 dt. 12.11.2012, have filed the present appeals against the Order-in-Original number AHM-STX-003-ADC-AJS-062-16-17 dated 29.03.2017 (hereinafter referred to as 'impugned orders') passed by the Additional Commissioner, Service Tax, HQ, Ahmedabad (hereinafter referred to as 'adjudicating authority');

2.1 The facts of the case, in brief, are that, Co-operative Society, registered under Gujarat Co-operative Society Act-1991, had given, right to carry out all the activity relating to construction of Housing cum Commercial project, named "Shyam Shukan Residency", to the M/S SSC ( the appellant) on land owned by said Society. M/S SSC had agreed to undertake Construction related activity which included marketing, purchase of materials, appointing subcontractor, soliciting prospective buyers, determining and fixing the cost of units, accepting the booking, prepare agreement with the buyers and receiving booking amount and further payment from the buyer. Whole construction cost and Land cost was recovered from buyers of units. Land cost was paid to the Society by M/S SSC. M/S SSC was appointed as Management consultant and for the same society has agreed that buyer of unit will make payment @ 2% of total charges received from members of society as Development Charges. Shri Jitendra Patel, Partner of M/S SSC and Shri Priyank Patel, Chairman of Society in their statement recorded u/s 14 of CEA, 1944 had stated that entire construction was carried out by the M/S SSC itself and the amount received from the buyers were also received and retained by the M/S SSC.

2.2 M/S SSC had paid service tax as Management Consultancy Service on service charge payment collected @ 2% of total charges received from would be the members of society as Development Charges. Department is of view that M/S SSC was required to pay service tax considering service rendered to buyer as "Construction Service" on total amount paid by buyer of unit to M/S SSC. Service Tax as GTA was also demanded from M/S SSC in terms of Notification 20/2012-ST r/w 2(d)(1)(B) on reverse Charge.

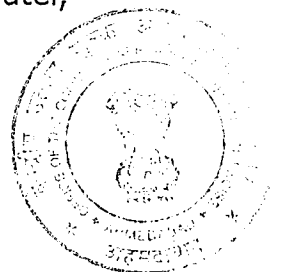
2.3 Adjudicating authority classified the service rendered by M/S SSC under category of Commercial or Industrial Construction Service [Clause



'65(105)(zzq) of FA, 1994] and Construction of Complex Service [[ Clause 65(105)(zzzh) of FA, 1994] for period from 01.07.2010 to 30.06.2012. Service rendered was considered as "declared service" [Section 66E(b) of FA, 1994] for period from 01.07.2012. Adjudicating authority confirmed demand of Service Tax of Rs. 1,26,12,326 on construction service and Rs. 5,03,570/- on GTA Service u/s 73(2) of FA, 1994 with interest liability on both service u/s 75. Penalty of Rs. 1,31,15,896/- u/s 78 and Rs. 10,000/- u/s 77(2) and Rs. 2,000/- u/r 7C of STR, 1994 r/w section 70 was imposed.

3. Being aggrieved with the impugned order, the appellant filed an appeal on 05.06.2012 wherein it is stated that-

- I. They have rendered Management Consultancy service to society as an agent and they have discharged service tax on it. They submitted definition of management cited in various judgments.
- II. Appellant have acted as pure agent and fulfilled the condition of Rule 5(2) of Service tax (Determination of Value) Rules, 2006.
- III. Society has subsequently filed VCES which is accepted by Department as valid application. It shows that society is accepted as service provider and they were liable to pay service tax. Revenue can not approbate and reprobate the same issue. The revenue can not take diametrically opposite stand in the same issue.
- IV. Entire demand in present case has suffered tax. Collection of the same amount of demand from appellant would amount to double taxation.
- V. Statement of the partner can not be relied upon in absence of corroborative evidence. Department has only placed reliance upon statements of partners which were taken under coercion and no documentary proof is adduced by the department to allege that the appellants have provided construction service.
- VI. Doctrine of substance over form is applicable to present case. The appellant is not the service provider of construction service in terms of scope of agreement.
- VII. Service tax is not payable on the amount charged by the society/appellants for sale of flats and office units under category of construction of complex service as there is no mechanism to ascertain value of service component subject to levy. Appellant relied upon judgement in case of Sureshkumar Bansal v/s UOI [ 2016 (43) STR.3 (Del.)]
- VIII. Appellant pray for cross-examination of Jitendra Somabhai Patel, partner of appellant.



IX. No penalty u/s 77 and 78 imposable. Issue involves bona fide interpretation of law. Section 80 is in favour of the appellant.

4. Personal hearing in the appeal was granted on 07.09.2017. Shri Jigar Shah, Advocate appeared before me on behalf appellant and reiterated the grounds of appeal. Shri Jigar Shah, Advocate, submitted the copy of judgement in case of Suresh Kumar Bansal v/s UOI [ 2016 (43) STR.3 (Del. HC)

#### DISUSSION AND FINDINGS

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants and copies of judgments submitted at the time of personal hearing.

6. I observe from SCN that same set of activity is termed by M/S SSC as "Management Consultancy service- rendered to Society" and termed by department as "construction service rendered to buyers of flats i.e. prospective members". Same set of activity can not be rendered to two different recipients. Recipient of service is one where benefits of service is accrued or passed on.

7. I proceed to decide who has received service from "same set of activity". It is not deniable that customers/buyers of flats & shops have received service as they are ultimate beneficiary of activity performed but it is questionable whether Society has received any service. Activity performed has not yielded/accrued any benefits to society. Only benefits received by Society is realization of land cost which is not the service in nature as it is against the sale of land to ultimate buyers through M/S SSC. Service rendered to so called prospective member cum buyers can not be termed as service rendered to Society. Buyers of flats/shops are not the legal members of society as no share certificate has been issued to the members. Simply allotting flats/shop does not entitle buyers to be member as they have no right to cast their vote in society election. Therefore I hold that buyers of flats/shops are the independent recipient of service.

8. Next question to be decided is as to who has provided this said service to buyer- whether it is provided by Society or provided by M/S SSC ? M/S SSC



is limiting its role only as consultant to Society but infect he has conceived, designed and executed project himself independently. Consideration received is accounted in their own account of M/S SSC. Further, TDS payment, EPF payment and filing of Income tax return has be done by M/S SSC on his own A/c and on his own PAN No. which shows that M/S SSC is service provider. M/S SSC is confirming party in sale deed or final possession letter which shows that M/S SSC has been given absolute right. M/S SSC has not acted as agent of society but acted independently to execute the project as M/S SSC has taken ownership of consideration received and its aligned liability. By making agreement does not disentitle M/S SSC of his status of service provider to buyer?

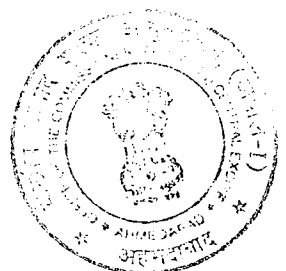
9. M/S SSC has sometimes stated that they have provided direct service of Management consultancy to Society and sometimes it is stated that M/S SSC Has provided service as "pure agent" envisaged in Rule 5(2) of Service tax (Determination of Value) Rules, 2006 to society. In forgoing para I had concluded that M/S SSC has not provided any direct service to Society. It is not stated which service M/S SSC has procured as "pure agent" for Society and who has provided that service through M/S SSC to Society. I find that no service either directly or as a pure agent is provided to Society by M/S SSC.

10. I am of considered view that entire arrangement of forming Society and appointing M/S SSC as Management Consultancy service was made to evade payment of service tax by both Society and M/S SSC. Intent of the statute is subverted by an artificial arrangement Shri Jitendra S. Patel, partner of M/S SSC, in his statement has stated that agreement itself is fictions one formed in order to show that construction was carried out by society for its members. Appellant pray for cross-examination of Jitendra Somabhai Patel, partner of appellant can not be considered as said statement is not retracted.

11. Adjudicating authority in para 15 of OIO has concluded as below-

*"M/s M/S SSC is the actual provider of services and also received consideration for the same, hence as per statutory provisions, they are liable to pay tax on consideration received by them. It further appears that merely because the Society has voluntarily came forward*

*D*



*and discharged service tax liability does not absolve M/S SSC from payment of service tax. Besides no activity was carried out by the society which falls under category of service under any section of finance Act, 1994 and there is no evidence indicating that they had received consideration for the same....."*

12. It is argued that since Society has voluntarily paid duty in voluntarily compliance scheme- VCES, therefore the duty should not be demand from M/S SSC as it would amount to double taxation of same activity. In this regards I agree with the adjudicating authority that only one who had legal responsibility to pay duty, can only pay the same. I find that the Section 68(1) makes it mandatory for service provider to pay tax. Section 68(1) is reproduced as below

"(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed."

13. The mandate of this section 68(1) and 68(2) is very clear and does not give any scope of interpretation leading to the conclusion that the tax liabilities cast on one person could be discharged by any other person in the manner which is not prescribed by the law. The plain and simple reading of section 68(1) and 68(2) is that the person on whom the tax liability is cast, he only should discharge it and also in the manner specified. Tax collected through any other person will be violative of Article 265 of Constitution of India as well as statutory provision of section 68(1) and 68(2).

14. **Article 265** of the Constitution of India state that "Taxes not be imposed saved by the authority of law. No taxes shall be levied or collected except by authority of law". Therefore no tax shall be **levied** or **collected** without an authority of law. It further states that "Taxes not to be imposed save by authority of law". **Article 265 contemplates two stages** - one is **levy of tax** and other is **collection of tax** and that levy of tax includes declaration of liability and assessment, namely, quantification of the liabilities. After the quantification of the liability follows the collection of tax and it should be only by an authority of law.

15. In view of above I am in complete agreement with adjudicating authority holding that the M/S SSC, being service provider to buyers, was required to pay the tax as per section 68 of FA, 1994 and that the payment by Society does not absolves M/S SSC from legal liability to pay duty.

*[Signature]*



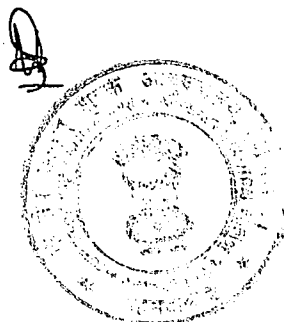


16. It is argued that there is no mechanism in statute to ascertain value of service component (of construction service) subject to levy. Appellant relied upon judgment in case of Sureshkumar Bansal v/s UOI [ 2016 (43) STR.3 (Del.)]. I find that this issue is not raised in SCN. Appellant may file the refund before proper authority

17. M/S SSC has resorted to doctrine of Doctrine of substance over form in his appeal memo. As per the said doctrine the incident of taxation depends on the substance rather than form of the transaction. "Substance" and "form" in present case leads to conclusion that M/S SSC is service provdor. I find that M/S SSC has been held as service provider on the basis actual performance of service as he is direct provider of service to buyers.

18. It has been contended by the appellant that no penalty should have been imposed upon them in view of the Section 80 of the Finance Act, 1994 and that mere failure to pay service tax cannot be ground for not invoking the provisions of Section 80. I have gone through the provisions contained in Section 80 which stipulate not to impose penalties prescribed under Sections 76, 77 and 78, if the assessee proves that there was 'reasonable cause' for the failure which attracted the said penalties. The Hon'ble High Court of Karnataka in the case of Motor World reported in 2012 (27) S.T.R. 225 (Kar.) has elaborated the term "reasonable cause" and outlined the circumstances / ingredients which merit invocation of provisions contained in Section 80. It is therefore pertinent to first examine the relevant portion of the said judgment of the Hon'ble High Court, which is reproduced as under:

*"13. Therefore, given the language of Section 80 of the Act, which confers discretion on the Service tax authorities not to impose penalty if there is reasonable cause in given case, the imposition of penalty under Sections 76, 77 and 78 is not automatic. The existence of grounds/ingredients postulated in the said provisions is a condition precedent for attracting penalty. Therefore, first, we have to find out whether in the facts of a given case whether those ingredients exist. Once it is held that those ingredients exist and the provisions are attracted, then if the language used in the said provisions do not leave any discretion in authority in the matter of imposition of penalty, penalty is to be imposed in terms of the said provision. However, if any*



*discretion is left, then the said quasi judicial discretion is to be exercised reasonably. Before levying penalty, the authority is required to find out whether there was any failure referred to in the concerned provision and the same was without a reasonable cause. The initial burden is on the assessee to shown that there existed reasonable cause, which was the reason for the failure referred to in the concerned provision. Thereafter the authority has to consider the explanation offered by the assessee for failure and whether it constitutes a reasonable cause. "Reasonable cause" means an honest belief founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinarily prudent and cautions man, to come to the conclusion that the same was the right thing to do. Only if it found to be frivolous, without substance or foundation, the question of imposing penalty would arise."*

19. In backdrop of the above judgment, I am not convinced by the justification/reason submitted by the appellant for failure to pay service tax on construction service despite they were registered with service tax Department. One can have bona fide doubt due to any decision of any appellate authority holding that service tax was not payable or any instructions / Circular issued by the Board on the subject matter. However, the appellant fails to stand justified on the grounds given under the appeal memo and as to why they did not pay service tax. After carefully analyzing the facts of the case vis-à-vis the appeal memorandum, I have come to conclusion that the failure on the part of the appellant of not depositing service tax was not caused by any reasonable cause. I rely on the Order passed by the Hon'ble CESTAT, Chennai, in the case of TVS Motor Co. Ltd. reported in 2012 (28) S.T.R. 127 (Tri. - Chennai), held as under:

*"13. So far as ground of no penalty advanced by learned counsel is concerned there is nothing on record to show that the appellant avoided its liability bona fide when it is an established business concern with vast experience in application of provisions of Finance Act, 1994. Its returns did not disclose bona fide omission. Rather facts suggest that knowable breach of law made the appellant to suffer adjudication. Accordingly, no immunity from penalty is possible to be granted on the plea of*



*tax compliances made which was found to be a case no payment of tax on the impugned services provided during the relevant period."*

20. Considering the facts of the case and evidences available on record, I hold that the present case does not merit invocation of provisions of Section 80. This is the case of malified mis-interpretation of law. Society and M/S SSC have colluded to evade service tax by devising factious agreement. I therefore do not subscribe to the contention of the appellant and reject the same being devoid of merits.

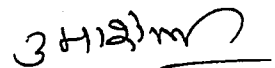
21.1 In the present case, non payment of service tax on construction service by the appellant was unearthed during preventive raid and subsequent inquiry undertaken by the Department. Had it not been detected by the Department, the said duty evasion would have gone unnoticed. I therefore hold that, the adjudicating authority was justified in invoking extended period of limitation and imposing all penalties under FA, 1994.

21.2 I hold that Service tax on amount received from buyers as service provider-[65(105)(zzq) ,65(105)(zzzh), Section 66E(b) of FA, 1994] and Service tax of GTA is required to be paid by M/S SSC as a service receiver in terms of Notification 20/2012-ST r/w 2(d)(1)(B) on reverse Charge, is payable along with interest by appellant.

22. In view of foregoing discussion, I uphold the OIO and reject the appeal filed by Shyam Shukan Corporation.

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

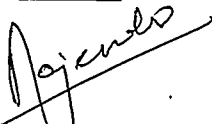
23. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

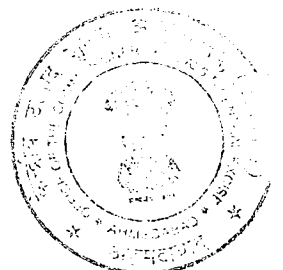
ATTESTED



(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD.



By R.P.A.D.:

To,

M/s . Shyam Shukan Corporation,  
Gandhinagar- Koba Road,  
Shyam Shukan Residency,  
Bhaijipura Patiya, Gandhinagar

Copy To:

The Chief Commissioner, Central Tax, Ahmedabad.

The Commissioner Central Tax, Gandhinagar, Custom House Ahmedabad-.

The Additional Commissioner, Central Tax , Gandhinagar, Custom House  
Ahmedabad

The Asst. Commissioner, Gandhinagar Division, Gandhinagar

The Asst. Commissioner(System), Gandhinagar, Hq, Custom House  
Ahmedabad.

Guard File.

P.A. File.

