



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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टेलीफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:20210764SW000042424B)

क फाइल संख्या : File No : GAPPL/COM/STP/624/2020 / 1833 To 1836

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP- 15/2021-22

दिनांक Date : 10-06-2021 जारी करने की तारीख Date of Issue 02-07-2021

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No 03/AC-DC/CEX-ST/MEH/2019-20 dated 02.03.2020 issued by Deputy Commissioner(Preventive), CGST & Central Excise, Gandhinagar.

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Tirupati Sarjan Limited, 5, 1st Floor, M.K. Patel Market, Kansa Char Rasta, Visnagar, Mehsana.

कोई व्यक्ति इस अपील आदेश से अरातोष 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 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) केंद्रीय 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 अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संराद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

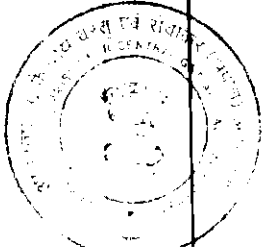
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी गण्डागार या अन्य कारखाने में या किसी गण्डागार से दूसरे गण्डागार में माल ले जाते हुए मार्ग में, या किसी गण्डागार या गण्डार में चाहे वह किसी कारखाने में या किसी गण्डागार 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.

(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।



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

1) 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

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

2) 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 हो समय पर या बाद में वित्त अधिनियम (नं. 2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

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) केंद्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता ई. का मुख्यशीर्ष के अंतर्गत धारा 35-ई 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 CIO 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, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

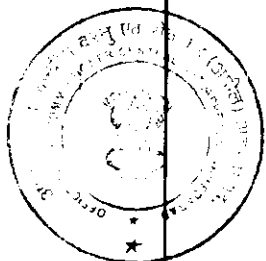
(1) केंद्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

Under Section 112 of CGST act 2017 an appeal lies to :-

(क) उपरिलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय 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 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 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 और 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.

- (56) 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)

- (57) 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)

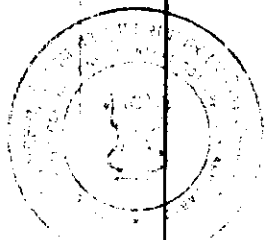
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (c) amount determined under Section 11 D;
(ci) amount of erroneous Cenvat Credit taken;
(cii) 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 मांग 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 appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



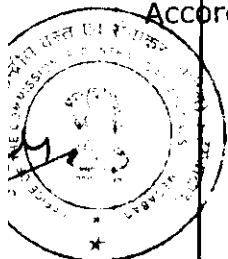
ORDER-IN-APPEAL

This order arises on account of an appeal filed by M/s.Tirupati Sarjan Ltd., 5, 1st floor, M.K. Patel Market, Kansa Char Rasta, Visnagar, Mehsana (hereinafter referred as '*the appellant*') against the Order-in-Original No.03/AC-DC/CEX-ST/MEH/2019-20 dated 02.03.2020 (hereinafter referred as '*the impugned Order*') passed by the Deputy Commissioner (Prev.), CGST & Central Excise, Commissionerate: Gandhinagar (hereinafter referred as '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant was engaged in providing of taxable services viz. "Construction of Residential Complex Services" for which they were holding Service Tax Registration No. AACT7015MST001. During the course of the review of ST-3 returns filed by the appellant for the period from October, 2012 to March, 2013, it was observed by the Jurisdictional Range Superintendent that the challans as per details given below, shown to have deposited by them against the service tax liability for the said period, were not reflected in the ACES Challan database against their Assessee Code/Service Tax Registration Number.

| Sr.No. | Challan No. | Date of Payment | Amount (Rs.) |
|--------|----------------------|-----------------|--------------|
| 1 | 05102472809201350264 | 28.09.2013 | 63143 |
| 2 | 05102472809201350241 | 28.09.2013 | 129716 |
| 3 | 05102472809201351152 | 30.09.2013 | 255379 |
| 4 | 05102472809201351141 | 30.09.2013 | 695470 |
| 5 | 05102472809201350277 | 28.09.2013 | 381475 |
| 6 | 05102472809201350270 | 28.09.2013 | 268211 |
| | TOTAL | | 1793395 |

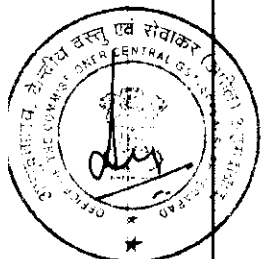
2.1 Further, on verification of the copies of the challans provided by the appellant vide their letter dated 11.10.2018, it was observed that the payments of these challans were made/deposited against the assessee code AACT7015MSD003 which pertained to M/s. Tirupati Sarjan Ltd., 10, 3rd floor, Tirupati Shopping Plaza, GIDC, Plot-1, Palanpur, Gujarat [another separate service tax registration number of the appellant]. Accordingly, the appellant was issued a show cause notice vide



F.No. V.ST/11A-52/Tirupati/2018-19 dated 13.12.2018 demanding service tax amounting to Rs. 17,93,395/- by invoking extended period of limitation alongwith interest and penalty.

3. The adjudicating authority vide the impugned order confirmed the demand of Service Tax amounting to Rs. 17,93,395/- from the appellant, by invoking extended period under the proviso to Section 73(1) of the Finance Act, 1994 and ordered to be recovered alongwith interest thereon, under Section 75 of the Finance Act, 1994. Further, a penalty of Rs.8,96,698/- was also imposed on the appellant, under the provisions of Section 78 of the Finance Act, 1994. The adjudicating authority has confirmed the above mentioned demands vide the impugned order, mainly on the grounds as reproduced below:

- (i) The deposition of the challans, claimed to have deposited by mistake, in the wrong assessee code i.e. AA ACT7015MSD003 cannot be tantamount as valid payment against Assessee Code- AA ACT7015MST001 of the appellant.
- (ii) It is utmost important to confirm whether the deposition of service tax amount has been adjusted against the service tax liability of Assessee Code- AA ACT7015MSD003 or not, or if the same is wrongly been deposited under the Assessee Code- AA ACT7015MSD003 as claimed, then whether the same have been deposited as advance service tax or may be claimed as refund afterwards. In this case, no such information is available on record. Therefore, it is difficult to judge whether the same has actually been wrongly deposited under Assessee Code- AA ACT7015MSD003 or whether the same is intentionally shown as deposited under Assessee Code- AA ACT7015MST001, even though the payment was actually made under Assessee Code- AA ACT7015MSD003. Thus, there arise short payment of Rs. 17,93,395/- by the appellant holding Assessee Code- AA ACT7015MST001.
- (iii) As per the provisions of Section 68 of the Finance Act, 1994, "every person providing taxable service to any person shall pay service tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. Further, Rule 6 of

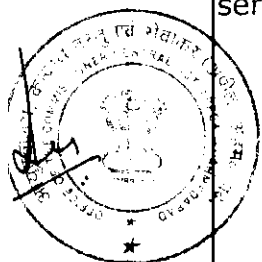


the Service Tax Rules, 1994 stipulates that service tax shall be paid to the credit of the Central Govt. by the 5th of the month immediately following the calendar month, in which the payments are received, towards the value of taxable services. It is to note here that no section of the Finance Act, 1994 or Rules made thereunder allows or provides for such adjustment of wrongly deposited service tax.

4. Being aggrieved with the impugned order, the appellant has filed the present appeal. The grounds of appeal in the present appeal, are as reproduced in the following paragraphs:

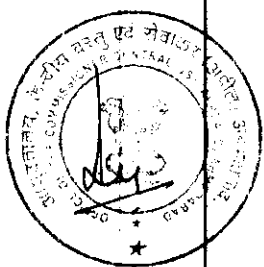
4.1 The appellant were holding total 5 nos. of different Service Tax Registrations based on their different locations, under the same name viz. M/s. Tirupati Sarjan Limited, having their head office at 5, M K Patel Market, Kansa Char Rasta, Visnagar-384315. They were having a common company management system for all the said 5 nos. of service-tax registration numbers. Further, the company has a single (common) income-tax [PAN] number and filing a single income-tax return for the whole company. It was due to clerical mistake of the accountant, the Service Tax Registration No. AA ACT7015MSD003 was mentioned in the challans [as mentioned in the table at para-2 above] vide which the payment of the due service tax amount pertains to the Service Tax Registration No. AA ACT7015MST001 has been deposited in the government account.

4.2 As per certificate issued by Shri. Rajesh J. Shah & Associates, Chartered Accountant, copy of which was also submitted to the adjudicating authority, it is certified that it was my clerical mistake the service tax registration number was mentioned as 'AA ACT7015MSD003' instead of 'AA ACT7015MST001'. Further, in respect of the amounts deposited under the challans as mentioned in the table at para-2 above, the credit for the payment of service tax has been claimed only for service tax registration no. AA ACT7015MST001 while filing service-tax return and no credit for the same has been claimed for payment of service tax amount for service tax registration no. AA ACT7015MSD003. The adjudicating



authority has not given any observation or adverse finding on the same, in the impugned order.

- 4.3 They have also submitted an affidavit confirming the facts that (i) they have claimed deduction and set-off of the service tax of Rs. 17,93,394/- while filing service tax return for registration no. AA ACT7015MST001 in respect of the period from October, 2012 to March, 2013. (ii) They have not claimed any deduction/set off for the aforesaid service tax challans while filing service tax return with registration no. AA ACT7015MSD003 for the period from October, 2012 to March, 2013 or any subsequent period. (iii) They have not claimed any refund in respect of the aforesaid service tax.
- 4.4 There is a common company under a common management having multiple service tax registration number, hence the mistake done by making payment of service tax of a unit by mentioned service tax number of another unit can be condoned, as there has been no revenue loss and there is a single legal person. They have relied upon the following judgements in support of their contention.
- (i) *Auro Pumps P. Ltd. Vs. Union of India [2017 (353) ELT 7 (Guj)]*
 - (ii) *Devang Paper Mills Pvt. Ltd. Vs. Union of India [2016 (41) STR 418 (Guj)]*
 - (iii) *Sahara India TV Network Vs. Commissioner of C.Ex. & S.T., Noida [2016 (41) STR 145 (Tri. Del)]*
 - (iv) *Commissioner of C.Ex. & S.T., Bhopal Vs. K.K.Kedia [2014 (35) STR 383 (Tri. Del.)]*
 - (v) *Neyveli Lignite Corporation Vs. Commissioner of GST & Central Excise [Final Order No. 40138/2018 dated 18.01.2018 passed by Hon'ble CESTAT, South Zonal Bench, Chennai]*
 - (vi) *Kirloskar Pneumatic Company Limited Vs. Union of India [Order dated 04.08.2014 passed by Hon'ble High Court of Bombay]*
- 4.5 There was no intention of fraud or collusion or suppression of any facts in this case, more particularly when service tax audit has been duly completed for both the service tax registration numbers without any adverse remark. Accordingly, the show cause notice issued invoking extended period of limitation is not correct. Further, when



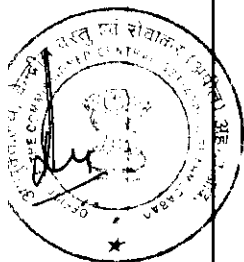
there is neither suppression of facts nor any intention to evade payment of duty, the penalty imposed under Section 78 of the Finance Act, 1994 is not tenable.

5. Personal hearing in the matter, through virtual mode, was held on 23.03.2021. Shri Kiran Parikh, Chartered Accountant, appeared on behalf of the appellant. He re-iterated submissions made in the Appeal Memorandum.

6. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum and submissions made at the time of personal hearing. I find that the issues to be decided in this case is whether the Challans deposited under different Service Tax registration number of the same company can be considered as valid payment of service tax for another Service Tax registration number or otherwise.

6.1 I find that in terms of the provisions of Section 68 of the Finance Act, 1994, "every person providing taxable service to any person shall pay service tax at the rate specified in Section 66 in such manner and within such period as may be prescribed." Further, Rule 6 of the Service Tax Rules, 1994 stipulates that service tax shall be paid to the credit of Central Govt., by the 5th of the month immediately following the calendar month, in which the payments are received, towards the value of taxable services."

6.2 In the present case, as per the impugned order, it is an undisputed fact that the amount of Rs. 17,93,394/- have been deposited in the government account under the challans mentioned in the table at para-2 above, towards payment of service tax. It is also observed that the details of the said challans have also been mentioned in the Part-H of the service tax return in Form ST-3 for the period from October, 2012 to March, 2013 filed by the appellant having service tax registration no. AAAC7015MST001. Further, it is observed that the service tax registration number of the assessee is mentioned as 'AAAC7015MSD003' in the abovementioned challans and not the appellant's registration number 'AAAC7015MST001' which is the genesis of the present case.



6.3 The appellant has relied upon case laws in support of their contention that such mistake can be condoned. They further contended that audit of their records was already under taken and hence extended period can not be invoked.

6.4 I have gone through the decision of Hon'ble High Court of Gujarat, in case of *Auro Pumps P. Ltd. Vs. Union of India* [2017 (353) ELT 7 (Guj)] relied upon by the appellant. In this case, it is held that:

"10. We are of the considered view that when authorities' stand became very clear from the communication at page 102 and reply that there exists no demand of duty or any sum payable from the petitioners so far as assessee code No. 001 is concerned and when the authority has also knowledge that there was a mistaken payment made under challan, which contained incorrect code i.e. Code No. 001, though it belonged to present assessee, who also has Code No. 002 also and who unequivocally intended to make payment demand, which was payable to him and which was paid, though mistakenly under wrong code i.e. Code No. 001, could not have been subjected to technical defect on the part of authority, so as to saddle with liability and the judgments of this Court in case of Devang Paper Mills Pvt. Ltd. (supra) cited at bar would help the case of the petitioners, as the observations made in said decisions do squarely cover the current situation."

6.5 I also find that Hon'ble High Court of Gujarat in case of *Devang Paper Mills Pvt. Ltd. Vs. Union of India* [2016 (41) STR 418 (Guj)] also held similar view which is as reproduced below:

"5. Whatever be the accounting difficulty, when undisputed fact is that the petitioner did pay a certain excise duty, merely mentioning wrong code in the process, cannot result into such harsh consequence of the entire payment not being recognized as valid, incurring further liability of repayment of the basic duty with interest and penalties. Such amount was deposited by the petitioner with the Government of India and it was duly credited in the Government account. It is not even the case of the respondents that the petitioner had any other code by the number AADCD7232REM001 and for which there was separate manufacturing activity inviting separate duty liability. Indisputably, thus, the petitioner had singular duty liability for which the actual payment was also made. Under the circumstances, the impugned communication dated 5-5-2015 and notice dated 21-7-2015 are quashed. The respondents are directed to give credit of the duty paid by the petitioner for a sum of Rs. 22.15 lacs by making necessary accounting entries on the basis that the same was paid at the relevant time. If thereafter any sum remains unpaid, it would be open for the Department to take further action in accordance with law."



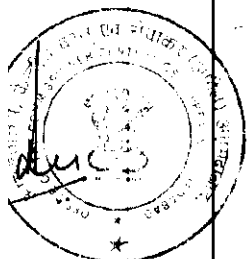
6.6 Further, it is also observed that Hon'ble CESTAT, New Delhi in case of *Sahara India TV Network Vs. Commissioner of C.Ex. & S.T., Noida* [2016 (41) STR 145 (Tri. Del)] also held that:

"6. We have considered the contentions of both sides. We find that in the case of *K.K. Kedia (supra)* CESTAT, in effect, has held that such adjustment can be permitted while in the case of *Plastichemix Industries (supra)* such adjustment is held to be not permissible on the ground that there is no provision for that in the Service Tax law. It is evident from the facts of the case narrated that the legal person for both the registrations (one for NOIDA unit and other for Mumbai unit) is the same. Further, it is evident that it is simply a case of wrong Service Tax registration number having been mentioned in the Service Tax deposit challan. In this case the wrong registration number happens to be of the appellant itself though belonging to its different unit. It could as well have been that by mistake the registration number of a different assessee was mentioned in which case it could not have been asserted that Service Tax was deposited in the account of that assessee whose registration number was wrongly mentioned in the challan (though its name did not appear therein) and not in the account of the person whose name was mentioned in the challan. Such mistakes can happen and it can scarcely be anybody's case that such mistakes are beyond rectification. In this case, the Assistant Commissioner, Service Tax in-charge of the appellant's Mumbai unit has categorically mentioned that the impugned amount of service tax (Rs. 25 lakhs) deposited has not been utilised towards paying service tax by the Bombay unit. The CESTAT judgment in the case of *Plastichemix Industries (supra)* makes a summary observation that there is no provision under the present service tax law for adjustment of service tax payments from the account of one registered unit to the account of another registered unit. It however does not say that there is any provision in the service tax law which prohibits such adjustment. Further, as stated earlier, the issue is not so much of law but of a mistake of incorrectly mentioning the registration number in the service tax deposit challan. That such mistakes do happen is also evident from the fact that Commissionerate of Cochin issued a Trade Notice No. 3/2014-S.T., dated 10-7-2014, the relevant part of which reads as under : -

"Subject : Ratification of remittances made against wrong accounting code and or wrong STC Code/C. Ex. Registration Number - Procedure - Regarding.

There has been number of representations from registered service providers/receivers and Central excise assesseees for rectification of mistakes occurred during remittances of service tax or Central excise duty against wrong accounting head and/or incorrect registration numbers.

The Central Board of Excise & Customs vide S.T. Circular No. 58/7/2003 (F.No. 157/2/2003 Cx. A), dated 20-5-2003 has clarified that in such instances the matter should be sorted



out with the P.A.O. and the assessee need not be asked to pay Service Tax again. The transfer entries has to be effected by the PAO, as per Pr. Chief Controller of Accounts, New Delhi's letter No. Coord/2(1)/76/e-PAO (Chennai)/13-14/159, dated 4-9-2013 and the Civil Accounts Manual of the PAO, read with letter Chord/2(8)/Cex/13-14/224, dated 1-5-2014, even for previous years.

The instances, resulting in remittances against wrong Head of accounts/STC numbers/C. Ex. Registration number, are cited below: -

1. Service Tax has been paid in the wrong accounting code of a difference service than which is rendered, where the mistake has occurred under same registration number.
2. Service Tax has been paid against incorrect Accounting Minor Heads of Education Cess, interest, penalty Secondary Higher Education Cess and or vice versa. For eg : interest paid under Secondary Higher Education Cess, etc.
3. Service Tax has been paid against the STC number of another assessee/same assessee's (having multiple registrations) different registration number.
4. Service Tax has been paid against Central Excise Registration number of the assessee instead of Service Tax Code Number or vice versa (major heads-Customs-037, Central Excise-038 and Service Tax-044).
5. Service Tax has been paid against cancelled/surrendered registrations on obtaining centralized registration.

In such instances, in order to ensure uniformity and to avoid hardships to the assessee, the following procedure is prescribed to be followed by the assessee and the field formations.

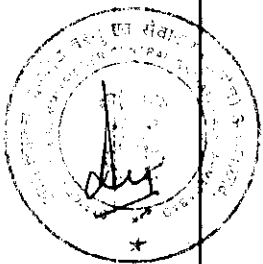
Case 1. The assessee should represent (Through Range and Division) to the Commissioner of Central Excise and Service Tax, describing the mistake occurred/reasons for such errors along with certified copies of the remittance challans, ST-3 Returns for the relevant period and any other document pertains to the issue to establish the genuine mistake and to ratify the error.

Case 2. Same as above.

Case 3. The assessee should obtain a no objection Certificate from the assessee or any other person against whose registration number to which the wrong remittances have been made by e-payment to transfer the amount from their registration number, certified by the concerned Range Officer of Central Excise/Service Tax that the said amount has not been utilized or paid by him and does not surface in his ledger (Books of accounts) and attach with the representation besides the documents enumerated against Case I above."

As may be observed, para No. '3' and para No. 'Case-3' of the said Trade Note squarely cover the situation obtaining in the present case and lay down a procedure for rectification of such mistake.

7. In the present case, there is complete absence of mala fide and the



mistake was brought to the notice of Revenue by the appellant itself. In effect, essentially, overall there has not been any short or delayed payment of service tax by appellant. In these circumstances, the question of penalties would not arise. In these circumstances, even the question of interest would not arise in the wake of C.B.E. & C. Circular dated 20-5-2013 cited above. We are of the view that the procedure prescribed by the Cochin Commissionerate in its Trade Notice dated 10-7-2014 is reasonable for the purpose of rectification of such mistakes without any risk to Revenue.

8. *In the light of the foregoing discussion, we set aside the impugned order, allow the appeal and remand the case to the primary adjudicating authority with the direction that the necessary adjustment of the impugned amount of Rs. 25 lakhs be done in accordance with the procedure prescribed in the Cochin Commissionerate Trade Notice dated 10-7-2014 cited above".*

7. In view of the above judicial pronouncements, as discussed in para-6.4, 6.5 and para-6.6, and Trade Notice No. 3/2014-ST dated 10.07.2014 issued by the Commissioner of Cochin in pursuance of the clarification issued by Board vide S.T. Circular No. 58/7/2003 (F.No. 157/2/2003 Cx.A) dated 20.05.2003, I find it a settled position that when the payment of Service Tax is made by the appellant under their own different registration number and it is confirmed that such amounts have neither been utilized [by the assessee holding such registration number] nor got refunded, then such procedural lapse on the part of the appellant can not be treated as short-payment of service tax as provided under Section 73 of the Finance Act, 1994.

7.1 Further, it is observed that there is neither explicit provisions under Service Tax law for adjustment of service tax payments from the account of one registered unit to the account of another registered unit nor there is any provision which prohibits such adjustment. Accordingly, I find that the issue in the present case is not so much of law but of a mistake of incorrectly mentioning the registration number in the service tax deposit challan. Hence, I find it proper to conclude the present case in line of the judicial pronouncements, as discussed in para-6.2, 6.3 and para-6.4 above wherein the jurisdictional higher appellate forum has decided the case in favour of the appellant.

7.2 Accordingly, I am not in agreement with the finding of the adjudicating authority in the impugned order that the amounts deposited



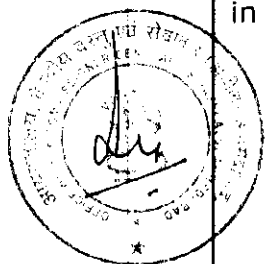
by the appellant through challans [as mentioned in the table to para-2 above] can not be considered as valid payments of service tax for the appellant, merely because a different service tax number is mentioned on such challans. Hence, I find that the impugned order passed by the adjudicating authority in the present case vide which the demand of Rs. 17,93,395/- is confirmed under Section 73(1) of the Finance Act, 1994 towards short payment of service tax, is not justifiable and legally correct.

7.3 Further, it is observed that the adjudicating authority at para-10 of the impugned order contended as below:

"In this case, it is utmost important to confirm whether the deposition of service tax amount has been adjusted against the service tax liability of Assessee Code AA ACT7015MSD003 or not, or if the same is wrongly been claimed to have deposited under the Assessee Code AA ACT7015MSD003, than whether the same is claimed to have been deposited as advance service tax or whether the same was claimed as refund afterwards. Here in this case, no such information is available on record. Therefore, it is difficult to judge whether the same has actually been wrongly deposited under Assessee Code AA ACT7015MSD003 or whether the same is intentionally shown as deposited under Assessee Code AA ACT7015MST001, even though the payment was actually made under Assessee Code AA ACT7015MSD003. And thus, there arise short payment of Rs. 17,93,395/- during the period October'2012 to March'2013 for the Assessee Code AA ACT7015MST001".

7.4 As regards the above contention of the adjudicating authority, I find that such facts can always be confirmed from the jurisdictional divisional authorities of the Assessee Code AA ACT7015MSD003 that whether the amount of Rs. 17,93,394/- deposited under the challans, as mentioned in the table at para-2 above, has been utilized by such assessee holding the said Assessee Code or otherwise and whether refund thereof has been claimed, at any point of time. This is also important in the context that the appellant has contended that audit of their records was also undertaken by the department for both the registration numbers. Accordingly, I find that the said contention of the adjudicating authority is made without complete appreciation of facts on record. Hence, it would be proper to remand the case to the adjudicating authority to the extent of verification of the facts from the respective jurisdictional authorities and to decide it afresh.

8. In view of the discussion at para-7, 7.1, 7.2, 7.3 and 7.4 above, I find it appropriate to remand the matter to the adjudicating authority to decide it afresh, after confirmation of the facts as discussed in para 7.4 from the the respective jurisdictional authorities of Assessee

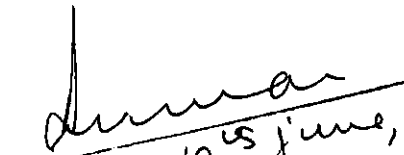


Code AACT7015MSD003 and to issue a fresh order, following the principle of natural justice.

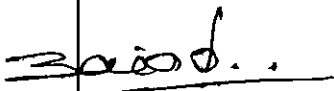
9. In view of the above, the impugned order passed by the adjudicating authority is set aside and is remanded to the adjudicating authority for denovo consideration, to the extent of verification of the facts as discussed in para-7.4 above, from the respective jurisdictional service tax authorities and to issue a fresh order.

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

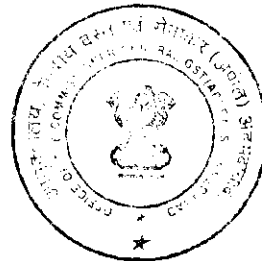
The appeal filed by the appellant stand disposed off in above terms.


10th June, 2021
(Akhilesh Kumar)
Commissioner (Appeals)

Attested



(M.P. Sisodiya)
Superintendent (Appeals),
CGST, Ahmedabad.



BY SPEED POST :

M/s. Tirupati Sarjan Ltd.,
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1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Commissionerate-Gandhinagar.
3. The Deputy/Assistant Commissioner (Prev.), CGST & C. Excise, Commissionerate-Gandhinagar.
4. The Deputy/Assistant Commissioner, CGST & C. Excise, Division-Mehsana, Commissionerate-Gandhinagar.
5. The Assistant Commissioner, CGST (System), HQ, Ahmedabad-South. *CRP*
6. Guard file.
7. P.A. File