



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015

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आजादी का

अमृत महोत्सव
By Regd. Post

DIN No.: 20221164SW000002020A

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/650/2022-APPEAL / 4438 - 42
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-056/2022-23 and 31.10.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	03.11.2022
(ङ)	Arising out of Order-In-Original No.AHM-CEX-003-ADC-PBM-005-21-22 dated 30.11.2021 passed by the Additional Commissioner, CGST & CE, HQ, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Hindustan Security & Detectives Address:- 'Navdeep', Plot No.417/1, Gurudwara Road, Sector-30, Gandhinagar, Gujarat-382030

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 अतत 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 :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



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

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।

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

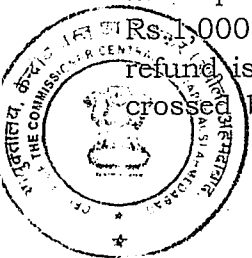
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.

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 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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) एके प्रति अपील के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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."



अपीलियआदेश / ORDER-IN-APPEAL

This Order arises out of an appeal filed by M/s. Hindustan Security & Detectives, 'Navdeep', Plot No.417/1, Gurudwara Road, Sector-30, Gandhinagar-382030 (hereinafter referred to as 'appellant') against Order in Original No. AHM-CEX-003-ADC-PBM-005-21-22 dated 30.11.2021(hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Central GST& Central Excise, Gandhinagar Commissionerate (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant firm is a Proprietorship firm engaged in providing Man Power Recruitment/Supply Agency Service and Security/Detective Agency Service. They are registered with Service Tax department since 2007 under Registration No.ACEPV0595MST001.The appellant was covered under the definition of 'Security Agency' as defined under Section 65(94) of the Finance Act, 1994 and the activity undertaken were covered under the category of 'Security Services' as defined under Section 65(105)(w) of the Finance Act,1994 (upto 30.06.2012). For the period with effect from 01.07.2012, the activities of the appellant was covered under definition of service under section 65 B(44) of the Finance Act, 1994. Majority of the clients of the appellant were Government/Semi-government bodies. The appellant was providing 'Security Agency Services' to their clientsand receiving considerations as per the agreements with them.

2.1. On the basis of investigation conducted against the appellant, SCN, as per details given in table below, was issued to the appellant for recovery of Service Tax amount for the period F.Y.2011-12 to F.Y 2014-15. The SCN was adjudicated as perdetails at table below :

SCN F.No.	SCN Date	SCN Issued by	Period Covered	Amount of Service Tax demanded (INR)
V.ST/15-09/DEM/ OA/ 15-17	15.04.2016	Commissioner, Cen.Excise & ST, Ahmedabad-III	2011-12 to 2014-15	Rs.1,65,58,257/-
OIO No	OIO Date	OIO Issued by	Period Covered	Amount of Service Tax confirmed/ dropped
AHM-ST-003-JC-AKS-025-17-18	28.03.2018	Joint Commissioner, Cen.Excise & Service Tax, Ahmedabad-III	2011-12 to 2014-15	Confirmed demand of Rs.1,54,24,745/- and dropped demand of Rs.12,33,052/-



2.2 In order to verify the details of Service Tax paid by the appellant during the subsequent period, various letters and Summons were issued, which were not honoured. Service Tax authorities obtained details of the appellant from the Income Tax department and the same was co-related with the declarations made by them in their Service Tax Returns and SCN was issued to the appellant, as detailed below:

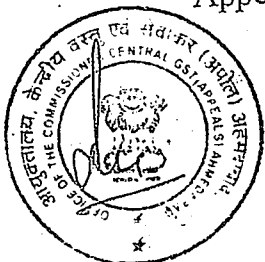
SCN F.No. & Date	SCN Issued by	Period Covered	Charges levelled against the appellant
V.ST/15-19/Dem/19-20; Dated 15.07.2020	Additional Commissioner, CGST & C.Ex, Gandhinagar	2015-16 to 2017-18 (upto 30.06.2017)	Demand of Service Tax for Rs.83,72,464/- u/s 73(1) of FA,1994; Interest at appropriate rates on above demand u/s 75 of the FA,1994; Penalty u/s 77(2) of the FA,1994; Penalty u/s 78 of the FA,1994; Penalty u/s 76 of the FA,1994.

2.3 The SCN was adjudicated vide the impugned order ex-parte, wherein demand of Service Tax amounting to Rs.83,72,464/- was confirmed alongwith interest and penalties were imposed under Sections 77(2) and 78 of the Finance Act, 1994.

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

(i) In terms of Para – 3.7 of CBIC Master Circular No.1053/02/2017-CX dated 10.03.2017, second SCN cannot be issued by invoking extended period, therefore the SCN is not tenable and hence the impugned order is required to be set aside.

(ii) They are engaged in providing services to Government and/or Public Sector undertakings who are covered under the definition of body corporate. Hence, in terms of Notification No.25/2012 ST dated 20.06.2012, the service tax liability for Service provided by way of Manpower service or security service shall lie 100% on the recipients under RCM. They stressed upon that in terms of Service Tax, the definition of 'Body Corporate' flows from the definition of the terms given vide Section 2(11) of the Companies Act, 2013. In order to stress upon the definition of 'Body Corporate' they relied upon the decision of the CESTAT, Chandigarh dated 16.12.2019 in Service tax Appeal No.61288 of 2019 in the case of GN Constuction Vs CCE & ST, Jalandhar.



Accordingly, they contended that all their service recipients are body corporates and registered under one or the other act and hence 100% service tax liability lies on them and not on the appellants.

(iii) In terms of Section 67(2) of the Finance Act, 1994, cum-duty valuation benefit is available to the appellants. They have not charged Service tax from the service receivers as they were under the bona-fide belief that no service tax is payable. In support of their argument they relied upon the following decisions:

Balaji Manpower Service Vs Union of India dtd.03.11.2019 by Hon'ble P&H High Court, Chandigarh.

The CESTAT judgement in case of M/s Honda Cars India Limited, 2018.

Decision of the CESTAT-New Delhi in the case of Hi-line Pens-2016

Decision of the CESTAT Chennai in the case of M/s Hans Interiors – 2016.

Decision of CESTAT-Chennai in the case of M/s Polaris Software Lab Ltd. – 2016

Decision of CESTAT-Mumbai in the case of M/s Loop Mobile India Ltd. – 2016

Decision of CESTAT in the case of M/s P.C Construction, M/s Raj & Co – 2015

(iv) Figures from 26 AS cannot be used for determining Servicetax liability unless there is conclusive evidence as to the said is on account of providing taxable service. That Form No. 26AS is not a statutory document for determining the taxable turnover under Service Tax provisions. As there are no allegations in the SCN regarding filing of incorrect returns or maintaining improper records / accounts therefore in absence of any specific discrepancy or allegation, the turnover figures cannot be rejected and demand of service tax short paid is not tenable and the OIO is required to be struck down. They relied on the following decisions:

Indus Motor Company Vs CCE, Cochin – 2007 – CESTAT-Bang.

Synergy Audio Visual Workshop Pvt.Ltd Vs CST Bangalore, 2008 – CESTAT – Bang.

CESTAT Allahabad in the case of Kush Constructions Vs CGST Nacin – 2019.

CESTAT Kolkata decision in the case of M/s Luit Developers Private Limited – 2022.

CESTAT Allahabad in the case of M/s Quest Engineers & Consultant Pvt.Ltd. – 2021.

CESTAT in CCE Ludhiana Vs Deluxe Enterprises – 2011

CESTAT in the case of M/s Nature Land Organic Foods – 2020.



(v) The impugned OIO is vague and incoherent where it has failed to establish willful suppression on the part of the appellant and SCN was issued arbitrarily and illegally. The OIO is not specific for suppression of facts on the part of the appellant and is on the contrary vague and lack details. They relied on the following decisions :

Hon'ble Supreme Court in case of Commissioner Vs Interchrome Pvt.Ltd – 2004;

Hon'ble Supreme Court in case of Commissioner of Cen.Excise – 2007(213) ELT 487 (SC);

Hon'ble Gujarat High Court in the case of M/s Mahadev Trading Co. Vs Union of India – 2020

Hon'ble Allahabad High Court in case of Sahibabad Printers Vs.Additional Commissioner CGST (Appeals) and 2 others – 2020;

Hon'ble Delhi High Court in the case of Principal Commissioner Vs Shubham Electricals – 2016;

(vi) Demand raised vide SCN and confirmed by OIO invoking proviso to Section 73 is time-barred and hence null and void. That there is no suppression of facts i.e. deliberate or conscious omission with an intent of deriving wrongful gain on the part of the appellant hence invocation of proviso to Section 73 of the FA,1994 is not proper. When Revenue invokes an extended period of limitation, the burden of proof lies on the department to prove it. The SCN no-where specifically established willful mis-statement, fraud or collusion with an intent to evade payment of Service Tax. In support they relied on the following decisions:

Uniworth Textiles Ltd. Vs C C E, Raipur – 2013(288) ELT 161 (S.C) 1989 (40) ELT 276 (SC);

Hon'ble Rajasthan High Court decision in the case of CCE, Jaipur Vs Rajasthan Renewable Energy Corporation Limited – 2018(15) GSTL 661 (Rajasthan).

CCE, Bangalore Vs ITC Limited , 2010 (257) ELT 514.

Concept Motors Pvt.Ltd Vs CST, Ahmedabad-Final Order no.A/11717/2018.

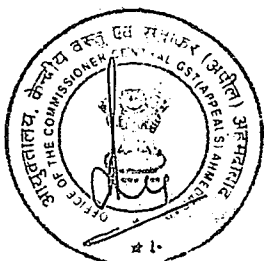
Continental Foundation Vs CCE, Chandigarh-I – 2007 (216) ELT 177 (SC).

Om Sai Professional Detectives & Securities Pvt.Ltd Vs CCE – 2008-12-STR 79 (Tri-Bang.)

Rolex Logistics Pvt.Ltd Vs CST – 2009-2013-STR-147 (Tri-Bang)

CESTAT-New Delhi in case of Gannon Dunkerley Co.Ltd – 2020(12) TMI 1096.

CESTAT New Delhi in case of Oriental Insurance Co.Ltd – 2021 (5) TMI 869



(vii) Since Tax is not payable, Interest and Penalty cannot be demanded from the appellant. As it is a settled principle of law that where there is no demand of duty, interest and penalty cannot be imposed. In support they relied on the following judgements :

CESTAT Mumbai in case of Jain KalarSamaj 2015 (38) STR 995.

Madras High Court in case of Sundaram Textiles Ltd – 2014 (36) STR 30 (Mad).

(viii) No interest is chargeable u/s 75 of the FA,1994 read with the CGST Act, 2017. As no Service Tax is liable against the appellant there is no question of paying interest u/s 75 of the FA,1994, hence demand of Interest is not tenable. They relied on the following judgements :

Tebma Shipyards Ltd Vs CCE – 2006-Tri-Chennai.

Pratibha Processors Vs UOI (1196) (SC)

(ix) Penalty cannot be imposed mechanically since the essential ingredients for the levy of penalty is missing. In cases where mens rea is absent, levy of penalty is unwarranted and unjustified. They relied on the following citations :

Supreme Court decision in case of Hindustan Steel Vs State of Orissa [1978 (2) ELT (J159)].

Mahadev Logistics Vs Cus. &C.Ex.Settlement Commission, New Delhi – 2017 (3) GSTL 56 (Chattisgarh)

UOI Vs Rajasthan Spinning and Weaving Mills – 2009(238) ELT 3 (SC).

SauravGanguly Vs UOI – 2016(43) STR 482 (Cal.)

South City Motors Ltd. Vs CST, Delhi – 2012-25-STR-483 (Tri.-Del)

C.R.Scooters Vs CCE Vadodara – 2012-25-STR-177-Tri.-Ahmed.

(x) Penalty under Section 77 (2) of the FA, 1994 is not applicable in the current case as the same is not maintainable and liable to be set aside.

(xi) No penalty u/s 78 (1) of the FA,1994 is imposable on the appellant as there is no suppression of facts hence section 73 (1) is not applicable. In support they relied on the following citations :

CESTAT Bang. In case of YCH Logistics (India) P.Ltd Vs. CCE& GST Bang.ST-I [2020 (3) TMI 809].

BumiEngg.Ltd Vs. Commr. of ST, Chennai-III – 2018 (7) TMI 616 – CESTAT, Chennai.



Satish Kumar Contractor Ltd Vs CCE, Panchkula – 2018(3) TMI 1429 – CESTAT Chandigarh.

CESTAT – Madras – Ishvarya Publicities Pvt.Ltd Vs. Commr. of ST, Chennai-II – 2016-TIOL-1409-CESTAT-Mad.

SCI-Continental Foundation Jt.Venture Vs. CCE Chandigarh-I – 2007 (216) ELT 177.

HC of Delhi – Delhi Transport Corpn. Vs Commr. of ST – 2015-TIOL-961-HC-DEL-ST

H.C of Mad. – CCE, Tiruchirapalli Vs Suthan Promoters – 2010-TIOL-623-HC-MAD-ST.

(xii) Penalty cannot be imposed when there is interpretation of law and as there is no element of fraud, willful mis-statement or suppression of facts, with intent to evade payment of service tax as all the income received were accounted for in the books of accounts. They relied upon the following decisions:

Hindustan Steel Ltd. Vs State of Orissa – 1978 (2) ELT J 159 (SC).

Gujarat Guardian Ltd 2016 (46) STR 737 (Tri.-Ahmed.)

Fascel Limited 2017 (52) STR 434 (Tri.Ahmed.)

8. Personal Hearing in the case was held on 09.09.2022 in virtual mode. Mr. Bishan R. Shah, Chartered Accountant, appeared for the hearing as authorized person of the appellant. He reiterated the submissions made in appeal memorandum and expressed his willingness to make additional submissions. However, no additional submissions were made by him till date.

9. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum, and submissions made at the time of personal hearing as well as all related documents placed before me. The issue before me for decision is whether the impugned order, confirming demand of Service Tax alongwith interest and imposing penalty under the provisions of Sections 77 (2) and Section 78 of the Finance Act, 1994, in the facts and circumstances of the case, are legal and proper or otherwise.

9.1 It is observed that the SCN in question has been issued as a consequence to the demand confirmed against the appellant for the period from F.Y. 2011-12 to F.Y.2014-15. The appellant had not responded to the letters issued by the department and not submitted the relevant documents/data pertaining to assessment. Consequently, the department obtained necessary details from the Income Tax department and from the Service receivers and quantified the demand raised in the impugned SCN. It is also



observed that the appellant did not file any reply to the SCN and also did not appear before the adjudicating authority which has resulted in confirmation of demand alongwith interest and penalty. It is also observed that the appellant has also not disputed the provision of service, alleged in the SCN as well as leviability of service tax on it. It has been contended that for the services in question, the liability is on the service receivers, who are body corporate, under reverse charge mechanism..

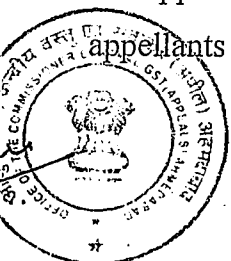
9.3 It is observed that the appellant has also challenged the SCN invoking extended period on grounds of limitation by referring to Para 3.7 of the CBIC Circular No.1053/02/2017-CX dated 10.03.2017, which reads as under:

3.7 Second SCN invoking extended period: Issuance of a second SCN invoking extended period after the first SCN invoking extended period of time has been issued is legally not tenable. However, the second SCN, if issued would also need to establish the ingredients required to invoke extended period independently. For example, in cases where clearances are not reported by the assessee in the periodic return, second SCN invoking extended period is quite logical whereas in cases of wilfulmis-statement regarding the clearances made under appropriate invoice and recorded in the periodic returns, second SCN invoking extended period would be difficult to sustain as the department comes in possession of all the facts after the time of first SCN. Therefore, as a matter of abundant precaution, it is desirable that after the first SCN invoking extended period, subsequent SCNs should be issued within the normal period of limitation.

9.3.1. Further, they have also claimed benefit of cum-duty payment by resorting to provisions of Section 67 (2) of the Finance Act, 1994. They have also challenged the demand raised on the basis of Income Tax data.

10. In this regard, I find that the appellant has not made any submission before the jurisdictional officers as well as before the adjudicating authority. Further, they have made a reconciliation statement but did not submit any corroborative evidence or documents in support of their claim. They have contested the SCN for the first time before this authority. As the matter requires verification from the documents of the appellant, which they had not submitted before, it would be in the interest of justice that the matter is remanded back to the adjudicating authority to examine the contentions of the appellant. The appellants are also directed to submit all the relevant documents for assessment before the adjudicating authority to take decision in the matter.

11. In view of the discussions made above, I set aside the impugned order and allow the appeal filed by the appellant by way of remand to the adjudicating authority. The appellants are directed to submit all the relevant documents before the adjudicating



authority within 30 days of receipt of this order. The adjudicating authority shall pass the order in accordance with the principles of natural justice.

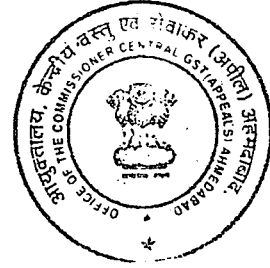
12. अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Akhil Kumar
31st October, 2022
(AKHILESH KUMAR)
Commissioner (Appeals)
Dated: 31st October, 2022

साक्षात्कृत/ Attested:

Somnath Chaudhary
(Somnath Chaudhary)
Superintendent (Appeals),
CGST, Ahmedabad.



To,

M/s Hindustan Security & Detective Services
'Navdeep', Plot No.417/1,
Gurudwara Road, Sector-30,
Gandhinagar-382030

Copy to :

The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.

The Principal Commissioner, CGST and Central Excise, Gandhinagar

The Deputy /Asstt. Commissioner, Central GST, Division- Gandhinagar, Gandhinagar Commissionerate.

The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website of office.

Guard file

PA File

