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- टेलेफैक्स07926305136

DIN:20230264SW0000823124

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/33/2022-APPEAL /8333-38

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-145/2022-23**
दिनाँक 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/14/KETAN/AM/2021-22** दिनाँक: **30.09.2021**, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s Ketan Construction Pvt. Ltd.,
   209, Sumel-II, Nr. Gurudwara,
   S.G.Highway, Thaltej,
   Ahmedabad- 380059

2. Respondent
   The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad North , 7th 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 पूवोक्त 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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

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

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

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

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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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 in 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 अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

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

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

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

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

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

इस 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. Ketan Construction Ltd., 209, Sumel-II, Nr. Gurudwara, S.G. Highway, Thaltej, Ahmedabad–380059 (hereinafter referred to as "*the appellant*") against Order-in-Original No. GST/D-VI/O&A/14/KETAN/AM/2021-22 dated 30.09.2021 (*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. The facts of the case, in brief, are that the appellant was engaged in providing 'Mining of Mineral, Oil or Gas Services', 'Work Contracts Services' and were receiving taxable services of 'Goods Transport Agency Services', 'Security Agency Service' and 'Legal Consultancy Services' for which they were holding Service Tax Registration No. AABCK5548HST003. On the basis of the intelligence gathered and further developed by the officers of DGGI, Zonal Unit, Ahmedabad (in short DGGI), it was noticed that the appellant was engaged in providing taxable as well as non-taxable services. However, they have short paid / not paid appropriate Service Tax on taxable service provided by them by suppressing their actual taxable value in the ST-3 Returns filed by them during the period from F.Y 2014-15 to F.Y 2015-16. They have not filed ST-3 Returns for the F.Y. 2016-17 to F.Y. 2017-18 (upto June-2017), whereas they charged and collected Service Tax from their service recipients but have not deposited / short deposited the same to the Government exchequer and thus evaded payment of Service Tax. They have not discharged Service Tax liability on Security Services, Legal Consultancy and GTA under Reverse Charge Mechanism. They also wrongly availed and utilized the Cenvat credit amounting to Rs.13,28,546/- on inputs i.e. Cement and Steel, which they were not entitled to. They did not discharge their Service Tax liability of Rs.35,23,881/- on the taxable services provided by them during the period October-2014 to June-2017. Thus, a total Service tax liability of Rs.48,52,427/- was detected by the officers of DGGI for the period from 01.10.2014 to 30.06.2017. As against total liability of Service Tax of Rs.48,52,427/-, the appellant had deposited Rs.27,84,422/- during the course of investigation.

2.1 A Show Cause Notice (SCN) bearing No.DGGI/RRU/36-05/2020-21 dated 28.09.2020 was issued to the appellant proposing demand of;

(i) Wrongly availed and utilized CENVAT credit amounting to Rs. 13,28,546/- under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 73(1) of the Finance Act, 1994 along with interest under Rule 14 of the CENVAT Credit Rules, 2004 read with under Section 75 of the Finance Act, 1994 and imposition of penalty under Rule 15 of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

(ii) Service Tax amounting to Rs. 27,84,422/- for the period from FY 2016-17 to F.Y. 2017-18 (upto June-2017), 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 and imposition of penalty under Section 78 of the Finance Act, 1994.

(iii) Interest at appropriate rate on the total Service Tax amount of Rs. 11,48,58,836/-, paid during the period from F.Y. 2015-16 to June,2017 under Section 75 of the Finance Act, 1994.

(iv) Service Tax amounting to Rs. 1,20,312/-, computed on reconciliation of incomes of FY 2015-16, 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 and imposition of penalty under Section 78 of the Finance Act, 1994.

(v) Service Tax amounting to Rs. 6,19,147/-, on "Supply of Manpower and Security Services" and "GTA" under RCM, for the period from F.Y. 2016-17 (upto June-2017, 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 and imposition of penalty under Section 78 of the Finance Act, 1994.

(vi) Late fee of Rs. 1,12,000/- under Section 70 for delay in filing of ST-3 Returns for the period from October-2014 to July-2017 and Penalty under Section 77(2) of the Finance Act, 1994.

2.2 The said SCN was adjudicated vide the impugned order, wherein the adjudicating authority has confirmed the demand alongwith interest. Penalty equal to tax confirmed was imposed under Section 78 and penalty of Rs.10,000/- was imposed on the appellant under Section 77. Late fees of Rs.1,12,000/- was also imposed under Section 70 of the F.A., 1994.

3. Being aggrieved by the impugned order, the appellant has preferred the present appeal contesting the demand, primarily on following grounds:-

- They were awarded four different contracts by Maharashtra State Electricity Transmission Corporation Limited (MSETCL). The Work Order No. MSETCL/CO/Tr-Proj/TKC-I/0409/9001/Package-I/10564 dated 03.08.2009 (Chandrapur TPS) and Work Order No. MSETCL/CO/Tr-Proj/TKC-I/0409/9001/Package-III/10566 dated 03.08.2009 (Koradi TPS) was for Erection and Commissioning of Tower (with material). These contracts were for clearing of the site, casting of tower foundations (if required), erection of complete tower with extension & all accessories, hosting of insulators, fitting of the line hardware, tower accessories stringing of conductor and earth wire lines etc. On these Erection and Commissioning Services, they have paid service tax on the total value of the contract without any abatement or exemption or reduction of value for goods used in the said contract. They claim to have paid service tax on the full value of the contract value on above service hence are entitled for the CENVAT Credit of duty paid on Inputs (like Steel and Cement used for creating a foundation for towers) used in providing such services. The Work Order No. MSETCL/CO/Tr-Proj/TKC-I/0409/9001/Package-I/10563 dated 03.08.2009 (Chandrapur TPS) and Work Order No. MSETCL/CO/Tr-Proj/TKC-I/0409/9001/Package-III/10565 dated 03.08.2009 (Koradi TPS) was purely supply of material on which they have paid local VAT on the full value of the contracts.

- All of the four contracts stated above are separately awarded and standalone independent contracts and execution of each contract is not dependent on each other. The valuation mechanism provided under Rule 2A of the valuation rules is applicable only for the works contract and not for mere Erection and Commissioning services. Hence, the entire proposed rejection of CENVAT credit based on Explanation 2 to Rule 2A, is not proper as said rule is not at all applicable to services other than Works Contracts.

- For the value of Erection and Commissioning services, the value of such steel and cement used is negligible and can be considered as consumed by them for the provision of erection and commissioning services. It may be argued that the property in steel and cement is also transferred to the service recipient during the provision of service. However, buying of or getting property in such steel or cement was never the intention of the parties to the contract and it is merely incidental to the contract of erection and commissioning and hence, such services can't be classified as Works Contract Service as transfer of property in goods, is a pre-requisite for classification under works contract. As such contract cannot be classified as a Works Contract and tax is paid on full value, Rule 2A does not apply to such a contract.

- Entire Cenvat credit demand has been made based on statement dated 08/09/2020 of Director Amit Barad accepting that such credit is not admissible. Acceptance by the director of the company, cannot override the written law and its correct interpretation.

- Further, it should be noted that contracts for construction of 400kv line for extension of Koradi TPS is already investigated by the DGGI and SCN dated 11/06/2014 was issued covering demand for the said contract. In the said SCN dated 11/06/2014 (copy attached as Annexure 1), credit on such contract was never disputed even after investigation of the said contract done thoroughly by a specialized investigating agency, DGGI. Thus, it is earlier accepted by the department that the credit is rightly availed.

- The demand of Rs.27,84,422/- raised in the SCN was already paid during the time of the investigation. Merely to impose a penalty under Section 78, this amount was included in the demand. Penalty is payable only if there is an intention to evade the tax, which is not proven.

- In terms of para-12 of the OIO, on reconciliation of the Audited Financial Statements with ST-3 returns, short value of Rs.8,37,276 declared for the period 2015-16 and service tax of Rs. 1,20,312 (ST Rs. 1,17,219 + SBC Rs. 3,093) is demanded. In the year 2014-15, excess value was declared in ST-3, as compared to the Audited Financial Statement. Thus, due to the Point of Taxation related provisions and various other reasons like accounting principles, it may happen that such income is booked in Annual Financial Statement for the year 2014-15 but tax is payable in 2015-16 according to Point of Taxation and already paid. Thus, merely assuming such difference as short paid, without any further investigation is not justified. Such difference must be arrived at after considering and adjusting the differences of all the

years under the investigation and such excess must be adjusted against the shortage in another year.

- Out of Rs. 483 Cr., merely Rs. 85 Cr (18%) of income was booked in Annual Financial Statement as taxable and other income is non-taxable. As majority of income (82%) is non-taxable and there is substantial chance that this difference is pertaining to non-taxable income. The OIO is totally silent on why such difference is assumed as of the taxable services. Thus, assuming such difference as pertaining to taxable income, without any evidence is not proper and demand based on such assumption and presumption shall not be confirmed. Even if it is assumed that such difference is pertaining to taxable contracts, they are entitled for the abatements and such value should be reduced by such abatements. Thus, above demand of Rs. 1,20,312/- should be dropped as it is merely on assumption and presumption and without taking any pain to investigate the difference.

- The SCN had been issued by invoking the extended period under Section 73(1) of the Finance Act, 1994. Further, charge of suppression is not leviable, in terms of provisions of Section 73 of the Finance Act, 1994, when the tax is not paid by reason other than fraud, the time period of service of notice shall be thirty months from the relevant date. Accordingly, when the said time limit of thirty months is considered, the period of service of notice for the year 2014-15, 2015-16 & 2016-17 is already time barred and liable to be dropped.

- Contract with MSETCL for Koradi TPS was already investigated by DGGI and SCN dated 11/06/2014 is already issued. So, again in the year 2020, said DGGI is alleging suppression for the same contract for the period 2014-15. During the year 2014, DGGI has accepted such CENVAT credit for this contract and now in the year 2020, after five years, it is held not eligible. Such change of the opinion of the DGGI is not sufficient to invoke charge of intention to evade the tax. Further, once, they have accepted the CENVAT Credit after proper investigation, there is no reason to believe that they have rightly availed the credit. They placed reliance on the decision passed Hon'ble Gujarat High Court in the case of AC of CGST Vejalpur V/s. Vodafone Essar Gujarat Limited, [2018 (8) G.S.T.L. 105 (Guj.)]

- Penalty of Rs.27,84,722/- is pertaining to regular tax self-assessed and paid through returns. Such returns were also filed without any direction or request from the DGGI. Hence, penalty cannot be imposed by invoking extended period of limitation as such tax was paid during inquiry by DGGI and before SCN. Due to financial difficulty, it was financially impossible for us to pay service tax within time hence paid Service Tax belatedly.

- Late fee of Rs.1,12,000 is demanded and imposed for late filing of returns. In terms of Second Proviso to Rule 7C of the Service Tax Rules, 1994, where assessee has paid the amount as prescribed under Rule 7C, i.e. late fees, the proceedings if any, in respect of such delayed submission of return shall be deemed to be concluded. Hence, once late fees is paid, proceedings related to delay in returns gets concluded and hence no further penalty is payable by the assessee. Considering this demand of

late fees as well as imposing penalty under Section 77(2) is not proper and against the law.

- In the absence of demand of service tax, question of payment of interest does not arise. Further, at nowhere OIO is it discussed as to how and why interest is payable on service tax of Rs. 11.49 Cr as stated in Para 26 of the OIO. Even amount of interest has not been quantified in OIO. In fact, for which period this amount is pertaining is also not mentioned. OIO is totally silent on how this amount of Rs. 11.49 Cr is arrived. This issue is actually nowhere discussed in the OIO. In fact, this issue is not even listed in para 17 of the OIO which summarise the issues covered in the OIO. This Para 17 has listed all the issues in the OIO but this issue is not included therein. Then, surprisingly, from nowhere, this demand jumps in directly at Order Para (ix) (Order Paragraph of OIO) without any reason or reference. In absence of any information, we are unable to defend ourselves and there will be violation of principle of natural justice as we are not put in the position to defend ourselves. As far as this issue is concerned, this OIO is vague, and demand cannot be confirmed based on such vague OIO and such OIO is liable to be quashed. Further, as demand of tax of Rs. 11.49 Cr is not there, in absence of demand of tax, question of payment of interest thereon doesn't arise.

3.1 Further, on going through the appeal memorandum, it is noticed that the impugned order was issued on 30.09.2021. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 30.12.2021 i.e. after a delay of 21 days of the time limit to file appeal. The appellant on 11.01.2022, have filed a Miscellaneous Application seeking condonation of delay stating that due to ongoing pandemic of COVID-19, the office was working at less than full capacity. Hence, they could not file the appeal within 60 days from the date of communication. They requested to condone the delay in light of Hon'ble Supreme Court's judgment dated 10.01.2022, which has extended the period of limitation.

4. Personal hearing in the matter was held on 24.01.21023. Shri Puneet Prajapati, Chartered Accountant, appeared on behalf of the appellant. He re-reiterated the submissions made in the appeal memorandum.

5. Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. The appellant have claimed that there was delay in filing appeal due to prevailing pandemic situation of COVID-19 and have relied on the Hon'ble Apex Court's decision passed vide Order dated 10.01.2022. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Further, Hon'ble Supreme Court, keeping in view the difficulties faced by litigants due to restrictions on movement and in an attempt to reduce the transmission of the deadly virus, extended the limitation period under the general law of limitation or under any special laws (both Central and/or State) on the filing of all

appeals, suits, petitions, applications and all other quasi proceedings vide its Order dated January 10, 2022, Hon'ble Court held that the period from March 15, 2020 till February 28, 2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings. Accordingly, I find that the appeal filed in the present case, being falling within the above period, has to be treated as filed within the period of limitation prescribed. Hence, there is no delay in filing the present appeal. Consequently, there is no case of considering or condoning any delay in the matter.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as during personal hearing. The issues to be decided in the present case are as to;

(a) Whether the confirmation of CENVAT credit demand amounting to Rs.13,28,546/- alongwith interest and penalty is legally sustainable ?

(b) Whether the confirmation of Service Tax demand amounting to Rs. 27,84,422/- short paid on the taxable income earned during F.Y. 2016-17 (upto June-2017), under Works Contract Service alongwith interest and penalty is legally sustainable?

(c) Whether the confirmation of Service Tax demand amounting to Rs.1,20,312/-, computed on reconciliation of incomes for F.Y 2015-16, alongwith interest and penalty is legally sustainable?

(d) Whether the confirmation of Service Tax demand amounting to Rs.6,19,147/-, required to be paid under reverse charge mechanism under "Supply of Manpower and Security Services" and "GTA" under RCM, for the period from F.Y. 2016-17 (upto June-2017, alongwith interest and penalty is legally sustainable?

(e) Whether Late fee of Rs.1,12,000/- imposed for late filing of ST-3 Returns for the period from October-2014 to July-2017 and Penalty of Rs.10,000/- imposed under Section 77(2) of the Finance Act, 1994, is legally sustainable?

(f) Whether recovery of interest amounting to Rs.11,48,58,836/- is legally sustainable?

The demand pertains to F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017).

7. On the first issue of CENVAT credit amounting to Rs.13,28,546/- availed and utilized by the appellant, the adjudicating authority has observed that the appellant has provided Works Contract Service to M/s. Maharashtra State Transmission Corporation Energy Ltd. (MSTCEL) and charged gross amount under an invoice, which included value of services and materials, on which the appellant were discharging their service tax liability on the full value of the works contract without availing exemption or abatement. They have however, availed the CENVAT credit on inputs (i.e. Cement and steel) used in

providing Works Contract Service, which he has held to be not admissible in terms of Explanation 2 to Rule 2A (ii) of the Service Tax (Determination of Value) Rules, 2006, which envisages that the provider of taxable service shall not take CENVAT Credit of duties or cess paid on any inputs, used in or in relation to the Works Contract. The appellant, on the other hand have claimed that the Work Order No. MSETCL/CO/Tr-Proj/TKC-I/0409/9001/Package-I/10564 dated 03.08.2009 (Chandrapur TPS) and Work Order No. MSETCL/CO/Tr-Proj/TKC-I/0409/9001/Package-III/10566 dated 03.08.2009 (Koradi TPS) was for Erection and Commissioning of Tower (with material). These contracts were for clearing of the site, casting of tower foundations (if required), erection of complete tower with extension & all accessories, hosting of insulators, fitting of the line hardware, tower accessories stringing of conductor and earth wire lines etc. On these Erection and Commissioning Services, they have paid service tax on the total value of the contract without any abatement or exemption or reduction of value for goods used in the said contract. Hence, they are entitled for the CENVAT Credit of duty paid on Inputs (like Steel and Cement used for creating a foundation for towers) used in providing such services. Further, the Work Order No.MSETCL/CO/Tr-Proj/TKC-I/0409/9001/Package-I/10563 dated 03.08.2009 (Chandrapur TPS) and Work Order No. MSETCL/CO/Tr-Proj/TKC-I/0409/9001/Package-III/10565 dated 03.08.2009 (Koradi TPS) was for purely supply of material, on which they had paid local VAT on the full value of the contracts. As the valuation mechanism provided under Rule 2A is applicable only for the works contract and not for Erection and Commissioning services, hence, it has been contended that the entire demand proposing rejection of CENVAT credit based on Explanation 2 to Rule 2A, is not proper as such rule is not at all applicable to services other than Works Contracts. Further, they have also claimed that buying of or getting property in such steel or cement was never the intention of the parties to the contract and it is merely incidental to the contract of erection and commissioning and hence, such services can't be classified as Works Contract Service, as transfer of property in goods, is a pre-requisite for classification under Works Contract. Further, they have also contended that contracts for construction of 400kv line for extension of Koradi TPS is already investigated by the DGGI and SCN dated 11/06/2014 was issued covering demand for the said contract, where credit on such contract was never disputed by DGGI.

7.1 Firstly, I will examine whether the services rendered by the appellant to M/s. MSETCL is under 'Works Contract Service' or not. With effect from 01.07.2012, service tax regime shifted from selective taxation to comprehensive taxation, thus erection, commission or installation services as well as works contract services are now taxable as 'service'. However, for the sake of point of reference, classification of service under specific head is referred.

7.2 The '**Erection, Commissioning or Installation**' service in erstwhile regime was considered as a service provided in relation to the erection, commission or installation of plant, "machinery, equipment or structures, whether pre-fabricated or otherwise" or installation of electrical and electronic devices, including wirings or fittings there for; or plumbing, drain laying or other installations for transport of fluids; or heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work; or thermal insulation, sound insulation, fire proofing or water proofing; or lift and escalator, fire escape staircases or travelators; or such other similar services. Similarly, the '**Works**

Contract' under Section 65 of clause (105) (zzzza) of the F.A,1994, in the pre-negative list regime was defined as a contract where transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and such contract is for the purpose of carrying out "erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators". Thus, an inference can be drawn that the activity of erection, commissioning or installation is also a part of works contract and taxable. After the introduction of negative list and declared services, all services were considered taxable, if not covered under negative list. However, Clause (54) of the Section 65B of the Finance Act, 1994, specifically defined "**works contract**" as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. Section 66E of the Act, containing the Declared List of Services at **Entry (h)** covered *'service portion in the execution of a works contract'*. So, under the works contract, both prior to and under negative list based service tax regime, the activities of erection, commissioning and installation are covered under the ambit of works contract.

7.3 Further, the CBIC vide Circular No,23/5/2010-TRU dated 24.05.2010, clarified that under 'Works Contract Service', transfer of property in goods is involved which is leviable to sales tax rather than the nature of the activity under taken which distinguishes the 'Works Contract service' from 'Construction or Industrial Construction service' and 'Erection, Commissioning or Installation service'. It is observed that generally construction and erection services would include only labour intensive services, where property in material is not passed on to the service recipient. Whereas under 'Works Contract Service', sale of goods and provision of service both takes place.

7.4 The appellant have claimed that out of the four contracts entered with M/s. MSETCL, two contracts were purely for supply of materials (towers) and the other two contracts were for Erection & Commissioning services (with material). However, they have not produced any agreement in support of their above contention. Shri Amit Vijaysinh Barad, Director of the appellant firm, in his statement recorded on 08.09.2020, deposed that they were awarded Work Contract by M/.s Power Grid Corporation of India Ltd (M/s. PGCIL) on which they availed CENVAT credit of input services provided by their sub-contractors, surveyors etc used in providing their output service. They were also awarded Contract for Supply and Erection work of LILO of one Circuit of 400 KV D/C Kosamba Corania Transmission Line at 4000KV Sanand –II (GIDC) by M/s. Gujarat Energy Transmission Corporation Ltd. (M/s. GETCL). Two separate work orders were given one for erection work and another for supply of G.T. Tower, Materials, Insulator, Earth Wire, Hard Ware etc. They availed CENVAT Credit in respect of input services used in providing Erection of tower used for Works Contract, but have not availed the CENVAT credit of inputs. In another contract awarded by M/s. GETCL for construction of 2400 Rmt Road along with site cleaning & grading at Mega Food Park, Surat LILO, they were discharging

service tax by availing 60% abatement on the total value of the contract. They have also not availed CENVAT credit on any inputs, input services & capital goods used in the contract. So, for the Erection of Tower, they discharged their tax liability under Works Contract after availing abatement and not availing CENVAT credit.

7.5 Further, it is observed that the contract awarded by M/s. MSETCL was for construction of 400KV Lines associated with evacuation of Power from Chandrapur TPS & Koradi TPS. The Work Order No.MSETCL/CO/Tr-Proj/TKC-I/0409/9001/Package-I/10564 dated 03.08.2009 (Chandrapur TPS) and Work Order No. MSETCL/CO/Tr-Proj/TKC-I/0409/9001/Package-I/10563 dated 03.08.2009 (Chandrapur TPS) were for the same Chandrapur Project. One was for 'Erection Part' and another for 'Supply Part'. Similarly, work contract was also awarded for Karodi TPS vide Work Order No. MSETCL/CO/Tr-Proj/TKC-I/0409/9001/Package-III/10566 dated 03.08.2009 (Koradi TPS) and Work Order No. MSETCL/CO/Tr-Proj/TKC-I/0409/9001/Package-III/10565 dated 03.08.2009 (Koradi TPS). One was for 'Erection Part' and another for 'Supply Part'.

7.6 Going by the nature of above contracts, it is clear that the service rendered by the appellant was Works Contract Service as the erection & commissioning services provided involved transfer of property in goods for execution of work contract. All the material supplied was in relation of the works contract awarded by M/s. MSETCL for construction of 400 KV Lines at respective sites. I find that the appellant have split the value by charging the service and material separately to avail inadmissible CENVAT credit which is not allowed. Thus, going by the nature of contract, I am of the considered view that the activity undertaken by the appellant is covered under Works Contract Service. So, once it is established that the taxable service rendered was in the nature of works contract, the determination of value therefore shall be governed by Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

7.7 Relevant text of Rule 2A of the Service Tax (Determination of Value) Rules, 2006, is reproduced below:-

*"2A. **Determination of value of service portion in the execution of a works contract.***- Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely :-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods [or in goods and land or undivided share of land, as the case may be] transferred in the execution of the said works contract.

Explanation. - For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;
(vii) other similar expenses relatable to supply of labour and services; and
(viii) profit earned by the service provider relatable to supply of labour and services;

(c) where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause;

Explanation 2. - For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.]

7.7.1 In terms of above Rule 2A (i) of Service Tax (Determination of Value) Rules, 2006, the value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods *[or in goods and land or undivided share of land, as the case may be]* transferred in the execution of the said works contract. Further, in terms of Explanation-2 above, the service provider is not eligible for CENVAT Credit of inputs used in relation of said works contract.

7.7.2 However, the appellant have contended that the contracts for construction of 400kv line for extension of Koradi TPS is already investigated by the DGGI and SCN dated 11/06/2014 was issued covering demand for the said contract where credit issue was never disputed even by DGGI. I have gone through the said SCN and I find that the said notice covers period from 04.12.2010 to 31.03.2014, wherein the issue was short payment of service tax under 'Works Contract Service' and the current demand notice covers subsequent period from October, 2014 to March, 2015 demanding recovery of CENVAT credit wrongly availed and utilized under 'Works Contract service'. In the demand for earlier period, there is no allegation that the appellant has availed and utilized the CENVAT credit under 'Works Contract Service', though the contracts included the contracts of MSETCL. Even though the appellant for the period October, 2014 to March, 2015 had availed Cenvat credit on the inputs used in providing taxable output service, but since these details were reflected in their ST-3 returns of the respective period filed on 12.09.2015, i.e., prior to issuance of SCN, provisions of suppression cannot be invoked. I find that the assessment made by the appellant and reflected in the ST-3 was not challenged, therefore, any subsequent denial of Cenvat credit on the said service invoking extended period of limitation shall not sustain legally. Moreover, it is also observed that the para 6.8 & 6.8.1 of the SCN mentions that the appellant before initiation of inquiry had paid Rs.13,97,46,385/- (in Cash) and Rs.4,08,03,082/- (through CENVAT) against the service tax liability for the period from October, 2014 to June,2017. During the inquiry, in all they have paid Rs.27,84,422/- (in Cash) and Rs.1,68,20,056/- (through CENVAT) for the period from April, 2016 to June, 2017. When the payment of tax liability made through CENVAT credit was not challenged by the revenue, challenging the demand on the grounds of availing inadmissible CENVAT credit now invoking extended period of limitation seems to be conflicting and irrational. I, therefore, find that the demand of Rs.13,28,546/- invoking extended period of limitation is legally not sustainable. When the demand is not sustainable recovery of interest and penalty is also not sustainable.

8. As regards, the second issue, it is observed that the service tax demand of **Rs.27,84,422/-** was raised on the grounds that the appellant had failed to discharge the above service tax liability on the taxable income earned during the period April, 2016-June, 2017. It was only after initiation of inquiry they filed the ST-3 Returns for the F.Y. 2016-17 and F.Y. 2017-18 (upto June, 2017) and discharged their service tax liability. The adjudicating authority has confirmed the demand under Section 73(1) alongwith interest and also imposed equivalent penalty under Section 78. He has also ordered appropriation of service tax amount already paid by the appellant against the confirmed demand. The appellant, however, are contesting that the delay in payment was due to financial difficulty, hence, suppression cannot be invoked since such non-payment was not with intent to evade tax. They are also contesting the imposition of penalty.

8.1 It is observed that the demand has been raised and confirmed under Section 73(1) alongwith interest and the appellant have during the investigation paid the outstanding liability of Rs.27,84,422/- (in cash). Though, they are not contesting the demand as such, but are contesting the imposition of penalty under Section 78 on the grounds that the such payment should be considered as a regular tax payment, self assessed and declared in the periodical returns of April, 2016 to June, 2017. It is observed that prior to investigation, the appellant had neither filed ST-3 returns for the said period. It was only after initiation of inquiry, i.e., after 18.06.2019, that they filed the returns and made the above payment that too without discharging their interest liability. I find that in terms of Section 78(1) of the F.A., 1994, where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to 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 which shall be equal to hundred per cent of the amount of such service tax.

8.2 In the instant case, the appellant were issued demand under proviso of Section 73(1) for not discharging their tax liability. Though they knew their tax liability, they did not discharge the same citing financial crunch, which I find, would not justify their non-payment as a bonafide act because they subsequently made the payment when an inquiry was initiated. They had not filed the ST-3 returns as well and hence, the department came to know about the service tax liability of the appellant after investigation was initiated against them. This amounts to suppression of facts to the department. All these acts on the part of the appellant clearly bring out the act of suppression and the intention to evade tax. So, in terms of Section 78(1) the appellant is liable for imposition of penalty equal to tax evaded. I, therefore find that penalty imposed under section 78 is legally sustainable.

9. As regards the third issue, it is observed that the short payment of service tax amounting to **Rs.1,20,312** was noticed on reconciliation of income shown in the Balance Sheet/Ledgers/Invoices of F.Y 2015-16 and those declared in ST-3 Returns. The appellant have claimed that the short value of Rs.8,37,276 was declared in ST-3 returns for the period 2015-16, as in the F.Y. 2014-15, excess value was declared in ST-3 as compared to

the Audited Financial Statement. Due to the Point of Taxation provisions and various other reasons like accounting principles, such income is booked in Annual Financial Statement for the year 2014-15 but tax is payable in 2015-16. Such difference must be arrived at after considering and adjusting the differences of all the years under the investigation and such excess must be adjusted against the shortage in another year.

9.1 I find that the appellant has not produced any documents like the Balance Sheets, Legers/Invoices supporting the above argument on the Point of Taxation provisions. The onus to prove that the differential income of Rs.8,37,276/- pertains to non-taxable income lies on the appellant as mere assumption cannot be a ground to justify non-payment of service tax. I, therefore, do not find any reasons to interfere with the findings of the adjudicating authority and uphold the demand of Rs.1,20,312 alongwith interest. As the difference or short payment was noticed on reconciliation of financial records, I find that this is a clear case of suppression of facts and, therefore, penalty imposed under Section 78 is also upheld.

10. As regards the fourth issue, it is observed that the Service Tax demand amounting to **Rs. 6,19,147/-** was raised on the grounds that appellant had shown expenses towards "Supply of Manpower and Security Services" and "GTA" in their Ledgers and Profit & Loss Account for the F.Y. 2016-17 to F.Y. 2017-18 (upto June-2017) but had not discharged their service tax liability under RCM, in terms of Notification No.30/2012-ST dated 20.06.2012. On going through the appeal memorandum, I find, that the appellant have not put forth any argument contesting the above demand. Hence, I do not interfere with the findings of the adjudicating authority and, therefore, uphold the demand of Rs.6,19,147/- confirmed alongwith interest and penalty as uncontested.

11. On the fifth issue regarding the imposition of late fee of **Rs. 1,12,000/-** under Section 70 for delay in filing of ST-3 Returns for the period from October-2014 to July-2017 and imposition of penalty amounting to **Rs.10,000/-** under Section 77(2) of the Finance Act, 1994, the appellant have contended that in terms of second proviso to Rule 7C of the Service Tax Rules, 1994, where the late fess as prescribed under Rule 7C has been paid, then the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded. They claim that the late fees has been paid, therefore, proceedings related to delay in returns gets concluded and no further penalty is imposable under Section 77(2).

11.1 I find that the appellant are not contesting the imposition of late fees as no grounds were put forth by the appellant challenging the same, so, I abstain from giving any findings on this issue. However, regarding imposition of penalty under Section 77(2), I find that in terms of Section 77(2) of Finance Act, 1994, penalty can be imposed for contravention of any of the provisions of Service Tax Act or any rules made thereunder for which no penalty is separately provided. This penalty may extend upto ten thousand rupees. Since, the appellant has paid late fees, I set-aside the penalty imposed under Section 77(2) of Financial Act, 1994, as both the penal action would be harsh on the appellant.

12. As regards the sixth issue, the appellant are contesting the recovery of interest on total service tax demand amounting to **Rs.11,48,58,836/-.** They claim that the OIO does

not discuss as to how and why interest is payable on service tax of Rs. 11.49 Cr, as stated in Para 26 of the OIO, therefore, they are unable to defend the interest liability of said amount which they claim is violation of principle of natural justice. It is observed that the para 6.8 & 6.8.1 of the SCN mentions that the appellant before initiation of inquiry had paid Rs.13,97,46,385/- (in Cash) and Rs.4,08,03,082/- (through CENVAT) against the service tax liability for the period from October, 2014 to June, 2017. During the inquiry they paid Rs.27,84,422/- (in Cash) and Rs.1,68,20,056/- (through CENVAT) for the period from April, 2016 to June, 2017. Subsequently, during the investigation, they also filed ST-3 Returns for the F.Y. 2016-17 to F.Y. 2017-18 (upto June 2017). Thus, they have discharged their total service tax liability of Rs.14,25,30,807/- in cash and Rs.5,76,23,138/- through CENVAT. I find that the notice proposes recovery of interest on respective demands and apart from that it also proposed the recovery of interest on Rs.11,48,58,836/- on which the impugned order is silent as no findings is given by of the adjudicating authority. I, therefore, agree with the contention of the appellant and in the interest of justice, it would be proper to remand the matter to the adjudication authority to give findings on merits and also on computation. Further, for the issues discussed above, where the demand has been upheld, I find that the interest is recoverable under Section 75 of the F.A., 1994.

13. The contention raised by the appellant is that the notice is time barred as the extended period cannot be invoked, is also not acceptable, as the demand of Rs.27,84,422/-, Rs.1,20,312/- & Rs.6,19,147/- raised in respect of issues **(b), (c)** and **(d)** are sustainable in light of the discussion held above. The appellant did not reflect the correct taxable value in the ST-3 Return for the F.Y. 2015-16 and evaded the tax liability on the taxable income received from their service recipients and also did not discharge service tax properly under RCM. I, therefore, find that this is a clear case of suppression and hence extended period of limitation has been rightly invoked to demand service tax.

14. Further, I find that the penalty imposed on the appellant under Section 78 of the Finance Act, 1994, is also justifiable as it provides for penalty for suppressing the value of taxable services. The crucial words in Section 78(1) of the Finance Act, 1994, are *'by reason of fraud or collusion'* or *'willful misstatement'* or *'suppression of facts'* should be read in conjunction with *'the intent to evade payment of service tax'*. Hon'ble Supreme Court, in case of *Union of India* v/s *Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], considered such provision and came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. The demand in this case was raised based on the investigation carried out by the DGGI though it was the responsibility of the appellant to correctly assess and discharge their tax liability. The suppression of taxable value in ST-3 Returns and resultant non-payment and short payment of tax, non-filing of ST-3 Returns, undoubtedly bring out the willful mis-statement and fraud with an intent to evade payment of service tax. Thus, imposition of penalty would follow in view of the decisions rendered in the case of *Rajasthan Spinning and Weaving Mills* [2009 (238) E.L.T. 3 (S.C.)] and *Dharamendra Textile Proceesors* [2008 (231) E.L.T. 3 (S.C.)], if any of the ingredients of proviso to Section 73(1) of the Finance Act, 1994 are established then the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined. I, therefore, uphold the penalty under Section 78 imposed in respect of issues **(b), (c)** and **(d)**.

15. In view of the above discussions and findings, I uphold the demand of Rs.27,84,422/-, Rs.1,20,312/-, Rs.6,19,147/- alongwith interest and penalties and the late fees of Rs.1,12,000/- imposed. Further, I set-aside the demand of Rs.13,28,546/- alongwith interest and penalty as well as the imposition of penalty of Rs.10,000/- in the impugned order. Further, I also remand the demand of interest confirmed on service tax amounting to Rs.11,48,58,836/- for re-examination of the issue on merits.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

(अखिलेश कुमार) 6th February 2023
आयुक्त (अपील्स)

Attested
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

Date: 06.02.2023

By RPAD/SPEED POST

To,
M/s. Ketan Construction Co.,
209, Sumel-II, Nr. Gurudwara,
S.G. Highway, Thaltej,
Ahmedabad–380059

Appellant

Assistant Commissioner,
CGST & Central Excise-Division-VI,
Ahmedabad North
Ahmedabad

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
5. Guard File.