

	केन्द्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS) CENTRAL TAX	
वस्तु एवं सेवा कर भवन	GST Building-7 th Floor Near Polytechnic Ambavadi, Ahmedabad 380015	
सप्तमी मजिल पॉलिटेक्निक के पास		
आम्बावाडी, अहमदाबाद-380015		
☎ 079-26305065		☎ 079-26305136

क फाइल संख्या : File No : V2/91/GNR/2018-19

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ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-157-18-19

दिनांक Date : 18-12-2018 जारी करने की तारीख Date of Issue:

9/1/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : AHM-ST-003-JC-AKS-025-17-18 दिनांक : 28-03-2018 से सृजित

Arising out of Order-in-Original: AHM-ST-003-JC-AKS-025-17-18, Date: 28-03-2018
Issued by: Joint Commisisoner, CGST, Div:RRA, HQ, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Hindustan Security & Detectives

C. file

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 पूर्वोक्त 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।

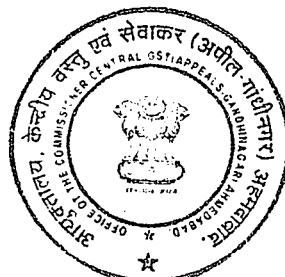
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 प्रकिया 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 गाल 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 विल्ट 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- षोबी/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 परिचम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

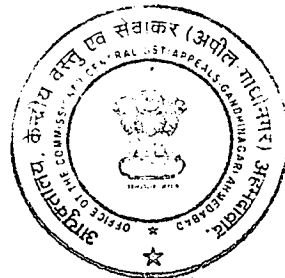
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-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 रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 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 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 पढी कार्य से बचने के लिए यथार्थिथि 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 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 lacs fee of Rs.100/- for each.



(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथार्थिनि 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 13 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 रुपए 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 अर्ज़ी एवं अपील को लागू नहीं होगा।

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:

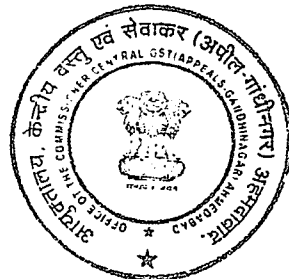
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/ Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



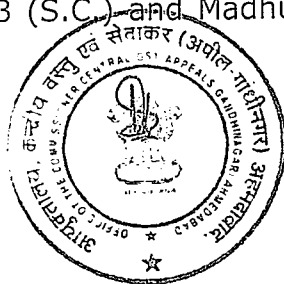
ORDER IN APPEAL

M/s. Hindustan Security and Detectives, Plot No. 575, Sector 30, Gandhinagar (*hereinafter referred to as 'appellantss'*) have filed the present appeal against the Order-in-Original number AHM-ST-003-JC-AKS-025-17-18 dated 28.03.2018 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, CGST & Central Excise, Gandhinagar Commissionerate (*hereinafter referred to as 'adjudicating authority'*). Appellantss hold ST registration for providing the taxable services.

2. The facts of the case, in brief, are that it was noticed on the basis of the data provided by the third party sources that the appellantss were indulging in evasion of service tax by not paying appropriate service tax on the value of taxable services rendered by them and without filing ST-3 returns. Investigations were carried out and after investigations, a show cause notice dtd. 15.04.2016 was issued proposing demand of service tax of Rs. 1,53,21,910/- on security services, Rs. 1,02,835/- on renting of immovable property services and of Rs. 12,33,502/- on Intellectual Property Services; proposed imposition of penalties and recovery of service tax with interest. After recording findings on the merits of the case, the adjudicating authority, vide the impugned order, confirmed the demand of service tax of Rs. 1,53,21,910/- on security services and the demand of Rs. 1,02,835/- on renting of immovable property services; dropped the demand of Rs. 12,33,502/- on Intellectual Property Services; imposed penalties under various sections of the Finance Act, 1994 (for brevity 'the Act') and imposed penalty of Rs. 19,98,449/- under Section 78 (1) of the Act.

3. Being aggrieved by the confirmation of demands and imposition of penalties vide the impugned order, the appellantss have preferred this appeal wherein it is contended that-

- a) the impugned order is vague and cryptic as it has been passed by neglecting the relevant facts and provisions of law submitted with the reply of show cause notice and no allegations have been leveled against the appellantss. They rely on the case laws of CCE vs. Brindavan Beverages P Ltd. - 2007 (213) ELT-487 (S.C.), Royal Oil Field Pvt. Ltd. vs. UOI - 2006 (194) ELT-385 (Bom.) and B. Lakshmidhand vs. Government of India - 1983 (12) ELT-322, Collector of C.Ex. vs. H.M.M. Ltd. - 1995 (76) ELT-497 (S.C.), Amrit Foods vs. CCE - 2005 (190) ELT-433 (S.C.) and Madhur Hosiery Ind. vs. CCE - 2006 (200) ELT-147;



- b) That no service tax can be demanded from them when no service is provided by them;
- c) Prior to 01.07.2012, services of the appellants did not fall under the definition of "security agency" as 'Person' was not defined under the Finance Act, 1994 prior to 01.07.2012;
- d) The definition of security services covers the activities in relation to the security of the property whereas they are engaged in providing direct manpower/security services to various clients. They seek support from the case law of Home Solution Retail India Ltd. vs. Union of India - 2009 (14) STR-433 (Del.);
- e) The demand raised under the category of security agency service for the period of July, 2012 to March, 2015 is not wholly sustainable in view of Notification No. 45/2012 dtd. 07.08.2012. as per this notification, their service tax liability is restricted to 25% of the tax in case services are provided to any body corporate entities;
- f) The expenses incurred by them on the salary of its staff are deductible from the taxable income in view of the provisions of Section 67 of the Finance Act and the Notification No. 12/2006-ST dtd. 19.04.2006. They seek support from the case laws of Intercontinental consultants vs. Union of India - 2013 (029) STR-0009 (Del.), Bhaven Desai vs. Commissioner of Service Tax, Mumbai - 2016 (043) STR-0235 (Tri.Bom.), P.S.Murugesan vs. CCE - 2017-TOIL-3918-CESTAT-Madras;
- g) the department cannot issue order solely on the basis of third party statement and without examining the books of accounts of the appellants. They rely on the case law of Sharma Fabricators and Erectors Pvt. Ltd. vs. CCE, Allahabad - 2017 (5) GSTL-96 (Tri.Allh.);
- h) no demand is sustainable under the category of 'renting of immovable property' as it is taxable only when it is rented for use in the course or furtherance of business or commerce whereas their property was used for residential purposes only;
- i) there is no suppression of facts as they have always cooperated with the department and each and every information sought by the department was provided. They seek reliance on the case law of M/s Anand Nishikawa Company Ltd. vs. Commissioner of C.E., Meerut - 2005-TOIL-118-SC-CX and Padmini Products Ltd. vs. CCE - 1989 (43) ELT-195 (S.C.), CCE vs. Chemphar Drugs & Liniments- 1989 (40) ELT-276 (S.C.);



j) no penalty can be imposed under Sections 77, 78 and Section 80 will apply.

4. Personal hearing in both the cases was held on 20.11.2018 in which Shri Pranav Shridhar, Chartered Accountant appeared before me and reiterated the grounds of appeal. He submitted that all service receivers were PSU/Govt. organisations and payment of salaries of manpower supplied were received on reimbursement basis. He also pointed out para D.7, D.8 & page 168 and 169 of grounds of appeal.

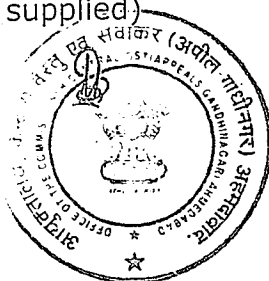
5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellantss at the time of personal hearing.

6. I find that the issue to be decided in this appeal is whether service tax has been correctly demanded and penalties imposed when the appellantss did not file required returns and did not pay service tax on the taxable service for which they were registered.

7. First of all, I take up the plea put forth by the appellants that the impugned order is vague and cryptic as it has been passed by neglecting the relevant facts and provisions of law submitted with the reply of show cause notice and no allegations have been leveled against the appellantss. While perusing the show cause notice and the impugned order, I find that the allegations have been clearly detailed and specifically given and the concerned sections which have been alleged to have been contravened have also been mentioned. I also find that detailed findings have also been given by the adjudicating authority as per issues involved. I therefore do not find any merit in the contention that the impugned order is vague and cryptic.

8. Now I take up the other contention of the appellantss that prior to 01.07.2012, services of the appellantss did not fall under the definition of "security agency" as 'Person' was not defined under the Finance Act, 1994 prior to 01.07.2012. For ease of understanding, I go through the definition of the 'Security Agency' given in the Section 65 (94) of the Act which is as under:

"65 (94): 'security agency' means any person engaged in business of rendering services related to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel." (emphasis supplied)

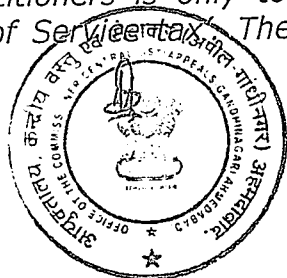


any person also and includes the services of providing security personnel. I therefore find no force in the contention and therefore reject the same.

10. Now I take up the contention of the appellants that they had provided services to the body corporates and therefore they had limited service tax liability. I find that the adjudicating authority in the para 15.3.6 and 15.3.7 has given findings that he carried out investigation about status of the six units on the website of the Govt. of india company affairs and has given detailed analysis. Since it is a matter of factual verification so I find no reason to brush aside the investigation by the adjudicating authority. Moreover the appellantss have not provided any documentary evidence to support their contention. They have given TAN numbers of the four units and I find that the TAN number is merely for those who have to deduct tax at source and having a TAN does not say anything whether the unit is body corporate or not.

11. Now I consider the contention raised by the appellantss that the expenses incurred by them on the salary of its staff are deductible from the taxable income in view of the provisions of Section 67 of the Finance Act and the Notification No. 12/2006-ST dtd. 19.04.2006. I find that this same issue came to be dealt with in the case law of 2012 (28) S.T.R. 3 (Ker.) in the High Court of Kerala in the case of Security Agencies Association Vs. Union Of India and while dealing with the issue, the Hon'ble Court has observed which I quote as under:

"14. The contention of the petitioners that they are virtually 'Man Power Recruiting Agents' and that their service is to be valued on the quantum of the commission they receive is wrong and unfounded. As mentioned hereinbefore, Man Power Recruiting Agency service is a separate entity which was brought within the Service Tax Net w.e.f. 7-7-1997 as per the Finance Act, 1997, whereas the Security Agency Service was brought in for the first time only w.e.f. 16-10-1998, as per the Finance Act, 1998. Both the above terms have been separately defined under Section 65. In the case of the latter, the Security Agency is the 'Employer' of the security personnel deployed to cater to the requirements of the service receivers, for which the service receivers effect the payment to the service providers, as per the terms of the contract. The 'Master and Servant relationship is between the Security Agency and the Security Personnel engaged and not between the Service Receivers and the Security Personnel. The service providers like the petitioners are very much authorised and entitled to pass on the liability towards salary and statutory payments to the 'Service Receivers' by raising the Bills including such amounts payable as Service tax. As such, they cannot be stated as aggrieved in any manner with regard to the liability imposed under the Statute and they cannot be stated as a loser in this regard. The role of the Security Agencies like the petitioners is only to act as 'agents' in the matter of collection of Service tax. The liability to pay service



tax cast upon them under Section 68 of the Act, in turn could be passed on, to be satisfied by the 'Service Receivers'."

As discussed and held by the Hon'ble court, I also hold that the payments made towards the salary cannot be claimed as deduction from the gross value for calculation of service tax liability and I therefore reject the contention of the appellantss in this regard. Section 65 A clearly provides that it is the gross amount charged to the service recipient which is to be considered for calculation of service tax liability. The case laws cited by the appellantss in their support are not of any help to them as the case laws deal with the situation in which reimbursable expenditure like hotel charges etc. are excluded from the value of service.

12. Now I take up the issue of service tax liability under the category of 'renting of immovable property'. The appellantss have contended that no demand is sustainable under the category of 'renting of immovable property' as it is taxable only when it is rented for use in the course or furtherance of business or commerce whereas in their case, the property was used for residential purposes only. I find that this issue is dependent on documents and it is the appellantss who have to prove beyond doubt that the property was used for residential purpose. I have gone through the impugned order and have perused the findings of the adjudicating authority. The adjudicating authority has discussed at length that the appellantss have not produced any documents in support of their contention. There is a discussion of one document allegedly signed by the Chairman of the housing society where the residential property is situated but it is not carrying any name and date so it cannot be accepted as evidence. In para 15.5.4 of the impugned order, the adjudicating authority has noted that the proprietor of the appellants firm was never a resident of the society and had never approached them to become a member. On being enquired from the neighbours in that society, it was learned that the said premises was being used for operating his own business. The second premises also carries the address in the letter head of the appellants firm and it clearly establishes the fact that the said premises are being used for commercial purpose only. In view of the fact that the appellantss have not produced any evidence to refute the allegations, the appeal in this regard is rejected and the impugned order needs no interference.

13. Another ground raised by the appellants is limitation and it has been contended that non-payment of tax or non-filing of return does not amount to suppression of facts. The argument seems to be far-fetched since Section 70 of the Finance Act read with Rule 7 of the Service Tax Rules, 1994 casts an onus on the assessee to correctly assess the tax dues and reflect the



same in the periodical returns. In the instant case, the appellants have failed to file the periodical returns and thereby suppressed the taxable value by such an act. Thus, suppression of material facts regarding the taxable value is very much on record and as such the extended period of limitation is rightly invocable.

14. Now I take up the contention raised by the appellants that the department cannot issue order solely on the basis of third party statement and without examining the books of accounts of the appellants. They rely on the case law of *Sharma Fabricators and Erectors Pvt. Ltd. vs. CCE, Allahabad - 2017 (5) GSTL-96 (Tri.Alld.)*. In this regard I find that the Tribunal has held as quoted below:

5. Having considered the rival contentions and on perusal of record, we find that in the cases of both the Show Cause Notices dated 20-4-2009 & 13-10-2009 there is no whisper of examination of books of account maintained by M/s. Sharma to arrive at the value of consideration received by them. Surprisingly the draft audit report was the relied upon document. It may be worth mentioning here that the purpose of audit report is to point out any discrepancy to the notice for examination by the executive and it is the duty of executive to examine the records and examine the objection raised with reference to the records and facts of the case and take a view whether there is a sustainable case for issue of Show Cause Notice. Such vital aspects of framing of charges have been missing in the present case. The charges in the Show Cause Notice have to be on the basis of books of account and records maintained by the assessee and other admissible evidence. The books of account maintained by M/s. Sharma were not looked into for issue of abovesated two Show Cause Notices. Therefore, the transactions recorded in the books of account cannot be held to be contrary to the facts. Therefore, we hold that the said Show Cause Notices are not sustainable. Since the said Show Cause Notices are not sustainable, appeal bearing No. ST/890/2010 filed by M/s. Sharma is allowed and appeal bearing No. ST/949/2010 filed by Revenue is dismissed. Miscellaneous Applications also stand disposed of. Cross Objection also disposed of. (emphasis supplied)

In the case cited by the appellants, the Tribunal was dealing with a case in which books of accounts of the petitioner party were not examined and the third party data was used to raise demand. In the instant case, the para 2 and 3 of the show cause notice dtd. 15.04.2016 discusses the documents of the appellants which were examined and consequent to that examination, the show cause notice was issued culminating into impugned order. I therefore find no substance in the contention of the appellants and I hold firmly that the issue is not based on third party data only and the various records and documents submitted by the appellants have been examined and after that the demand raised. I therefore reject the contention of the appellants.



15. As regards the imposition of penalties and allegation of suppression of facts are concerned, I find that the matter as discussed clearly establishes the grounds suitable for confirmation in the impugned order and I therefore find no reason to interfere in the impugned order.

16. In view of the above discussion, the appeal is rejected and the impugned order is upheld.

17. The appeal filed by the appellants stand disposed off in above terms.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

U. Shankar

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)
अहमदाबाद

दिनांक:

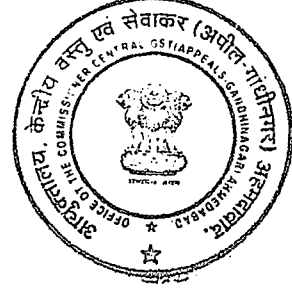
सत्यापित

R.P.A.D.
(धर्मद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To,

M/s. Hindustan Security and Detectives,
Plot No. 575,
Sector 30,
Gandhinagar



Copy to:

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Gandhinagar,
- (3) The Joint. Commissioner, CGST, Gandhinagar,
- (4) The Dy./Astt. Commissioner (Systems), CGST, Gandhinagar,
- (5) Guard File,
- (6) P.A. File.

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