



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलिफैक्स 07926305136



DIN : 20210264SW0000333AFD

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)14/GNR/2020-21
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-052/20-21**
दिनांक Date : **20-01-2021** जारी करने की तारीख Date of Issue 03.02.2021
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **12/D/GNR-DK/20-21** दिनांक: **18.05.2020**,
issued by Deputy Commissioner, Preventive Section, Commissionerate-Gandhinagar
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Milestone Tubes (P) Ltd.,
Survey No. 130/1 Karai Road,
Vill-Valad, Gandhinagar

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) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा का उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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।

(c) 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.

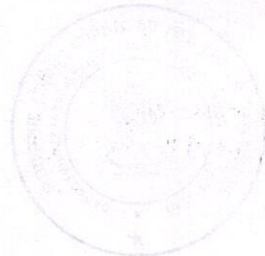
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

(क) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

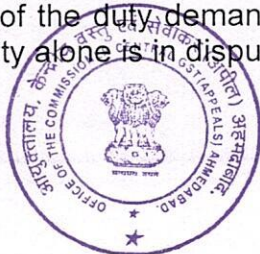
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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. Milestone Tubes Pvt. Ltd., Survey No.130/1, Karai Road, Village-Valad, Distt-Gandhinagar (hereinafter referred to as “*appellant*”) has filed the present appeal against the Order-in-Original No.12/D/GNR-DK/20-21 dated 18.05.2020 (hereinafter referred to as “*impugned order*”) passed by the Deputy Commissioner of CGST, Preventive Section, Gandhinagar Commissionerate (hereinafter referred to as “*adjudicating authority*”).

2(i). The facts of the case, in brief, are that the appellant is engaged in the manufacture of MS Pipes and SS Pipes falling under Chapter No.7304 and 7306 of the First Schedule to the Central Excise Tariff Act, 1985 and holding Central Excise Registration No. AAECM2849QXM001. They are also holding Service Tax Registration No. AAECM2849QST001. During the course of scrutiny of the ledger account and 3CD report for the year 2014-15 of the appellant, the CERA Audit Party noticed that the appellant has paid Rs.58,80,000/- as Remuneration to its Directors in the financial year 2014-15 and has deducted TDS under Section 194J on the said payment. Since the appellant did not provide the ledger account and 3CD report for the financial year 2013-14 to CERA Audit Party, the documents for the period from financial years 2011-12 to 2015-16 were called by the Superintendent of Service Tax, Range-I, Gandhinagar. The appellant vide letter dated 30.11.2016 submitted the Ledger Account of Directors Remuneration, Balance Sheet and 3CD Report for the period 2011-12 to 2015-16 alongwith names of 4 Directors and their PAN No.s. A table showing the amount paid to the Directors and due service tax during different years is shown below :

Srl. No.	Financial Year	Remuneration to the Directors (in Rs.)	Service Tax involved (in Rs.)
1	2012-13	40,80,000	5,04,288
2	2013-14	58,80,000	7,26,768
3	2014-15	58,80,000	7,26,768
4	2015-16	1,90,00,000	27,55,000
	TOTAL	3,48,40,000	47,12,824

2(ii). The audit officers contended that as per Notification No.30/2012-ST dated 20.06.2012, as amended by Notification No. 45/2012-ST dated 07.08.2012, the service rendered by the Directors to the Company is to be considered as service falling under the purview of service tax and service tax is liable to be paid by the appellant firm in this respect as the same is neither falling under negative list nor exempted by virtue of Exemption Notification No.25/2012-ST dated 20.06.2012. The CERA Audit Report No.CERA-VII/AR-I/Dn-G’Nagar/A’bad-III/AQ-06 dated 23.06.2016 was issued by the Audit Officer, CERA-VII, Indian Audit & Accounts Department, Ahmedabad. Statement of Shri Sunil L. Patel, Director of the appellant, was recorded on 03.01.2017 wherein he stated that they were withdrawing remuneration in terms of salary from the appellant and not providing any service to the appellant as they were employee of the appellant. He further submitted that they are not providing any service to any one or the appellant and have not issued any invoice or bill to the appellant. He also stated that the said



remuneration were not reflected in ST3 returns as they have neither provided any service to the company nor issued any invoice.

2(iii). A Show Cause Notice (hereinafter referred to as "SCN") dated 05.06.2017 was issued to the appellant, alleging non-payment of service tax on Director's remuneration under reverse charge mechanism, as stipulated under Notification No.30/2012-ST dated 20.06.2012 read with Notification No.45/2012-ST dated 07.08.2012. The said SCN proposed demand/recovery of service tax amounting to Rs.47,12,824/- for the period financial year 2012-13 to financial year 2015-16 under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 and also proposed imposition of penalties (a) under Section 78 for non-payment of Service Tax on account of mis-statement/ suppression of facts with an intent to evade payment of service tax; (b) under Section 77(1)(a) for failure to amend Registration for appropriate service category and (c) under Section 77(2) of the Finance Act, 1994 for failure to file correct service tax return.

2(iv). The said SCN was decided by the Asstt. Commissioner of Service Tax, Gandhinagar Division, Ahmedabad-III Commissionerate vide the Order-in-Original No.18/D/GNR/NK/2017-18 dated 10.01.2018 under which the proposal made under the said SCN was accepted and demand was confirmed alongwith interest and penalty was also imposed upon the appellant. The appellant filed an appeal against the said Order-in-Original before the then Commissioner(Appeals) of Central Tax, Ahmedabad who, on request of the appellant, remanded the case back to adjudicating authority to pass the order afresh after consideration of documents putforth by the appellant.

2(v). In the remand proceedings, the adjudicating authority, vide the impugned order confirmed the demand alongwith interest and imposed penalties as proposed under the said SCN.

3. Being aggrieved with the impugned order, appellant has preferred the present appeal on the following grounds :

- (i) that they have paid the remuneration in terms of Salary to all the Directors and all the Directors are in pay rolls of the Company;
- (ii) that no one is part-time Director in the appellant and therefore it can not be said that Directors have provided service to the appellant;
- (iii) that since there is no service, they are not required to pay any service tax on the remuneration paid to the Directors;
- (iv) that they have shown salary in their income tax return as well as in Balance Sheet managerial remuneration as salary and thus being employee of them they are not required to pay service tax;
- (v) that Section 65B(44) of the Finance Act, 1994, which defines the term 'Service', specifically excludes the service rendered by an employee to the employer in the course of or in relation to the employment and therefore, since all the Directors are employee of them, there is no need to pay service tax on the remuneration paid to their Directors;
- (vi) that the Director in his statement dated 03.01.2017 has specifically stated that Directors were withdrawing remuneration in terms of salary and not providing any



- service to the appellant and as such they are employees of the company and remuneration paid to the employees are out of purview of service tax;
- (vii) that mere deduction of TDS under Section 194J of the Income Tax Act can not become base to consider the remuneration to be liable to be chargeable to service tax;
 - (viii) that in the present case, there is no loss of revenue to the Govt. as the amount required to be paid as service tax by them will be eligible for cenvat credit available to them and as such there will be revenue neutrality in the present matter;
 - (ix) that demand pertaining to period 2012-13 to 2015-16 is issued on 05.06.2017 which is beyond the normal period and as such demand is time-barred;
 - (x) that they rely upon various case laws in support of their contentions.

4. The personal hearing in the present matter was held on 16.12.2020 in virtual mode. Shri Naimesh Oza, Advocate, represented the appellant and reiterated the submissions made in appeal memorandum as well as those made under additional written submission made on 14.12.2020 and requested to consider the same. It has been submitted in the additional written submission that mere deduction made under Section 194J of the Income Tax Act, 1961 does not amount to provision of service by the Director. Hence, no liability of service tax arises. The appellant have relied upon case laws in respect of their contention of revenue neutrality as well as invocation of extended period of limitation.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum, in additional written submission as well as those made at the time of personal hearing. The issue to be decided in the instant appeal is whether the appellant is liable to pay service tax under reverse charge mechanism, under Notification No.30/2012-ST dated 20.06.2012 as amended, on the amount paid as remuneration to the Directors. Further whether the demand invoking extended period of limitation is legally sustainable.

6. The facts of the case reveal that the appellant had paid various amounts to their directos during financial years 2012-13 to 2015-16 on which service tax amounting to Rs.47,12,824/- has been demanded by invoking extended period of limitation. It is further observed that service tax has been mainly demanded on the basis of the TDS deducted under Section 194J of the Income Tax Act. Before analyzing the matter in details, some of the facts relevant to the present case are given below :

- (i) Section 65B(44) reads as under :
65B : In this chapter, unless the context otherwise requires, -
(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—
 - (a) *an activity which constitutes merely,—*
 - (i)
 - (ii)
 - (iii)
 - (b) *a provision of service by an employee to the employer in the course of or in relation to his employment;*
 - (c)
- (ii) By virtue of Notification No.30/2012-ST dated 20.06.2012, as amended by Notification No.45/2012-ST, in respect of services provided or agreed to be



provided by a director of a company to the said company, the recipient of the service (i.e. the said company) is made liable to pay the 100% service tax.

- (iii) Section 2(94) of the Company Act, 2013 reads as under :
"whole time director" includes a director in the whole-time employment of the company."
- (iv) The adjudicating authority under para 16.3(ii) has accepted that 'salary is a type of remuneration'.
- (v) Form-16 in respect of four Directors for the year 2011-12 and 2012-13 have been submitted by the appellant alongwith their written submission (received on 14.12.2020) showing the head 'Period with the Employer'.
- (vi) Annual Return Form No. MGT-7 under the Companies Act, 2013 in respect of four Directors for the year 2014-15 and 2015-16 have been submitted by the appellant alongwith their written submission (received on 14.12.2020) under which at page-12, the remuneration of the Directors have been shown under the head 'Gross Salary'.

7(i). It is noticed that by virtue of Section 65B(44)(b), the service provided by the employees to their employer are kept out of the purview of service tax because in this situation service rendered by the employee is in relation to his employment. I find that the appellant has produced the Form-16 for the period 2011-12 to 2012-13. Form-16 is issued to the employees of a company/firm and not to the others with whom the company/firm has business relations. In the present case, Form-16 have been issued by the appellant to the Directors which goes on to show that the services rendered by the Directors were in relation to their employment and there were employer-employee relationship between the appellant and the said Directors to the extent of receipt of salary in the form of remuneration from the appellant company. Once the services of the Directors of the appellant are considered in the capacity of their employment, the levy of service tax on the remuneration paid to the Directors is out of the purview of service tax in view of Section 65B(44)(b) of the Finance Act, 1994. This aspect has not been considered in the impugned order in as much as there is no discussion/explanation towards the issuance of Form-16 to the Directors and demand is confirmed on the basis of the TDS made under Section 194J of the Income Tax Act, alone. Moreover, the adjudicating authority under para 16.3(ii) of impugned order has accepted that 'salary is a type of remuneration'.

7(ii). The appellant has also submitted copies of Form No.MGT-7 (i.e. Annual Return under Companies Act, 2013) for the year 2014-15 and 2015-16 under which at page-12, the remuneration of the Directors have been shown under the head 'Gross Salary'. Moreover, the Director has already submitted in his statement that they have not issued any invoice in respect of the service rendered by them as their service were being in the nature of employee-employer. This clearly indicate that had there been any service, there would have been existence of invoice with regard to that service. However, no invoice was issued due to the relationship of employer-employee.



7(iii). A demand can not be confirmed on a ground alone, ignoring all the other facts/aspects available in a matter. The other facts/aspects are also required to be considered before confirmation of demand and totality of the case should be considered. Moreover, it has been submitted by the appellant that the Directors are not part-time Directors and are on the payroll of them. The demand has been confirmed vide the impugned order ignoring the other facts/aspect available in the matter. I, therefore, do not find any justifiable reason for the confirmation of demand pertaining to the period 2012-13, 2014-15 and 2015-16 as sufficient material is available on record to consider the remuneration paid to the Directors as Salary and that the demand has been confirmed keeping aside the other relevant facts available in the matter. In view of above discussion, the demand of service tax on the remuneration paid to the directors pertaining to the period 2012-13, 2014-15 and 2015-16 is set aside.

7(iv). The appellant failed to submit any document, i.e. either Form-16 or MGT-7, in support of their contention for the period 2013-14. Therefore in absence of any document, I am not inclined to accept the contention of the appellant to set aside the demand pertaining to the period 2013-14 and the same is upheld.

8(i). Regarding the contention of revenue neutrality, putforth by the appellant, I find that the Government has incorporated the system of reverse charge mechanism under the law and defined that person has to first pay the amount of service tax under reverse charge mechanism and then the person may be allowed to take credit of the amount of service tax paid by that person under reverse charge mechanism. If the ground of revenue neutrality is accepted then there would be situation where nobody would pay the service tax under reverse charge mechanism on the ground that they are eligible to take credit of the same. Hence, when the Government has specifically introduced a system under the law, it is required on part of any assessee to obey it and follow it. In case of Commr. of C.Ex., Chandigarh v/s. M/s. Baba Asia Ltd. reported at 2011(267)ELT 115(Tri.-Del.), the Hon'ble Tribunal has accepted the contention of the Department that merely because the assessee is entitled to avail cenvat credit that can not give leverage to the assessee to avoid payment of duty in time and held that each and every situation cannot be termed as a revenue neutral situation and it would depend upon the facts and circumstances of each case. Thus, the contention of revenue neutrality putforth by the appellant is not acceptable.

8(ii). It is further noticed that the appellant is holding service tax registration and therefore it can be said that they are aware of the service tax law. The act of non-payment of service tax (specifically for the demand pertaining to the period 2013-14), where they did not have any supporting document, can definitely be considered to be an intentional one when the same was also not reflected in their service tax returns. Thus, for this, the extended period has been correctly invoked by the adjudicating authority under the provisions of law.

9(i). In view of above discussion, the demands pertaining to the period 2012-13, 2014-15 and 2015-16 are set aside and the demand pertaining to the period 2013-14 is upheld. It



goes without saying that where the demand of service tax is set aside, there can not be any interest over such demand and imposition of penalties in the matter. However, where the demand is upheld the charging of interest over such demand is also upheld under relevant Section.

9(ii). So far as the Penalties pertaining to the period 2013-14 is concerned, it is noticed that the appellant is holding the service tax registration. Thus, it can be said that they are aware of the law. The compliance of law in existence should be invariably met with. Failure to comply with the provisions of law in force leads to the imposition of penalty which has been correctly done by the adjudicating authority. In view of this, the penalties imposed (i) under Section 77(1)(a) for failure to amend Registration for appropriate service category; (ii) under Section 77(2) for failure to file correct service tax return and (iii) under Section 78 of the Finance Act, 1994 for non-payment of Service Tax on account of mis-statement/ suppression of facts with an intent to evade payment of service tax pertaining to the period 2013-14 are upheld.

10. The appeal is disposed of accordingly.

Akhil Kumar
.. 20/01/2021..
(Akhil Kumar)
Commissioner (Appeals)

Date : .01.2021.

Attested

Dave
03/02/2021
(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.



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

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