



सत्यमेव जयते

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



DIN:20230264SW000000CE01

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/802/2022-APPEAL *356-60*
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-144/2022-23**  
 दिनांक Date : **06-02-2023** जारी करने की तारीख Date of Issue 15.02.2023  
 आयुक्त (अपील) द्वारा पारित  
 Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original No. **GST-06/D-VI/O&A/29/Divine/AM/2021-22** दिनांक: **06.12.2021**, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

**M/s Divine Power,  
A-58, Abhishek Society,  
Bopal, Ahmedabad-380015**

2. Respondent

**The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad North , 7<sup>th</sup> Floor, B D Patel House, Nr. Sardar Patel Statue , Naranpura, Ahmedabad - 380014**

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 :

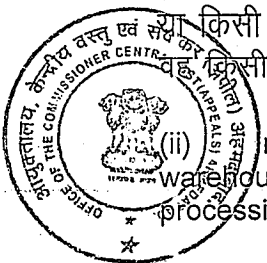
भारत सरकार का पुनरीक्षण आवेदन :  
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा 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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

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



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

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

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

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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

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

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

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

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



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

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

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

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

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

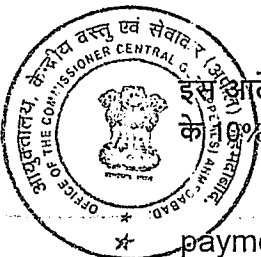
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

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**

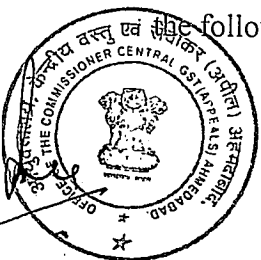
The present appeal has been filed by M/s. Divine Power, A-58, Abhishek Society, Bopal, Ahmedabad – 380015 (hereinafter referred to as “the appellant”) against Order-in-Original No. GST/D-VI/O&A/29/Divine/AM/2021-22 dated 06.12.2021 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant is holding PAN No. AAHFD2602C. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15, it was noticed that the appellant had earned an income of Rs. 98,67,402/- during the FY 2014-15, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” provided by the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant was called upon to submit copies of Balance Sheet, Profit & Loss accounts, Income Tax Returns, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant was issued a Show Cause Notice No. CGST-06/04-568/O&A/Divine/2020-21 dated 28.09.2020 demanding Service Tax amounting to Rs. 12,19,610/- for the period FY 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fees under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994; and imposition of penalties under Section 76, Section 77(1) & Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 12,19,610/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15. Further (i) Penalty of Rs. 12,19,610/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) of the Finance Act, 1994 for failure to taking Service Tax Registration; and (iii) Penalty of Rs. 40,000/- was imposed on the appellant under Section 70(1) of the Finance Act, 1994 for not furnishing service tax returns.

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



- The appellant were engaged in providing services to Madhya Gujarat Vij Company Limited, i.e. MGVCCL, one of the company emerged from unbundling of Gujarat Electricity Board (Erstwhile GEB).
- The service tax demand of Rs. 12,19,610/- pertaining to the services related to Transmission and Distribution of electricity and the same service provided to Madhya Gujarat Vij Company Limited, MGVCCL (Erstwhile GEB), the appellant deny that the services were taxable as any services related to Transmission and Distribution of electricity is under exemption list issued by the Ministry of Finance time to time.
- This being a bona fide belief having absolutely no mala fide intent to evade even though there is no merit in the demand and the appellant has fully complied with the departmental inquiry as far as their understanding of law is concerned.
- On the basis of above grounds, the appellants requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be quashed and set aside.

4. Personal hearing in the case was held on 18.01.2023. Shri Ravi Nilesh Mandaliya, Advocate, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He stated that he would make additional written submission in the case. However, it is observed that no additional submission has been received from the appellant till date.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2014-15.

6. I find that the adjudicating authority has, while confirming the demand, held that M/s. MGVCCL does not fulfill the conditions of para 2.4.7 or 2.4.8 of the "Taxation of Services: An Education Guide" dated 20.06.2012 released by the CBIC to be included in the definition of Government or local authority and as such cannot be called as either Government or local authority as mentioned in Sr. No. 12 of Notification No. 25/2012-ST dated 20.06.2012. Hence, no exemption from payment of service tax can be given to the appellant providing services to M/s. MGVCCL. The relevant paras of the impugned order are as under:

"33. I find that the assessee in their defence reply dated 09.11.2021 has stated that they are engaged in the lying of electric lines along with PSC poles. Further, on perusal of the



RA Bill No. 1 dated NIL issued by M/s. MGVCL in work order No. BLD/EXP/Line Work/PUR/4724 dated 03.10.2012, it is found that description of work is mentioned as 'erection of single pole structure of 8 Mtr PSC Pole, erection of guy set as per schedule etc.'

From the above, I find that the assessee is engaged in providing erection, commissioning and installation service which do not falls under negative list or exemption list by virtue of mega exemption vide Notification No. 25/2012 dated 20.06.2012 as amended.

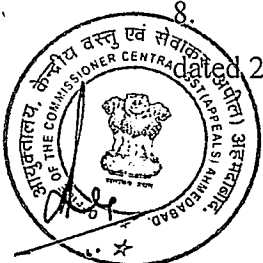
34. I find that the assessee in their defence reply dated 09.11.2021 has stated that they are providing the above discussed service to M/ s. MGVCL which is as per their understanding a government company and services provided to the Government authority by way of construction, erection, commissioning, installation, completion, fitting out etc is exempted vide Sr. No.12 of the Mega exemption notification No. 25/2012 dated 20.06.2012 as amended."

"36. From the above, it is clear that M/ s. MGVCL does not fulfil the conditions of para 2.4.7 or 2.4.8 to be included in the definition of Government or local authority and as such cannot be called as either Government or local authority as mentioned in Sr. No. 12 of Notification No. 25/2012-ST dated 20.06.2012. Hence, I find that no exemption to pay service tax can be given to the assessee providing services to M/ s. MGVCL.

37. I find that the assessee has failed to discharge their service tax liability on the income received by providing services to M/s. MGVCL by wrongly interpreting the provisions of exemption notification no. 25/2012 dated 20.06.2012 as amended. I find that they are liable to pay service tax on the above income as discussed in the SCN."

7. I also find that the main contention of the appellant is that the service tax demand of Rs. 12,19,610/- pertained to the services related to Transmission and Distribution of electricity and provided to Madhya Gujarat Vij Company Limited, MGVCL (Erstwhile GEB). The appellant have contended that the services were not taxable as any services related to Transmission and Distribution of electricity is under exemption list issued by the Ministry of Finance from time to time. I also find that in the reply to the SCN, the appellant had submitted that their services were exempted from payment of service tax by virtue of Sr. No. 12 of Notification No. 25/2012-ST dated 20.06.2012.

8. For ease of reference, I reproduce the relevant provision of Notification No. 25/2012-ST dated 20.06.2012 as amended at the relevant time i.e. FY 2014-15, which reads as under:



*"Notification No. 25/2012-Service Tax dated 20th June, 2012*

*G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-*

*1...*

*2... ..*

*12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-*

*(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*

*(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity*

*specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);*

*(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;*

*(d) canal, dam or other irrigation works;*

*(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or*

*(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;"*

9. On plain reading of the aforesaid notification, it is crystal clear that the exemption from service tax was extended to services provided to Government, a local authority or a governmental authority and for the services specified therein. As discussed by the adjudicating authority at length in the impugned order, the service recipient in the present case i.e. Madhya Gujarat Vij Company Limited (MGVCL), does not falls under the definition of 'Government' and 'Local authority', also the MGVCL not carried out any function entrusted to a municipality under article 243W of the Constitution. Therefore, the MGVCL does not falls under the definition of 'governmental authority' as provided under Para 2(s) of the Notification No.

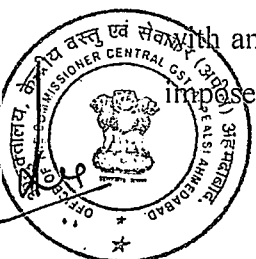
25/2012-ST dated 20.06.2012.



10. Hence, I find that the appellant is required to pay the applicable service tax on the services provided to M/s. MGVCL and no exemption is available to them under Notification No. 25/2012-ST dated 20.06.2012. Under such circumstances, I find that the appellant has merely made a bald contention that *"the services were not taxable as any services related to Transmission and Distribution of electricity is under exemption list issued by the Ministry of Finance time to time"* without submitting any valid grounds in appeal memorandum. Therefore, I find that without any supporting documents / details countering the findings of the adjudicating authority, simple contention of the appellant that their services were exempted, is not legally tenable.

11. Further, in the present case, it clearly transpires that the appellant has intentionally suppressed the taxable value by deliberately withholding of essential information from the department with an intent to evade taxes. Also, the appellant had not obtained service tax registration and the appellant had never informed the department about the non payment of Service Tax and said fact could be unearthed only upon initiation of the inquiry by the department after receipt of the data from the Income Tax department. Therefore, I find that all these acts of willful mis-statement and suppression of facts on the part of the appellant, with an intent to evade payment of Service Tax, are the essential ingredients which exist in the present case which makes them liable to pay the demand raised against them invoking the extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994. When the demand sustains, there is no escape from the liability of interest, hence, the same is, therefore, recoverable under Section 75 of the Finance Act, 1994.

12. Further, I find that the imposition of penalty under Section 78 is also sustainable, as the demands were raised based on detection noticed during the initiation of inquiry by the department. Section 78(1) of the Finance Act, 1994, provides penalty for suppressing the value of taxable services by reason of fraud or collusion' or 'willful misstatement' or 'suppression of facts' with 'the intent to evade payment of service tax'. Since the issues covered in the present appeal are on settled issues, the appellant cannot bring into play the interpretation plea to avoid penalty. After introduction of measures like self assessment etc., a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules and private records maintained by them for normal business purposes are accepted, for all the purpose of service tax. All these operates on the basis of the trust placed on the service provider and therefore, the governing provisions create an absolute liability when any provision is contravened as there is a breach of the trust placed on them. It is the responsibility of the appellant to correctly assess their tax liability and pay the taxes. The deliberate efforts by not paying correct amount of Service Tax is utter dis-regard to the requirement of law and breach of trust deposited on them. Hence, I find that the act of willful mis-statement and suppression of facts with an intent to evade payment of tax, as discussed in Para supra, made the appellant liable to impose penalty on them under the provisions of Section 78 (1) of the Finance Act, 1994.





12.1 As I have already upheld invocation of extended period of limitation on the grounds of suppression of facts as per discussion in para *supra*, hence, penalty under Section 78 of the Act is mandatory, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, hold that the Appellant was liable to penalty under Section 78 of the Finance Act, 1994.

13. As regards the Penalty of Rs. 40,000/- confirmed on the appellant under Section 70(1) of the Finance Act, 1994, I find that as per the provisions of Rule 7C of the Service Tax Rules, 1994, if any person liable to file ST-3 return under Rule 7 of the Service Tax Rules, 1994, and furnished the ST-3 return after the date prescribed for submission of such return, they were liable to pay late fees as stipulate therein. Rule 7C of the Service Tax Rules, 1994 clearly stipulates about the calculation of late fee for delay in filing ST-3 returns. In the present case, the appellant not obtained Service Tax Registration and not filed ST-3 returns. Therefore, the appellant has failed to comply with the provisions of Rule 7 for filing of ST-3 return within prescribed time limit and accordingly, they are liable to pay the late fees / penalty as prescribed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994. I find that the adjudicating authority has imposed penalty for non-filing of ST-3 Returns for the period from April, 2014 to March, 2015. I concur with the findings of the adjudicating authority and uphold imposition of penalty of Rs. 40,000/- under Section 70 of the Finance Act, 1994.

14. Further, I find that the appellant was not registered with the service tax during the relevant period. The appellant were required to obtain service tax registration in terms of Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994. However, the appellant has not obtained the Service Tax Registration, though they were providing the taxable services to their clients. This failure in obtaining Service Tax Registration has made the suppression and evasion of service tax. Thus, the appellant has contravened the provisions of Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994. This act of the appellant renders themselves liable for penalty under Section 77(1)(a) of the Finance Act, 1994. Accordingly, I hold that the appellant is liable for penalty under Section 77(1)(a) of the Finance Act, 1994.

15. I also find that the jurisdictional Range Officer had asked the appellant to furnish information & documents in respect to their income for the said period vide letter 31.07.2020 and reminder dated 24.09.2020, but the appellant failed to furnish information & documents as called for by the department till the date of issuance of the Show Cause Notice. Thus, the appellant has contravened the provisions of Section 77(1)(c) of the Finance Act, 1994. This act

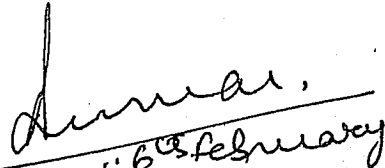


of the appellant renders themselves liable for penalty under Section 77(1)(c) of the Finance Act, 1994. Accordingly, I hold that the appellant is liable for penalty under Section 77(1)(c) of the Finance Act, 1994.

16. In view of the above, I uphold the order passed by the adjudicating authority and reject the appeal filed by the appellant.


17. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

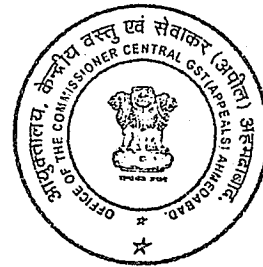
The appeal filed by the appellant stands disposed of in above terms.

  
(Akhilesh Kumar) 06 February 2023  
Commissioner (Appeals)

Attested

Date : 06.02.2023

  
(R. C. Maniyar)  
Superintendent(Appeals),  
CGST, Ahmedabad



**By RPAD / SPEED POST**

To,

M/s. Divine Power,  
A-58, Abhishek Society, Bopal,  
Ahmedabad – 380015

Appellant

The Assistant Commissioner,  
CGST, Division-VI,  
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

- 5) Guard File
- 6) PA file

