



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय

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

वस्तु एवं सेवा कर भवन,

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015

GST Building, 7th Floor,,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015



: 079-26305065

टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : **V2/39/GNR/2019-20 / 15462 70 15458**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-32-2020-21**

दिनांक Date : 19.08.2020 जारी करने की तारीख Date of Issue: **21/08/2020**

आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **23/D/GNR/NK/2018-19**
दिनांक : **25/02/2019** से सृजित

Arising out of Order-in-Original: **23/D/GNR/NK/2018-19**, Date: **25/02/2019** Issued by:
Assistant Commissioner, CGST, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Veer Developers

Opposite Sukan Scheme, Village- Koba, Gandhinagar-382007.



ORDER-IN-APPEAL

M/s Veer Developers, Survey No.83, Opposite Sukan Scheme, Village-Koba, Gandhinagar-382007 [hereinafter referred to as "the appellant"] has filed following appeal against the Order-in-Original passed by the Assistant Commissioner, Central GST, Division-Gandhinagar, Commissionerate-Gandhinagar. The details of the said appeal are as under.

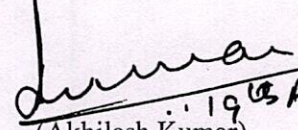
Appeal No	Orders-in-Original No.& Date	Amount involved-Rs.	Issue involved
V2/39/GNR/19-20	23/D/GNR/NK/2018-19 dated 25.02.2019	2,46,390/- Service Tax + interest 2,56,390/- Penalty	Non-payment of service tax on additional consideration received.

2. The appellant vide their letter dated 18.08.2020 has informed that they had opted for "Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 [for short-SVLDRS] for the issue under appeal and the designated committee has accepted their application under SVLDRS and issued discharge certificate to them in terms of provisions of Section 127 of the Finance (No.2) Act, 2019 and since the dispute is now resolved, they withdraw their appeal as the same becomes infructuous.

3. I find that as per provisions of Section 127 (6) of the Finance (No.2) Act, 2019, in respect of a declaration filed under SVLDRS which is accepted by the designated committee and issued discharge certificate, the appeal before appellate authorities challenging the issue/tax dues for which settlement is sought under SVLDRS, will be deemed to have been withdrawn. The relevant provisions of Section 127 (6) of the said Act is as under:

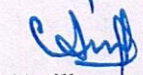
"(6) Where the declarant has filed an appeal or reference or a reply to the show cause notice against any order or notice giving rise to the tax dues, before the appellate forum, other than the Supreme Court or the High Court, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn. "

5. In view thereof, the appeal under consideration is to be considered as withdrawn. Accordingly, I dismiss the appeal as withdrawn.


(Akhilesh Kumar)
Commissioner (Appeals)
Date : 19.08.2020.
19th August, 2020

F.No. V2/39/GNR/19-20

Attested



(Anilkumar P.)
Superintendent (Appeals)
Central GST, Ahmedabad



R.P.A.D/Speed Post

To
M/s Veer Developers,
Survey No.83, Opposite Sukan Scheme,
Village-Koba, Gandhinagar-382007.

Copy to:-

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar Commissionerate.
3. The Assistant Commissioner, CGST, Division – Gandhinagar.
4. The Assistant Commissioner (Systems), CGST, Gandhinagar Commissionerate.
5. Guard file.
6. P.A.



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
वस्तु एवं सेवा कर भवन,
सह्याय मंजिल, पॉलिटेक्निक के पास,
आम्बावाडी, अहमदाबाद-380015

GST Building, 7th Floor,
Near Polytechnic,
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380015



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☎ : 079 - 26305136

- क फाइल संख्या : File No : V2/73/GNR/2019-20 / 1544 TO 1444
- ख अपील आदेश संख्या : Order-In-Appeal No. : AHM-EXCUS-003-APP-31-2020-21
दिनांक Date : 07.08.2020 जारी करने की तारीख Date of Issue: 13/08/2020
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-002-AC-RD-19-20
दिनांक : 26/08/2019 से सृजित
Arising out of Order-in-Original: AHM-ST-002-AC-RD-19-20, Date: 26/08/2019-Issued by:
Joint Commissioner, CGST, Gandhinagar Commissionerate, Ahmedabad.
- घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता
Name & Address of the Appellant & Respondent
M/s. Morakhia Copper & Alloys Pvt. Ltd
3429, GIDC Estate, Phase-IV, Chhatrai, Kalol, Gandhinagar-382729.

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 से प्रथम परन्तु 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 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 मामले 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 निर्यात 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- 35बी/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, बहूमाली 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 संबन्ध 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 पढी 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 not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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 हैं

- (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."



ORDER-IN-APPEAL

M/s. Morakhia Copper & Alloys Pvt. Ltd. (Unit-I), 3429, GIDC Estate, Phase-IV, Chhatral, Taluka-Kalol, Distt-Gandhinagar-382729 (hereinafter referred to as the “*appellant*”) has filed the present appeal against the Order-in-Original No. AHM-ST-002-AC-RD-19-20 dated 28.06.2019 (hereinafter referred to as the “*impugned order*”) passed by the Assistant Commissioner of CGST & Central Excise, Gandhinagar Commissionerate (hereinafter referred to as the “*adjudicating authority*”).

2. The facts of the case, in brief, are that the appellant is engaged in the manufacture of Copper Tube, Copper Rod, Copper Bar, Copper Flat etc. falling under Chapter Head 74 of the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as “*CETA*”) and was holding Excise Registration No. AAACM3439JXM001 and Service Tax Registration No.AAACM3439JST001. During the course of audit of financial records of the appellant, it was found that the appellant has not paid the service tax (i) amounting Rs.10,640/- under Legal Consultancy Service (ii) amounting Rs.2,383/- under Rent-a-Cab Service under reverse charge mechanism vide Notification No.30/2012-ST dated 20.06.2012 (applicable w.e.f. 01.07.2012) as amended. It was further found that they had not paid the late fee amounting to Rs.15,900/- on late filing of ST3 returns for the period April-2014 to September-2014, April-2015 to September-2015 and October-2015 to March-2016. An Audit Report No.ST-197/2016-17 dated 28.07.2016 was issued in this respect incorporating the above referred discrepancies.

3(i). Accordingly, a Show Cause Notice dated 06.09.2016 (hereinafter referred to as “*SCN*”) was issued by the Asstt. Commissioner of Central Excise, Circle-I, Audit-I, Ahmedabad proposing (i) demand of Service Tax to the tune of Rs.13,023/- (including Cess) under proviso to Section 73(1) alongwith interest under Section 75 of the Finance Act, 1994 (ii) recovery of Rs.15,900/- for late filing of ST3 returns under Section 70(1) of the Finance Act, 1994 read with Rule 7C(1) of Service Tax Rules, 1994. Penalty equivalent to the demand of service tax amount was also proposed to be imposed upon the appellant under Section 78 of the Finance Act, 1994.

3(ii). Adjudicating Authority granted the opportunities of hearing to the appellant on 07.03.2017, 20.03.2017, 30.03.2017, 10.04.2017, 05.05.2017,



29.05.2017, 08.12.2017, 11.09.2018, 25.03.2019 and 02.04.2019 which were not availed by them. Thus, on the basis of available records, adjudicating authority decided the matter on merits vide the impugned order and (i) confirmed the demand alongwith interest under Section 73(1) and Section 75 respectively (ii) imposed penalties upon the appellant under Section 76 and 78 of the Finance Act, 1994 and (iii) confirmed the demand of late fee under Section 70(1) of the Finance Act, 1994 read with Rule 7C(1) of Service Tax Rules, 1994.

4. Being aggrieved with the impugned order, appellant preferred an appeal on the grounds that :

- (i) the demand is not sustainable on ground of limitation;
- (ii) Annual Report comprising Balance Sheet are submitted to the department from time to time and therefore suppression of facts with intent to evade payment of tax can not be alleged against them. They rely on the case of M/s. GAC Shipping (India) Pvt. Ltd. cited at 2008(9)STR 524(Tri-Bang.) in this respect wherein it was held that the details of the expenditure incurred have been mentioned in the books of accounts of the applicant therefore there is no justification to hold that the applicant had suppressed facts with an intent to evade service tax.
- (iii) there was no need to suppress the facts with intention to evade service tax in as much as the service tax paid by them would have been available as cenvat credit to them and thus there is revenue neutrality. They rely on the case of M/s. Punjab Chemicals & Crop Protection Ltd. reported at 2017(47)STR 345(Tri-Chan.) wherein it is held that assessee disclosed the receipts of records payment of services which has been accepted by the Department and thus in that situation of revenue extended period of limitation is not invocable.
- (iv) in case of Matrix Telecom Pvt. Ltd. reported at 2013(32)STR 423 (Tri.-Ahmd.) the revenue neutrality was held in favour of assessee and penalties were set aside.
- (iv) in case of Jain Irrigation System Ltd. reported at 2015(40)STR 752(Tri.-Mumbai) also, the revenue neutrality was held in favour of assessee and penalties were set aside.
- (v) under third proviso to Rule 7C of Service Tax Rules, 1994, the central excise officer may deduce or waive the penalty where the gross amount of service tax payable is nil; there was no liability of paying service tax in respect of forward charge on their part.

5. Opportunities of Personal Hearing were accorded to the appellant on 27.02.2020, 20.03.2020, 25.06.2020, and on 21.07.2020. None appeared for on any given date nor any adjournment request was made by them. Therefore, I proceed to decide the appeal on merits and on the basis of available documents/records.

6. I have carefully gone through the facts of the case, grounds of appeal in the Appeal Memorandum and the records/documents available in the matter. It is observed that the issue to be decided in the present appeal is whether the appellant liable to pay the service tax on Legal Charges and Rent-a-Cab Service under



reverse charge in view of the Notification No.30/2012-ST as amended and whether the demand for extended period can be sustained. Further, whether the proposal for late fee recovery is sustainable.

7. The facts of the case reveal that the appellant were accorded dates viz. 15.06.2016, 23.06.2016 and 29.06.2016 to furnish their submission towards the audit queries raised by the Department. However, they did not file any reply or submission and remained silent. Further, the adjudicating authority granted the opportunities of personal hearing to them on 07.03.2017, 20.03.2017, 30.03.2017, 10.04.2017, 05.05.2017, 29.05.2017, 08.12.2017, 11.09.2018, 25.03.2019 and 02.04.2019 which were not availed by them. Thus, the adjudicating authority vide the impugned order decided the matter ex-parte. Before this authority also, neither they availed any opportunities of personal hearing granted to them nor sought any adjournment.

8. It is observed that the demand is raised in view of the Notification No.30/2012-ST dated 20.06.2012 (applicable w.e.f. 01.07.2012) as amended which had introduced the concept of payment of service tax by receiver of service under reverse charge mechanism. In the said Notification, the Table clearly shows the person liable to pay the quantum of service tax in respect of certain services. For the sake of convenience, the table is shown below :

Table

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
2	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
3	in respect of services provided or agreed to be provided by way of sponsorship	Nil	100%
4	in respect of services provided or agreed to be provided by an arbitral tribunal	Nil	100%
5	in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%
6	in respect of services provided or agreed to be provided by Government or local authority by way of support services excluding,- (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.	Nil	100%



Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
7	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business	Nil	100 %
	(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	60%	40%
8	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75 %
9	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%
10	in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%

Explanation-I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II. - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

9(i). The legal provisions enumerated in above table is clear enough to understand the person, who will be liable to pay the service tax and the percentage of share of service tax required to be paid by the said person. I find that the appellant in their appeal memorandum did not dispute the leviability of service tax on services in question. They have contended that the demand is hit by limitation and also that it was a case of revenue neutrality. I find that the appellant is in the tax regime since long and therefore it can not be believed that they were unaware about the legal provisions or they could not have understood that. Since the liability of service tax payment has been cast upon the Assessee being a service recipient. Government allowed them to take the cenvat credit of such tax amount paid by them being recipient of service.

9(ii). However, in no way that could mean that if they are eligible to get the cenvat credit of the amount so paid by them, they are not supposed to pay the service tax being recipient of service by claiming that the activity will become revenue neutral. Had it been so, the Government would not have incorporated the whole of such system under the law. The system incorporated is such that an Assessee has to pay the service tax first and then they were eligible to get/avail the credit of the tax paid by them. The Hon'ble CESTAT, Mumbai in case of Board of



Control for Cricket in India reported at 2019(29)GSTL 304(Tri-Mumbai) has held that

“if argument of revenue neutrality as permissible defense accepted, entire scheme of payment of taxes on reverse charge basis to become otiose”.

The Apex Court in case of Star Industries reported at 2015(324) ELT 656(SC) has also held that

“Demand – Revenue neutrality – Based on availability of cenvat credit – Plea by assessee taken in appeal goes against them – if exercise is Revenue neutral, then there was no need even to file appeal”.

9(iii). In view of above, it can be said that the concept of Revenue Neutrality can not become the ground to avoid service tax payment. The system of payment of service tax under reverse charge is introduced by the Government so that an assessee has to pay the service tax first as a recipient of service and then to take cenvat credit of the amount of the tax so paid by them as a recipient of service. As the appellant is holding the service tax registration, it can not be accepted that they are not aware of the service tax law. Had the Revenue Neutrality is accepted as a ground for not paying service tax as a recipient of service then the whole system of payment of service tax as a recipient of service will collapse and nobody will pay the service tax as a recipient of service for the reason being that such payment of tax is available to them as cenvat credit. The judgements of Hon'ble Tribunal and Hon'ble Supreme Court above also support this finding. Hence, I reject the contention of the appellant as legally untenable.

9(iv). I have gone through the case law of M/s. Matrix Telecom Pvt. Ltd. reported at 2013(32)STR 423 (Tri-Ahmd.) and observed that in that case there was confusion regarding service tax liability on an assessee under reverse charge mechanism and therefore penalties were set aside. However, in the case on hand, there is no confusion regarding tax liability as the Notification is quite clear. Further, in the case of Jain Irrigation Systems Ltd. reported at 2015(40)STR 752(Tri-Mumbai) as relied upon by the appellant, I observed that in that case the service tax and interest was paid after issuance of Show Cause Notice and hence the facts of the case is different from the case on hand.

9(v). From the above, it is clear that the appellant did not pay the service tax as service recipient which came to knowledge of the department only when the audit of the financial records carried out for the purpose of ensuing compliance of service tax liability. It is observed that the SCN has been issued on 06.09.2016 and



the period covered in respect of the service tax payment is within 30 month from 06.09.2016 which is available under Section 73(1) of the Finance Act, 1994. Therefore the SCN has been issued well within time.

The appellant had not made any declaration in ST3 returns. In the self assessment regime, the burden lies on the appellant to assessee their liability by themselves and pay the tax accordingly. I find that the Appellant failed to do so. Thus, the provisions of law regarding the demand alongwith interest and imposition of penalty (under Section 78) under the Act have been rightly invoked by the adjudicating authority in the present matter.

9(vi). For the imposition of penalty under Section 76 of the Act, I find that there was no proposal for imposition of penalty under Section 76 of the Finance Act, 1994 under the Show Cause Notice. However, the adjudicating authority vide the impugned order has imposed penalty under Section 76 of the Finance Act, 1994. Thus, I find that the adjudicating authority has travelled beyond the scope of SCN, which is not sustainable. In result, I set aside the penalty imposed upon the appellant under Section 76 of the Finance Act, 1994.

9(vii). Regarding the charging of late fee of Rs.15,900/- under Section 70(1) of the Finance Act, 1994 read with Rule 7C(1) of the Service Tax Rules, 1994, for late filing of three service tax returns, I find that the Section 70(1) allows the assessee for late filing of return only with payment of requisite late fee which has been prescribed under Rule 7C(1) of the Service Tax Rules, 1994. Since the appellant had filed three service tax returns late, they are liable to pay the late fee for the same. The third proviso to Rule 7C(1) of the Service Tax Rules, 1994, to which the appellant relied upon, reads as under :

"Provided also that where the gross amount of service tax payable is 'Nil', the central excise officer may on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty"

Perusal of the above proviso clause makes it clear that there must be two things simultaneously. One is that the gross amount for service tax payable should be 'nil' and the second is that there should be sufficient reason for not filing the return to which the central excise officer is satisfied. The appellant has not putforth any reasonable submission for non-filing of service tax returns at their end. Besides that, the gross amount of service tax payable is not 'Nil'. Thus, I do not find any infirmity in the impugned order so far as it relates to charging of late fee for late filing of three service tax returns. I therefore uphold the same.



10. In view of the foregoing discussion, the impugned order is modified to the extent discussed in para-9(vi) above and appeal is disposed of accordingly.

Akhilesh Kumar
7th August 2020

(Akhilesh Kumar)
Commissioner (Appeals)

Date: .08.2020

Attested

Dave
13/08/2020

(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.



BY R.P.A.D. / SPEED-POST TO :

M/s. Morakhia Copper & Alloys Pvt. Ltd. (Unit-I),
3429, GIDC Estate, Phase-IV,
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Distt-Gandhinagar.

Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner/Commissioner, CGST & Central Excise, Gandhinagar Comm'rate.
3. The Addl. Commissioner, CGST & Cen.Excise, Gandhinagar Comm'rate.
4. The Asstt. Commissioner, System, CGST & Central Excise, Gandhinagar Comm'rate.
5. The Asstt. Commissioner, CGST & Central Excise, Kalol Divn, Gandhinagar Comm'rate.
6. Guard File.
7. P.A. File.