



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:20230264SW000011161B

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/34/2022-APPEAL /8556 - 60
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-158/2022-23  
 दिनांक Date : 08-02-2023 जारी करने की तारीख Date of Issue 20.02.2023  
 आयुक्त (अपील) द्वारा पारित  
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 09/JC/MT/2021-22 दिनांक: 23.06.2021, issued by  
 Joint Commissioner, CGST, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

**M/s. Gujarat Security Guard Services,  
 Block No F, 5<sup>th</sup> Floor, Multi Storage Building,  
 Manjushri Mills Campus,  
 Girdharnagar, Asarwa, Ahmedabad-380016**

2. Respondent

**The Joint Commissioner,CGST, Ahmedabad North , Custom House, 1<sup>st</sup>  
 Floor, Navrangpura, Ahmedabad - 380009**

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 :

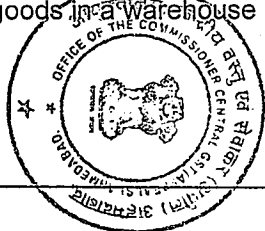
भारत सरकार का पुनरीक्षण आवेदन :  
**Revision application to Government of India :**

(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 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 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.

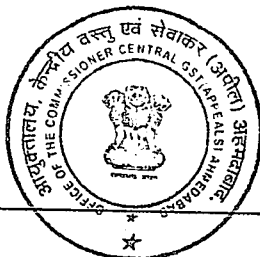
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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.

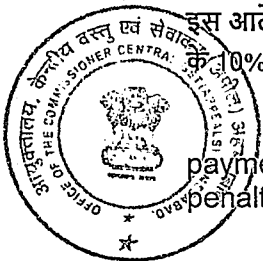
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क का 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. Gujarat Security Guard Services, Block No. F, 5<sup>th</sup> Floor, Multi Storage Building, Manjushri Mills Campus, Girdharnagar, Asarwa, Ahmedabad-380016 (hereinafter referred to as "the appellant") against Order-in-Original No. 9/JC/MT/2021-22 dated 23.06.2021 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central GST, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

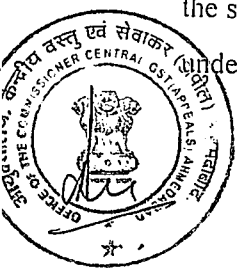
2.1 Briefly stated the facts of the case are that the appellant are engaged in providing Security and Detective Agency Services and are holding Service Tax Registration No. AAAAG0372LST001. During the course of audit of the financial records of the appellant, for the period from April-2012 to June-2017, by the officers of the Central GST, Audit Commissionerate, Ahmedabad, the following observation were raised in Final Audit Report No. 915/2018-19 dated 31.01.2019.

**2.2 Wrong availment of exemption on services provided to Social Welfare Department**

Verification of the records revealed that the appellant is providing security services to various Hostels governed by Social Welfare Department of the Government of Gujarat and is availing exemption under Sr. No. 9 of Notification No. 25/2012-ST dated 20.06.2012, as amended by Notification No. 9/2016-ST dated 01.03.2016.

2.2.1 Till 11.07.2014, only auxiliary education services provided to educational institutions, who are providing education exempted from service tax as outlined in clause (l) of Section 66D, were exempted from payment of Service Tax. As Hostels do not provide education exempted from Service Tax, auxiliary educational services defined under paragraph 2(f) of Notification No. 25/2012-ST dated 20.06.2012, provided to such Hostels, would not qualify for exemption under the Notification *ibid*. Hence, the security services provided to Hostels by the appellant, would not be covered under the exemption provided under Sr. No. 9 of Notification No. 25/2012-ST dated 20.06.2012.

2.2.2 It appears that Hostels run by the Social Welfare Department of the Government of Gujarat are just places of residence and education is not imparted in any manner in such Hostels. Since, Hostels are merely places to stay, and also do not offer any of the types of education listed above, it appeared that such Hostels would not be covered under the definition of education institution and by extension, security services provided by the appellant to such Hostels run by the social welfare department of the Government of Gujarat would not be eligible for exemption under the Mega Exemption Notification No. 25/2012 - ST dated 20.06.2012, as amended.



2.2.3 The appellant was issued a Query memo dated 09.07.2018 requesting them to clarify their stand and also pay the duty along with interest and penalty. The appellant agreed to the objection and paid total Service Tax amount of Rs. 72,75,783/- vide DRC-03s dated 27.07.2018 and 01.01.2019. However, vide letter dated 16.08.2018, the appellant, inter alia, stating that they did not agree with the objection raised by the department, but without prejudice to their stand, they are making payment "Under Protest".

**2.3 Wrong availment of exemption on services provided to SEZ units without producing Form A-1 and A-2:**

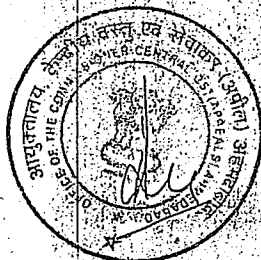
During the course of audit, it was also observed that the appellant had availed exemption from Service Tax on services provided by them to SEZ units, during the period FY 2012-13 to FY 2014-15. But the appellant failed to produce Form A-1 and A-2 stipulated under Notification No. 40/2012-ST dated 20.06.2012, rescinded / superseded by Notification No. 12/2013-ST dated 01.07.2013.

2.3.1 The department vide a letter dated 18.12.2019 requested the appellant to pay the service tax liability involved in the said services along with interest and penalty. The appellant paid Service Tax amount of Rs. 6,43,979/- vide DRC-03 dated 25.02.2020 "Under Protest".

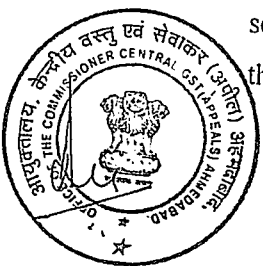
2.4 Subsequently, a SCN bearing No.VI/1(b)-CTA/Tech-29/SCN/GISFS/2018-19 dated 11.06.2020 was issued to the appellant proposing demand of Service Tax amount of Rs. 79,19,762/- (Rs. 72,75,783/- + Rs. 6,43,979/-) in terms of proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and proposing penalty under Section 78 of the Finance Act, 1994. The said SCN also proposed appropriation of Service Tax amount of Rs. 79,19,762/- already paid by the appellant vide DRC-03s dated 27.07.2018; 01.01.2019 and 25.02.2020 and also proposed for vacation of protest letters dated 16.08.2018 and 28.02.2020.

2.5 The said SCN dated 11.06.2020 was adjudicated vide impugned order wherein the demand of Service Tax amounting to Rs. 79,19,762/- (Rs. 72,75,783/- + Rs. 6,43,979/-) proposed in SCN was confirmed under the proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and penalty of Rs. 79,19,762/- (Rs. 72,75,783/- + Rs. 6,43,979/-) was also imposed on the appellant under Section 78(1) of the Finance Act, 1994. In the impugned order also order for appropriation of Service Tax amount of Rs. 79,19,762/- already paid by the appellant, as discussed supra, and also vacated the protest of the appellant filed by them vide letters dated 16.08.2018 and 28.02.2020.

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



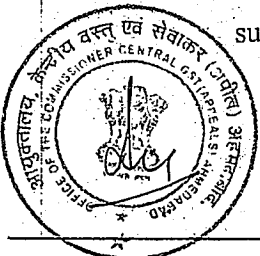
- The appellant was engaged in providing services of supplying the Security Services to the Government Hostels / Chatralayas and holding Service Tax Registration No. AAAAG0372LST001.
- The adjudicating authority failed to appreciate that the exemption to security services provided to education institutions under clause 9 of the Notification No. 25/2012-ST dated 20.06.2012. In the definition clause of this notification "auxiliary education services" defined as any services provided to and for and in relation which may be required to run the education institution, either themselves or outsourced, would all be termed as auxiliary or ancillary to the education and examples are quoted therein services like admission, conduct of examination, catering, transportation and likewise.
- It is most pertinent to note that thereafter several private schools and associations of higher secondary and various other federations and associations of schools and institutions imparting education, with various other facilities being provided to students like accommodation, residence, meals, etc. had approached the CBEC, seeking queries and clarifications.
- Upon which the CBEC vide circular dated 19.09.2013, clarified that auxiliary education services provided to education institutes like transport operators to ferry students to and from school, hostels, housekeeping services, canteens and security services, etc. would all be covered as auxiliary education services. However, the adjudicating authority, in spite of clear words in this circular covering hostels, housekeeping, security services, hold that it would not cover Security services provided only to Hostels.
- The appellant directly covered under this notification and its further clarification, since these state government run hostels, were accommodating students since they cannot come from various places and by making them stay at such hostels, they are also taught in the schools run by this social welfare department run for such special category students.
- Thereafter, vide Notification No. 6/2014-ST dated 11.07.2014, Sr. No. 9 of the exemption Notification No. 25/2012-ST amended and under sub clause (iii) security or cleaning or housekeeping services performed in such educational institute were specifically exempted from levy of service tax.
- All these hostels run by the State Government of Gujarat, through the Social Welfare Department are special category hostels for residence of students of schedule castes and schedule tribes, who not only reside there, but are also undertaking education entirely from the same very institution. Accordingly, they are clearly educational institutions with the



combined facilities of hostels, since such special class category students have to reside there for the purposes of their learning and education.

- The Government of Gujarat has allocated a specific grant to the social welfare department, vide resolution dated 07.04.2010, to various chhatralayas (Hostels) which provide both residence and education on benevolent purposes for up-lifment of the socially and economically backward class, including for all such boys and girls separately, for all purposes of residence, meals and education at one place.
- As regard, the demand of service tax on the income received from providing services to various SEZ units, the appellant submitted that there was ample and sufficient proof of record to conclude that these security services were entirely provided for this period to the various SEZ units and mere procedural irregularity of not submitting Authorization in Form A-1 & A-2, since the same were not supplied by these units to the appellant can in no way override exemption clearly available to them. Therefore, in the absence of any of their purposeful default, of any procedure prescribed under the notifications, for any fault of SEZ units in not adhering to this procedure, they should not be made liable to any Service Tax demand.
- Since the demand of the proposed service tax was clearly entitle to exemption, the question of levy of interest under Section 75 of the Finance Act, 1994 or any penalty under Section 78 of the Finance Act, 1994 does not arise.
- The extended period of limitation cannot be invoked against them by alleging suppression at all in the present case, as the entire facts were duly within the knowledge of department all throughout under the regular returns filed by them and under the routine audits undertaken by the service tax department from time to time.
- The appellant also submitted that the computation of the Service tax demand is also wrong and against the settled principles of taxation in not granting abatement of salaries of their security guards, their other contributions including PF, GPF, Gratuity and such other statutory deductions.
- 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 through virtual mode. Shri Hasit D. Dave, Advocate, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum.



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 issues to be decided in the present appeal are as under:

(i) Whether exemption under Sr. No. 9 of the Notification No. 25/2012-ST dated 20.06.2012 is available to the appellant for the security services provided to various Hostels governed by Social Welfare Department of the Government of Gujarat or otherwise?

(ii) Whether exemption from Service Tax on services provided by them to SEZ units, during the period FY 2012-13 to FY 2014-15 under Notification No. 40/2012-ST dated 20.06.2012, rescinded / superseded by Notification No. 12/2013-ST dated 01.07.2013 is available to the appellant when the appellant failed to produce Form A-1 and A-2, or otherwise?

(iii) Whether demand of Service Tax is required to confirmed under proviso to section 73(1) of the Finance Act, 1994 or not, and consequently, penalty and interest are required to be imposed or not?

6.1 As regard the first issue of providing Security services to various Hostels governed by Social Welfare Department of the Government of Gujarat, I find that the adjudicating authority in the impugned order, while confirming demand of Service Tax, has held as under:

*"21. From the above, it can be summarized that since Hostels are merely places to stay, and are not covered under the definition of educational institution, the security services provided by the assessee to such Hostels run by the Social Welfare Department of the Government of Gujarat would not be eligible for exemption under SI No. 9(b) of Mega Exemption Notification No. 25/2012 - Service Tax dated 20.06.2012, as amended. Therefore, the unpaid service tax of Rs.72,75,783/- on the taxable value of security services provided to Hostels, is liable to be demanded and recovered from the assessee under the proviso to Section 73(1) of the Finance Act, 1994."*

6.2 I also find that the appellant have contended that these hostels run by the State Government of Gujarat, through the Social Welfare Department, are special category hostels for residence of students of schedule castes and schedule tribes, who not only reside there, but are also undertaking education entirely from the same very institution. The appellant have also submitted copy of Resolution dated 07.04.2010 passed by the Section Officer, Department of Social Justice and Empowerment, and also submitted copy of Agreements dated 04.07.2016 & 14-07-2017 entered with the District Deputy Director – Development Caste Class-1, Vadodara in support of their claim.





6.3 In order to examine the claim of the appellant, I hereby reproduce the free english translation of the resolution dated 07.04.2010 passed by the Section Officer, Department of Social Justice and Empowerment, which is originally in Gujarati Language:

*"Resolution:*

*In order to increase the prevalence of education among the children of socially and educationally backward classes and to enable the children of this caste to get education, the government is running 18 government girls chhatralayas (hostels) for socially and educationally backward classes. In these chhatralayas (hostels), students are provided free accommodation, food and study facilities. The issue of keeping security guards for the safety of girls in these government chhatralayas (hostels) was under consideration.*

*After mature consideration, 3 watchmen of eight hours per chhatralayas (hostels) in socially and educationally backward class government girls chhatralayas (hostels), as per the resolution of the Industries and Mines Department of Govt., approval is hereby granted for Rs. 18,465/- for three security guard, @ Rs. 6155/- per security guard, for 18 girls' chhatralayas (hostels) for keeping security guards on out sourced basis from Gujarat Industrial Security Force Society and for fresh expenditure of Rs.39.88 lakhs, subject to the following conditions."*

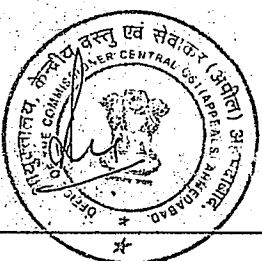
6.4 In view of the above, I find that the said 18 Hostels for the girls run by the Social Welfare Department of the Government of Gujarat are not just places of residence, but it were for accommodation, food and study facilities and called as "Chhatralaya".

6.5 For ease of reference, I reproduce the relevant provisions of the exemption under Sr. No. 9 of the Mega Exemption Notification No. 25/2012-ST, I find that during the FY 2014-15, vide Notification No. 06/2014-ST dated 11.07.2014, Sr. No. 9 of the Notification No. 25/2012-ST were substituted. Therefore, for the period of 01.04.2014 to 10.07.2014, Sr. No. 9 of the Notification No. 25/2012-ST read as under:

*"9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-  
(a) auxiliary educational services; or  
(b) renting of immovable property;"*

6.6 From the period from 11.07.2014, Sr. No. 9 of the Notification No. 25/2012-ST were substituted vide Notification No. 06/2014-ST dated 11.07.2014, which read as under:

*"9. Services provided, -  
(a) by an educational institution to its students, faculty and staff;  
(b) to an educational institution, by way of, -  
(i) transportation of students, faculty and staff;*



- (ii) catering, including any mid-day meals scheme sponsored by the Government;  
 (iii) security or cleaning or house-keeping services performed in such educational institution;  
 (iv) services relating to admission to, or conduct of examination by, such institution;"

6.7 I also find that CBEC vide Circular No.172/7/2013 – ST dated 19.09.2013 clarified that all services relating to education viz. services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution, the transport services provided by the transport operator to the school, hostels, housekeeping, security services, canteen, etc. are exempt from service tax. The relevant portion of the said circular read as under:

*"As defined in the said notification, "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.*

3. *By virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification.*

4. *In addition to the services mentioned in the definition of "auxiliary educational services", other examples would be hostels, housekeeping, security services, canteen, etc."*

6.8 On plain reading of the aforesaid provision of Sr. No. 9(a) of the Notification No. 25/2012-ST, as amended, read with Circular No. 172/7/2013-ST dated 19.09.2013, as they prevailed during the period from 01.04.2014 to 10.07.2014 and provision of Sr. No. 9(b)(iii) of the Notification No. 25/2012-ST, as amended, as they prevailed during the period from 11.07.2014 to 31.03.2015, it is amply clear that the Security service provided to an educational institute are exempted from levy of service tax.

6.9 I also find that "educational institute" were not defined under Notification No. 25/2012-ST until 28.02.2016. The government vide Notification No. 9/2016, dated 1-3-2016, inserted the Clause (oa) 'educational institution' in the definition under Para 2 of Notification No. 25/2012-ST, as amended, with effect from such date on which the Finance Bill, 2016, receives assent of the President of India. The said clause (oa) read as under:

(oa) *"educational institution" means an institution providing services by way of:*



- (i) pre-school education and education up to higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course;"

6.10 In view of the above, I find that upto 10.07.2014, there was exemption from Service Tax to the Security Services provided to an educational institution, who provided (i) pre-school education and education upto higher secondary school or equivalent; (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force, and (iii) education as a part of an approved vocational education courses. However, I find that the appellant failed to demonstrate / produce any documentary evidence that the total income of Rs. 5,9808,869/- for the period from FY 2012-13 to FY 2017-18 (upto June-2017) was received by them, for providing services as any education institution offering the above types of education. It is the contention of the appellant that Hostels run by the Social Welfare Department of the Government of Gujarat are providing residence, meals and education to students at one place, however, the appellant have failed to submit any supporting documents showing that such Hostels provided the education by offering the above types of education. Therefore, I find that the Security Services provided to various Hostels by the appellant do not fall under the definition of education institutes and, therefore are not exempted from Service Tax. Therefore, it is held that the security services provided by the appellant to such Hostels run by the Social Welfare Department of the Government of Gujarat are not eligible for exemption under the Sr. No. 9 of the Notification No. 25/2012 - ST dated 20.06.2012, as amended, during the relevant period.

7. As regard the second issue of providing Security services to various SEZ units, I find that the appellant have failed to produce Form A-1 and Form A-2, which is main conditions for availing exemption from payment of Service Tax under the Notification No. 40/2012-ST dated 20.06.2012 & Notification No. 12/2013-ST dated 01.07.2013. In order to examine the matter in proper perspective, the relevant portion of the Notification No. 40/2012-ST dated 20.06.2012 & Notification No. 12/2013-ST dated 01.07.2013 are reproduced as under:

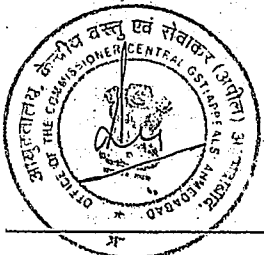
**Notification No. 40/2012-ST dated 20.06.2012**

"3. The following procedure should be adopted for claiming the benefit of the exemption contained in this notification, namely:-

(a) the unit of a SEZ or developer, who has paid the service tax leviable under section 66B of the said Act shall avail the exemption by filling a claim for refund of service tax paid on specified services used for the authorised operations;

(b) the unit of a SEZ or developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Act or the rules made thereunder, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the SEZ unit or developer, as the case may be, in Form A2;

(c) the unit of a SEZ or developer who is not so registered under the provisions referred to in clause (b), shall, before filing a claim for refund under this notification, file a declaration with the Assistant



Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the SEZ unit or developer, as the case may be, in Form A-3;

(d) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the unit of a SEZ or developer, referred to in clause (c), within seven days from the date of receipt of the said declaration, in Form A-3;

(e) claim for refund shall be filed, within one year from the end of the month in which actual payment of service tax was made by such developer or unit, to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

(f) the refund claim shall be accompanied by the following documents, namely:-

(i) a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee; wherever applicable, a copy of the declaration made in Form A-1; .....

### Notification No. 12/2013-ST dated 01.07.2013

"3. This exemption shall be given effect to in the following manner:

(I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

(II) The ab -initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax;

(e) the SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, it shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder."

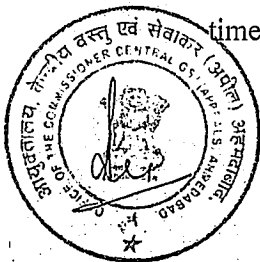
7.1 In view of the legal provisions above, I find that the procedure to be followed for claiming the exemption under Notification No. 40/2012-ST dated 20.06.2012 and Notification No. 12/2013-ST dated 01.07.2013 is similar in nature. I also find that the Notification No. 12/2013-ST dated 01.07.2013 envisages the procedure to be followed for not paying the service tax. Para 3 (II) of the notification specifically provided that the exemption was subject to the procedure and conditions prescribed therein and Para 3(II)(b) specified the condition that "on the basis



of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2". Whereas in the present case, the appellant have failed to produce Form A-1 & Form A-2, which is basic condition for availing exemption under the said notification. In this background, the appellant cannot be considered to have provided services to the SEZ Unit and hence, cannot avail the exemption benefit under Notification No. 40/2012-ST dated 20.06.2012 and Notification No. 12/2013-ST dated 01.07.2013, as amended. I also find that the appellant have contended that they have ample and sufficient proof on records, viz. Invoices and ledgers containing entire details of their service provided to these SEZ units for the period from 2012 to 2015 and merely not submitting authorisation in Form A-1 & Form A-2, since the same were not supplied by these units to the appellant, not override the exemption clearly available to them. In this regard, I find that the appellant have failed in producing Form A-1 & Form A-2, which is basic condition for availing exemption under the said notification, and therefore, the appellant are not eligible to avail exemption under Notification No. 40/2012-ST dated 20.06.2012 and Notification No. 12/2013-ST dated 01.07.2013, as amended, during the relevant period.

7.2 It is settled law that an exemption notification has to be construed in a strict manner and it is for the appellant to prove that they fall within the four corners of the exemption claimed. The Hon'ble Supreme Court, in their decision in the case of Commissioner of Customs (Import), Mumbai Vs. M/s Dilipkumar & Company [2018 (361) E.L.T. 577 (SC)], has settled the legal position in this regard, wherein it was held that "*Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification*". In view thereof, I do not find any merit in the contention raised by the appellant in the case that the non-issuance of Form A1 & Form-A2 is only a procedural lapse and exemption to the appellant cannot be denied on this ground.

8. As regard the contention of the appellant that extended period of limitation can not be invoked in their case for the reason that the appellants have not suppressed any fact from the department; I find that the appellant had never declared to the department regarding wrong availment of the exemption benefit under Sr. No. 9 of Notification No. 25/2012-ST dated 20.06.2012 as well as under Notification No. 40/2012-ST dated 20.06.2012 and Notification No. 12/2013-ST dated 01.07.2013, without having Form-A1 & Form-A2, till the audit of the financial records by the department. The non payment of appropriate Service Tax, by withholding this facts from the department is also suppression of the facts and it clearly transpires that the appellant has intentionally suppressed the same by deliberately withholding of essential information from the department with an intent to evade taxes. Also, the appellant has never informed the department about the same and the said fact could be unearthed only at the time of audit of the financial records by the department. Therefore, I find that all these acts of



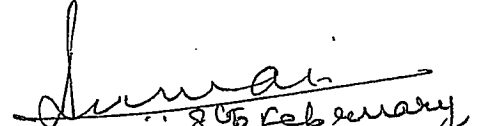
willful mis-statement and suppression of facts on the part of the appellant, with an intent to evade payment of Service Tax, are the essential ingredients exist in the present case which makes them liable to raise the demand against them invoking the extended period of limitation under proviso to Section 73 of the Finance Act, 1994. When the demand sustains, there is no escape from the liability of interest. Hence the same is, recoverable from them under Section 75 of the Finance Act, 1994.

9. As regards penalty imposed under Section 78 of the Act, the appellant has pleaded that since there was no suppression of facts, no penalty can be imposed upon them under Section 78 of the Act. 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 is liable to penalty under Section 78 of the Finance Act, 1994.

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


11. 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)  
Commissioner (Appeals) 2023..

Date : 08.02.2023

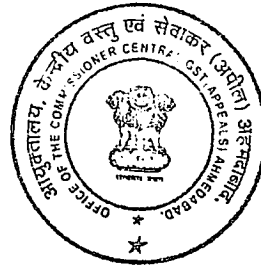
Attested

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

**By RPAD / SPEED POST**

To,  
M/s. Gujarat Security Guard Services,  
Block No. F, 5<sup>th</sup> Floor,  
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Manjushri Mills Campus,  
Girdharnagar, Asarwa,  
Ahmedabad - 380016

The Joint Commissioner,  
Central GST,



Appellant

Respondent

Ahmedabad North

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Joint Commissioner, CGST, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North  
(for uploading the OIA)
- ✓ 5) Guard File
- 6) PA file



