



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

GST Building, 7<sup>th</sup> Floor,,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015

सप्तवीं मंजिल, पॉलिटेक्निक के पास,

आम्बावाडी, अहमदाबाद-380015



: 079-26305065

टेलीफैक्स : 079 - 26305136



क फाइल संख्या : File No : V2/8/RA/GNR/2019-20/14840 TO 14844

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-76-19-20

दिनांक Date : 19-03-2020 जारी करने की तारीख Date of Issue:

आयुक्त (अपील) द्वारा पारित

Passed by Shri Akhilesh Kumar, Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : AHM-ST-003-AC-RD-19-20

दिनांक : 09-07-2019 से सृजित

Arising out of Order-in-Original: AHM-ST-003-AC-RD-19-20, Date: 09-07-2019 Issued by: Assistant Commissioner, CGST, Div: Kalol, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. UGVCL

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।

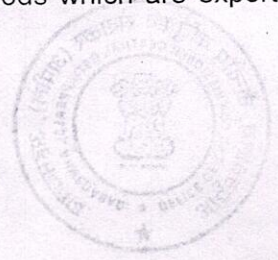
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case,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

घ 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- 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 पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण 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 रुपये 5 लाख या उससे कम है वहां रुपये 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 5 लाख या 50 लाख तक हो तो रुपये 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 50 लाख या उससे ज्यादा है वहां रुपये 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 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 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, 1998 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 अपील 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.

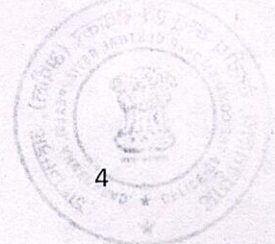




**ORDER-IN-APPEAL**

This order arises out of an appeal filed by the Assistant Commissioner, Central GST & Central Excise, Kalol Division, Gandhinagar Commissionerate (in short '*appellant*') in terms of Review Order No. 06/2019-20 passed under Section 84 (1) of the Finance Act, 1994 (in short '*the Act*') by the Review Authority against Order-in-Original No. AHM-ST-003-AC-RD-19-20 dated 09.07.2019 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST & Central Excise, Gandhinagar (in short '*the adjudicating authority*') in the case of M/s Uttar Gujarat Vij Company Ltd. (UGVCL), Kalol Division, 66 KV Compound, Mahendra Mill Road, Kalol, Gandhinagar (in short '*respondent*').

2. The facts of the case, in brief, are that the respondent are engaged in the business of electricity sub-transmission, distribution and retail supply of electricity to the consumers of their licensed area. An investigation done by the DGCEI revealed that the respondent was issuing electricity consumption charges bills to their consumers and has appointed various Gram Panchayats as collection agency to collect the amount of such bills from the consumers falling under their jurisdiction and for this service by the Gram Panchayats, they were paid commission by the respondents. It was contended that the activity of collection of payments of electricity consumption charges from the customers for the respondent by such Gram Panchayats was amounting to "service" as defined under Section 65B(44) of the Finance Act, 1994 (in short '*the Act*') and the said service being not under Negative List mentioned under Section 66D of the Act and not being exempt from payment of service tax, was taxable and service tax was payable on the consideration received as commission by the Gram Panchayats. However, the service provider, various Gram Panchayats, being a "local authority" as defined under Section 65B(31) of the Act, the liability to pay service tax on such services provided, was with the service recipient i.e., the respondent under Reverse Charge Mechanism in terms of sub-rule (d) (i) (e) of Rule 2 of the Service Tax Rules, 1994 and Notification No. 30/2012-ST dated 20.06.2012 as amended. However, it was found that the respondent was not paying service tax on commission being paid by them to various Gram Panchayats falling under their jurisdiction for receiving electricity bill collection services. On being pointed out during investigation, the respondent immediately paid due service tax amounting to Rs. 5,77,789/- covering period from July, 2012 to September 2016 under RCM along with interest before issue of Show Cause Notice (SCN). However, a SCN dtd.17.04.2017 was issued to the respondent for demand of service tax along with interest and imposition of penalty. The adjudicating authority vide impugned order confirmed the demand of Rs. 5,77,789/- along with interest under proviso to Section 73(1) and 75 of the Finance Act, 1994 respectively, appropriated the amount already paid against service tax and interest. However, the adjudicating authority refrained from





imposition of any penalty under Section 78 of the Act in line of order of Commissioner (Appeals) OIA No.AHM-EXCUS-002-APP-37-17-18 dated 10.08.2018 in a similar matter of the similar other Division, i.e., Bopal Division of UGVCL.

3. Aggrieved with the non-imposition of penalty under Section 78 of the Act vide the impugned order, the appellant Department has filed the present appeal mainly on the following grounds:

- (i) In the instant case, the non-payment of service tax by the UGVCL came to the notice of department on investigation conducted by the DGCEI. If DGCEI would have not detected the evasion, the UGVCL would have never paid the service tax under RCM on the commission amount paid various Gram Panchayats. Suppression on the part of UGVCL is clearly established in this case. Therefore, the penalty under Section 78 of the Act is imposable on them;
- (ii) The provisions of Section 78 prescribe a mandatory penalty equal to the duty not levied or paid or has been short paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement, suppression of facts or contravention of any of the provisions of the act or the rules made there-under with intent to evade payment of duty. Nowhere in the provision any reduction or waiver has been provided in the Section;
- (iii) The Commissioner (Appeals) Order No. AHM-EXCUS-002-APP-37-17-18 dated 10.08.2018 in a similar matter of Bopal Division of UGVCL, based on which the adjudicating authority has dropped the penalty, has not been accepted by the Department in principle, but due to lower monetary ground, the issue has not been contested further.
- (iv) The adjudicating authority has committed gross error while holding that penalty under Section 78 ibid could not have been imposed in view of the fact that the assessee had paid the Service Tax even before issuance of the SCN in terms of Section 80 and 73 of the Act. The appellant relied upon the Hon'ble High Court of Gujarat's decision in the case of IWI Crogenic Vaporization System (I) P. Ltd. Vs. CCE [2017 (47) STR 209 (Guj.)] in support of their contention;
- (v) The Commissioner (Appeals), in a similar case involving another Government Undertaking viz. ONGC, wherein they had paid the service tax (detected by Audit) with interest before issuance of SCN, had confirmed the penalty under Section 78 of the Act;
- (vi) In support of their contention that penalty under Section 78 is imposable in the case, the appellant has relied upon the following case laws:
  - (a) UOI Vs. Dharmendra Textile Processors [2008 (231) ELT 3 (SC)];
  - (b) Kedia Business Centre Vs. CCE [2009 (15) STR 550 (Tri.- Mumbai)];
  - (c) Visranthi Builders Vs. CESTAT, Chennai [2015 (39) STR 785 (Mad.)]; and
  - (d) Suganthi Travels Vs. CCE, Trichy [2011 (22) STR 72 (Tri.- Chennai)]





4. The respondent vide their letter dated 09.12.2019 has submitted a Memorandum of Cross-Objections on the appeal filed by the department, the main contentions/objections of which are as under:

- They are Gujarat Govt. owned public sector undertaking. Hence, there cannot be any intention to tax evasion and its employees cannot derive any personal benefits by suppression of taxable value and non-payment of service tax;
- They were under the bonafide belief that Gram Panchayats are Government Authority and further since payments was related to collection of electricity charges which was exempted services under the Act, no service tax was payable under reverse charge on commission paid to Gram Panchayats;
- On being came to know, upon enquiry by DGCEI, that Gram Panchayats being local authority as defined under Section 65B(31).of the Act, they were the person liable to pay service tax on services received from Gram Panchayats and commission paid to them in terms of sub-section (d) (i) (E) of Section 2 of Service Tax Rules, 1994, they had immediately initiated process for payment of service tax voluntarily all past periods with applicable interest and paid the service tax payable was paid by them even before recording of statement of their General Manager (Finance) under Section 14 of the Central Excise Act, 1944;
- In the absence of any malafide intention to evade payment of tax, the penalty under Section 78 of the Act is not imposable in their case.
- The respondent relied upon the following case laws in support of their contention that in case of government undertakings, no malafide intention can be alleged:
  - (a) Hon'ble Gujarat High Court's decision in the case of CCE, Vadodara-II Vs. BSNL in Tax Appeal No.891 of 2011;
  - (b) Tamilnadu Housing Board Vs. CCE, Madras [1994 (74) ELT 09 (SC)]; and
  - (c) Surat Municipal Corporation Vs. CCE, Surat [2006 (04) STR 044 (Tri.-Delhi)];
- The respondent also relied upon the Commissioner (Appeals), Ahmedabad's different Orders on similar issue in the case of other 15 field offices of UGVCL wherein the penalties imposed under Section 78 of the Act were set aside. It is further submitted that in none of these orders, the department has filed any appeal so far.
- In the case laws relied upon by the department, none of the assessees are PSU like UGVCL; and
- In the case of Commissioner (Appeals) Order in the case of ONGC referred by the department, the facts were not similar as of UGVCL as UGVCL had never





deducted or paid service tax on Collection Charges paid to any of the Gram Panchayats.

5. Personal hearing in the matter was held on 28.02.2020. Shri Ashok Chhajed, Chartered Accountant, appeared on behalf of the respondent and reiterated the submissions made in the Cross Objections dated 09.12.2019. No one appeared from the appellant's side.

6. I have carefully gone through the facts of the case, submissions made in the appeal memorandum, cross-objections filed by the respondent and submissions made by the respondent during personal hearing and evidences available on records. It is observed that the limited issue to be decided in the case is as to whether under the facts and circumstances, penalty under Section 78 of the Act is imposable against the respondents or not. It is the case of the appellant department that the non-payment of service tax by the UGVCL came to the notice of department on investigation conducted by the DGCEI and had this not been detected by the DGCEI, the UGVCL would have never paid the service tax under RCM on the commission amount paid to various Gram Panchayats and as such suppression on the part of UGVCL is clearly established in this case and therefore, the penalty under Section 78 of the Act is imposable on them. Whereas the respondent's contention is that penalty is not imposable under Section 78 of the Act when there is no intent to evade payment of duty as theirs being Govt. of Gujarat public sector undertaking.

7. I find that the adjudicating authority has refrained from imposing penalty under Section 78 of the Act in view of the Commissioner (Appeals) Order in a similar matter of other division, Bopal Division, of UGVCL, wherein the Commissioner (Appeals) has set aside the penalty imposed under Section 78 of the Act by the adjudicating authority holding that there is no intention of evasion of service tax of the appellant. The assessee involved and the facts of the case being similar in both the cases and there being a decision by the appellate authority on the issue under dispute, the adjudicating authority has no other option but to follow the decision of the higher appellate authority in view of the principles of judicial discipline and hence for that matter, I do not find any legal infirmity in the decision taken by the adjudicating authority in refraining from imposing any penalty under Section 78 of the Act.

8. Coming to the contentions of the department on imposition of penalty under Section 78 of the Act, I find that for imposing penalty under Section 78 of the Act, there should necessarily be an intention on the part of the assessee to evade payment of tax in the case. Unless such a malafide or deliberate intention is proved, no penalty is imposable under Section 78 of the Act. It is a well settled legal position that for imposing penalties under provisions like Section 11AC of the Central Excise Act or Section 78 of





the Act, presence of mens rea is a mandatory requirement and in the absence of the same, imposition of penalty under such Sections is unjustified, in view of the decisions of the Hon'ble Supreme Court in the cases like Union of India Vs. Rajasthan Spinning and Weaving Mills (2009) 13 SCC 448, Commissioner of Central Excise, Chandigarh Vs. Pepsi Foods Ltd. 2010 (260) E.L.T. 481 (S.C.), Commissioner of Central Excise, Calcutta-II Vs. Indian Aluminium Company Limited (2010) 15 SCC 167, and Commissioner of Central Excise, Vapi Vs. Kisan Mouldings Limited (2010) 15 SCC 100. Though the said decisions of the Apex Court were in the context of penalty imposable under Section 11 AC of the Central Excise Act, the same are equally applicable in the case of penalty imposable under Section 78 of the Act also as provisions under Section 11AC of the Central Excise Act of 1944 and Section 78 of the Finance Act, 1994, are *pari materia*.

8.1 I find that the respondent in their submissions from the very beginning has contended that the service tax payable on the issue was not paid by them as they were under bonafide belief that Gram Panchayats, to whom they had entrusted the work of electricity bill collection on commission basis, are Government Authority and further since payments was related to collection of electricity charges which was exempted services under the Act, no service tax was payable under reverse charge on commission paid to Gram Panchayats. This bona fide on their part was also supported by the fact that the service provider viz. Gram Panchayats had not indicated the liability of service tax on the services provided by them in the bills raised by them to the respondents. This has been clearly brought on record in the investigation in the case. Rule 4A(1) of the Service Tax Rules, 1994 clearly provides that every person providing taxable service shall issue an invoice or a bill in respect of taxable service provided by them and such an invoice or bill shall contain among other details, the service tax payable thereon. Therefore, the facts in the case clearly reveals that the respondents were simply unaware about their liability but as soon as they came to know about their liability they have readily paid the service tax along with applicable interest. They have proved their case that there was no ulterior motive. It is a case of omission on their part born out of a bona fide belief. On the other hand, the department could not establish or put any evidence on records which suggest that there was an intention to evade payment of service tax or the non-payment of service tax was a conscious and/or deliberate act of wrong doing and/or deception, in the facts of the case. Further, it is not a fact in dispute that the respondent is an undertaking of the State Government of Gujarat and it has been held by various courts of law that malafide intention can not be attributed to government undertakings as it cannot be imagined that the Government itself is involved in suppression of fact with intent to evade service tax. The decisions of various benches of the Tribunal in the following case laws hold similar view:





- (i) BSNL Vs. Commissioner of Central Excise, Ahmedabad  
[2009 (14) STR 359 (Tri.-Ahmd.)]
- (ii) Karnataka State Tourism Development Corporation Ltd. Vs. C.S.T., Bangalore  
[2011 (21) STR 518 (Tri.-Bang.)]
- (iii) Tamilnadu Tourism Development Corporation Ltd. Vs. C.S.T., Chennai  
[2018 (19) GSTL 60 (Tri.-Chennai)]
- (iv) Tamilnadu State Transport Corporation (Coimbatore) Ltd. Vs. Commissioner of Customs, C.Ex. & S.T., Coimbatore  
[2019 (28) GSTL 225 (Tri.-Chennai)]
- (v) Municipal Corporation, Rajamundry Vs. C.S.T. & C.Ex., Visakhapatnam  
[2017 (5) GSTL 78 (Tri.-Hyd.)]
- (vi) Rajdhani Krishi Upaj Mandi Samiti Vs. Commissioner of C.Ex. & S.T., Jaipur-I  
[2019 (24) GSTL 623 (Tri.-Del.)]
- (vii) Karad Nagar Parishad Vs. Commissioner of C.Ex. & S.T., Kolhapur  
[2019 (20) GSTL 288 (Tri.-Mumbai)]
- (viii) Brihanmumbai Municipal Corporation Vs. C.S.T  
[2017-TIOL-1846 CESTAT-Mum.]
- (ix) Surat Municipal Corporation Vs. CCE, Surat  
[2006 (04) STR 044 (Tri.-Del.)]

The case laws relied upon by the department also stand distinguished for the very same reason discussed above as none of the assessee involved in the said case laws relied by the department were government undertakings, as in the present case. The Commissioner (Appeal)'s decision in the case of ONGC relied by the department does not advance their contention much in view of the higher judicial forum's decisions referred above in the matter. Having regard to the above facts and ratio of above decisions, no deliberate or willful intention to evade payment of service tax seems to be proved against the respondent in the facts of the present case and in the absence of such a mala fide intention, the penalty under Section 78 of the Act is not imposable.

8.2 Further, as discussed earlier, in the present case, the respondents were under a bona fide belief that they were not liable to pay Service Tax on the impugned services received by them. The conduct of the respondent of prompt payment of Service Tax immediately after gaining knowledge about its liability to pay Service Tax, is sufficient reason to believe that they did not have an intention to evade the payment of Service Tax. Since the non-payment of service tax was on account of a bona fide belief without any intention to evade service tax, the respondent had shown reasonable cause for failure to discharge its service tax liability and was therefore, also eligible to relief of penalty in terms of section 80 of the Act and Section 73(3) [Explanation 2) of the Act.

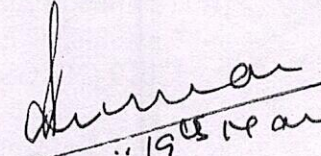




8.3 In view of the above discussions, it is to be held that the contentions raised by the department on the merit of the issue are not sustainable in law on facts and merits and hence deserves to be rejected.


9. Accordingly, I do not find any reason to interfere with the decision taken by the adjudicating authority and therefore, I upheld the impugned order and reject the appeal filed by the appellant being devoid of merits.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeals filed by the appellant stand disposed off in above terms.

  
(Akhilesh Kumar)  
Commissioner (Appeals)

Date: 19.03.2020.

Attested:

  
(Anilkumar P.)  
Superintendent (Appeals),  
CGST, Ahmedabad.



**BY SPEED POST**

To

1. The Assistant Commissioner,  
CGST & Central Excise, Division-Kalol,  
Gandhinagar Commissionerate.
2. M/s Uttar Gujarat Vij Company Ltd. (UGVCL)-Kalol Division,  
66 KV Compound,  
Mahendra Mill Road,  
Kalol, Gandhinagar

**Copy to:-**

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar (RRA Section).
3. The Asstt. Commissioner (System), CGST, Gandhinagar.  
(for uploading OIA on website)
4. Guard file
5. P.A. file.

