



सत्यमेव जयते

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



DIN : 20210964SW000032323B

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/491/2020 / 2949 T 0 2953

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-20/2021-22**
 दिनांक Date : **30-07-2021** जारी करने की तारीख Date of Issue 10.09.2021

आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **SUPDT/MEH/R-1/ST/06-2020-21** दिनांक: **29.07.2020** issued
 by Superintendent of CGST & Central Excise, Mehsana Division, Gandhinagar Commissionerate

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

M/s Vikas Enterprise
 26, Prem Nagar Society,
 Radhanpur Road, Mehsana

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 :

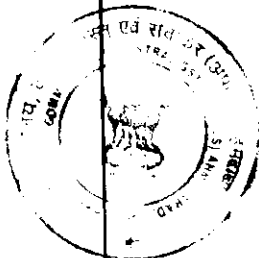
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतः 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, 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 मामले 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 जोड़ यूटी के डिटेमैन्य 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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनों के सेतीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उस के साथ खाता इसका मुख्य शीर्ष 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 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 कर एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न कर 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.

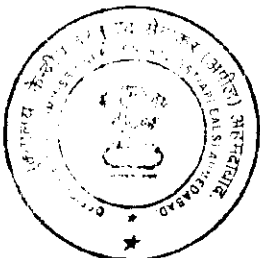
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

(क) उक्त लिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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 कोई 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 यथासंशोधित 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 सेवा कर 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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 सेन वैट क्रेडिट की राशि;
- (iii) सेन वैट 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.

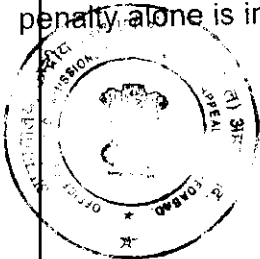
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (iv) amount determined under Section 11 D;
- (v) amount of erroneous Cenvat Credit taken;
- (vi) amount payable under Rule 6 of the Cenvat Credit Rules.

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

1. This order arises out of an appeal filed by M/s. Vikas Enterprise, 26, Prem Nagar Society, Radhanpur Road, Mehsana-384002 (hereinafter referred to as '*appellant*') against Order in Original No. SUPDT/MEH/R-1/ST/06/2020-21 dated 29.07.2020 (hereinafter referred to as '*the impugned order*') passed by the Superintendent, CGST & Central Excise, Range-I, Division-Mehsana, Commissionerate-Gandhinagar (hereinafter referred to as '*the adjudicating authority*').

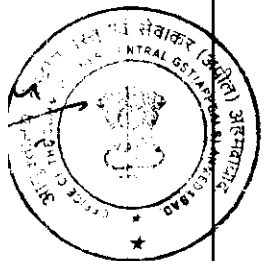
2. Facts of the case, in brief, are that the appellant is engaged in providing taxable services under the category of "Housekeeping/Cleaning Services and Manpower Recruitment or Supply Agency's Services" and holding Service Tax Registration Number BAUPR4512DSD001.

2.1 The appellant had been issued a show cause notice demanding amount of Service Tax short paid/not paid, as detailed in table below.

Sr. No.	SCN No.& Date	Issued by	Period	Amount of Service Tax short paid/not paid (Rs.)
1	DGCEI/AZU/36-23/2018-19 dated 10.04.2018	ADG, DGGI, AZU, Ahmedabad	July, 2012 to March, 2017	2,70,64,386/-

The said show cause notice has also been adjudicated by the Principal Commissioner, Central GST & Central Excise, Gandhinagar vide OIO No. AHM-EXCUS-003-COM-002-19-20 dated 17.05.2019 whereby he confirmed the demand of Service Tax and also imposed penalty accordingly.

2.2 As regards the details called for by the department in respect of services provided by them for the period from April, 2017 to June, 2017, the appellant vide their letter dated 26.12.2019 submitted that they have closed their business in F.Y. 2016-17 only. Further, as regards the amount shown as received under the head 'Contract Income' in the Form 26AS, the appellant submitted that they have received only their outstanding amounts from their client (SBI) for the services provided to them in previous financial years. Accordingly, the appellant was issued a show cause notice vide F.No. CGST/R-1/MEH/SCN/VIKAS/18-19 dated 17.01.2020 demanding an amount of Rs. 4,20,057/- towards the Service Tax short paid/not paid, as detailed below:



Period	Taxable Value (as per form 26AS) (in Rs.)	Service Tax (in Rs.)	SBC (in Rs.)	KKC (in Rs.)	Total Service short paid/not (in Rs.)
April-2017 to June-2017	2800381	392053	14002	14002	420057

2.3 The show cause notice vide F.No. CGST/R-1/MEH/SCN/VIKAS/18-19 dated 17.01.2020 issued to the appellant has been adjudicated by the adjudicating authority vide the impugned order as per details given below:

- (i) He confirmed the demand of Service tax amounting to Rs. 4,20,057/- on account of short/non payment of service tax during the period April, 2017 to June, 2017.
- (ii) He ordered to recover interest as applicable rate due on the amount as confirmed above, under Section 75 of the Finance Act, 1994 as amended.
- (iii) Penalty of Rs. 4,20,057/- was imposed under Section 78 of the Finance Act, 1994, on account of the demands proposed at (i) above.
- (iv) Penalty of Rs. 10,000/- was imposed under Section 77 (2) of the Finance Act, 1994 readwith Section 142 and Section 174 of the CGST Act, 2017 in as much as they failed to correctly self-assess the due service tax in their ST-3 returns.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds reproduced in following paragraphs.

- (i). The appellant is manpower service contractor and providing manpower service to various government organizations and body corporate etc. They have paid service tax and filed returns after getting registration with the department. During the period under show cause notice, they have not carried out business for the services rendered but received the amounts from the State Bank of India.
- (ii). As regards the services provided to State Bank of India, the Service Tax on service value has been paid by State Bank of India under Reverse Charge Mechanism. The State Bank of India has issued letter to the appellant which shows that service is covered under RCM and service tax has been deposited by them.
- (iii). In terms of the Notification No. 30/2012-ST, the service provided in respect of manpower supply service for any purpose whether it is for cleaning service or maintenance service, would be covered under the said notification and accordingly, they are not liable to charge any amount as Service Tax from the service recipient and entire tax is required to be paid by the service recipient under Reverse Charge Mechanism.



(iv). As regards the penalties imposed, penalty would be imposable where there is an intention to evade the tax. There is no intention of the appellant to evade the tax rather all tax has been deposited in government account. The appellant has act on bonafide belief and tried to comply with provisions of the act. Relying on the decision of Hon'ble Supreme Court in the Hindustan Steel Vs. State of Orissa 1978 ELT (J159) that "penalty would not be ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted inconscious disregards of its obligation."

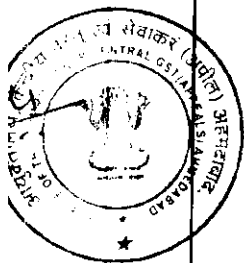
4. The appellant was granted opportunity for personal hearing on 23.06.2021 through video conferencing. Shri Arpan Yagnik, Chartered Accountant, appeared for personal hearing as authorised representative of the appellant. He re-iterated the submissions made in Appeal Memorandum.

4.1 Further, the appellant has also submitted an additional submission vide their letter dated 24.06.2021, which is reproduced below:

- (1) The department has collected tax from the State Bank of India and same has been confirmed by the SBI through its letter. Hence, the department can not classified same transaction in two different category and demand tax from both the party i.e. service recipient and provider.
- (2) The services are in nature of manpower service and covered under reverse charge mechanism. The department on that basis collected tax from service recipient now, changing classification and demanding tax again which is totally incorrect. Further, the learned adjudication officer relied on order of Commissioner and without appreciating fact that during the course of show cause notice, the appellant has submitted invoices which mentioned that the service tax is payable by service recipient.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum, oral submissions made by the appellant at the time of hearing and the additional submission made vide their letter dated 24.06.2021.

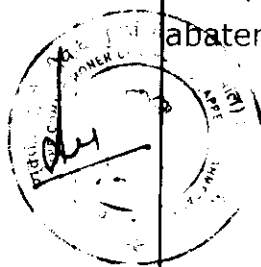
6. On going through the impugned order, it is observed that the appellant was issued a show cause notice dated 10.04.2018 (as mentioned in para-2.1 above) alleging short/non payment of service tax



by the appellant in respect of the services provided during the period from July, 2012 to March, 2017. Further, the adjudicating authority in the impugned also mentioned that the Principal Commissioner, CGST & C.Excise, Gandhinagar vide OIO No. AHM-EXCUS-003-COM-002-19-20 dated 17.05.2019 confirmed the said demand of Service Tax finding that *"Even otherwise if the documentary evidences had been produced, then also from the description of the work mentioned in the invoices/ work order/agreement as well as prerequisite conditions for classification of a service under manpower supply, I find that the service provided by the said assessee was not of Manpower Recruitment or Supply Agency Service but was for cleaning & maintenance of the premises of various branches of SBI and therefore, provisions of RCM was not applicable in the instant case and the said assessee was required to charge and pay full service tax on the said services."*

6.1 Further, as regard the instant case, I find that the impugned order is issued in respect of the show cause notice issued for the amount of Rs. 28,00,381/- received by the appellant during the period from April, 2017 to June, 2017 which is a periodical show cause notice in continuation of the show cause notice issued for the earlier period as mentioned in the para-2.1 above. The show cause notice issued for the earlier period has been adjudicated vide OIO dated 17.05.2019, underwhich the nature of the services provided by the appellant to their client has been examined by Principal Commissioner, CGST & C.Excise, Gandhinagar and confirmed the demand with finding that the services provided by the appellant are not covered under the provisions of Notification No. 30/2012-ST dated 20.6.2012 and hence, provisions of RCM are not applicable in case of services provided by the appellant. Further, it is observed that in case of a periodical show cause notice and in the same set of facts, the findings of the Principal Commissioner are binding to the lower authority i.e. the adjudicating authority in the present case as per the principles of judicial precedence. Accordingly, I find that in absence of any additional grounds produced by the appellant before the adjudicating authority, the impugned order issued by the adjudicating authority is legally correct.

6.2 Further, it is also observed that even during this appeal proceeding the appellant has not submitted any additional grounds which substantiate their contention that the services provided by them are covered under the RCM mechanism in terms of the Notification No. 30/2012-ST dated 20.6.2012. In absence of any substantial documentary evidences, the claims of appellant regarding non taxability of services or exemption and abatements cannot be taken at its face value and hence, not sustainable.



The Apex Court has also held in the case of Mysore Metal Industries [1988 (36) ELT 369 (SC)] that the burden is on the party who claims exemption, to prove the facts that entitled him to exemption.

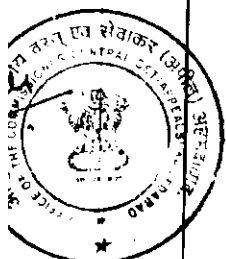
6.3 I also find that the appellant has not produced any supporting documentary evidences either before the adjudicating authority or during this appeal proceeding to substantiate their contention that the Service Tax liability has been discharged by the client i.e. SBI.

7. In view of the above discussion, I do not find any merit in the contention of the appellant against the demand of Service Tax amounting to Rs. 4,20,057/- confirmed by the adjudicating authority vide the impugned order and the same is liable to be recovered from the appellant alongwith interest leviable thereon under Section 75 of the Finance Act, 1994. Accordingly, I do not find any reason to intervene in the impugned order to that extent.

7.1 As regards the penalty of Rs. 10,000/- imposed under Section 77 (2) of the Finance Act, 1944, it is observed that in terms of the provisions of SECTION 70 (1) of the Finance Act, 1994, *"Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed."* and Section 77 (2) of the said act also provides that *"Any person, who contravenes any of the provisions of this Chapter or any rules made there under for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees."* Accordingly, in the present case, I find that the penalty of Rs. 10,000/- imposed on the appellant under Section 77 (2) of the act is legally correct, in as much as the appellant failed to correctly self assess the due service tax in their ST-3 Returns and hence, the impugned order is upheld to that extent.

7.2 As regards the penalty imposed by the adjudicating authority in terms of the provisions of Section 78 of the Finance Act, 1994, it is observed that in case of a periodical demand the penalty under Section 78 of the Finance Act, 1994 is not imposable. Accordingly, I find that the penalty of Rs. 4,20,057/- imposed on the appellant in the present case under Section 78 of the Finance Act, 1994 is not tenable.

7.3 However, I find that as per the provision of SECTION 76 (1) of the Finance Act, 1994, *"Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason,*

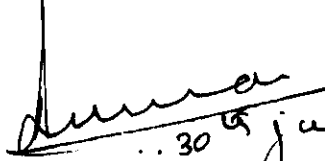


other than the reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there under with "the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent. of the amount of such service tax". Accordingly, I find that the appellant is liable to the penalty in terms of the Section 76 of the Finance Act, 1994.

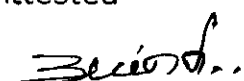
8. In view of the above discussion, I pass the following order:

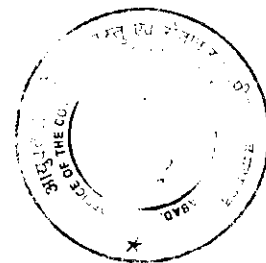
- (1) As regards the demand confirmed of Service Tax amounting to Rs. 4,20,057/- and ordered to be recovered alongwith interest at the applicable rate under Section 75 of the Finance Act, 1994, the impugned order is upheld.
- (2) In respect of penalty imposed of Rs. 10,000/- under Section 77 (2) of the Finance Act, 1994 also, the impugned order is upheld.
- (3) I set aside the penalty of Rs. 4,20,057/- imposed on the appellant vide the impugned order under Section 78 of the Finance Act, 1994. However, I impose the penalty of Rs. 42,000/- on the appellant under the provisions of Section 76 of the Finance Act, 1994. Accordingly, the impugned order is modified to that extent.

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


30th July, 2021
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 30th July, 2021

Attested


(M.P. Sisodiya)
Superintendent (Appeals)
Central Excise, Ahmedabad



By Regd. Post A. D

M/s. Vikas Enterprise,
26, Prem Nagar Society,
Radhanpur Road, Mehsana-384002

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Commissionerate-Gandhinagar.
3. The Deputy /Asstt. Commissioner, Central GST, Division-Mehsana, Commissionerate-Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Commissionerate-Gandhinagar.
- ✓ 5. Guard file
6. PA File

