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:20230364SW000000E54F

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2231/2022-APPEAL 10690-94

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-171/2022-23**
दिनाँक Date : **27-02-2023** जारी करने की तारीख Date of Issue 02.03.2023

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

ग Arising out of Order-in-Original No. **CGST/WT07/RAJ/02/2022-23** दिनाँक: **07.04.2022**, issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s Ramshankar Ramshree Suthar,
   209, Rohitnagar, Nr. Jantanagar Railway Crossing,
   Ghatlodia, Ahmedabad-380061

2. Respondent
   The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad North , 4th Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

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. Ramshankar Ramshree Suthar, 209, Rohitnagar, Nr. Jantanagar Railway Crossing, Ghatlodia, Ahmedabad – 380061 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WT07/RAJ/02/2022-23 dated 07.04.2022 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant is holding PAN No. BMBPS1152B. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that the appellant had earned an income of Rs. 11,75,549/- during the FY 2015-16, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" provided by the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant was called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant was issued a Show Cause Notice No. CGST/A'bad North/Div-II/AR-III/TPD/Unreg15-16/20-21/42 dated 21.12.2020 demanding Service Tax amounting to Rs. 2,51,624/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(a), Section 77(1)(c), Section 77(2) & Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2016-17 & FY 2017-18 (up to Jun-17).

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 2,36,512/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16 to FY 2017-18 (upto June-2017). Further (i) Penalty of Rs. 2,36,512/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 5,000/- was imposed on the appellant under Section 77(1)(a) of the Finance Act, 1994; (iii) Penalty of Rs. 5,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994; and (iv) Penalty of Rs. 5,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant have preferred the present appeal along with application for condonation of delay in filing of appeal on the following grounds:

- The appellant is engaged in business of providing Manpower Supply services on contractual basis at the site of company for carpentry work at the direction and supervision of the management / employees of the company.

- Major part of services consists of Manpower Supply to Body Corporate and same was covered under Reverse Charge Mechanism. As per Notification No. 30/2012-ST dated 20.06.2012, in respect of services provided or agreed to be provided by way of supply of manpower for any purpose by the Individual/HUF/Firm/AOP to the Companies/LLP, the liability to pay Service Tax would be in ratio of 25% by the person providing service and 75% by the person receiving service (till 31.03.2015). However, effective from 01.04.2015, 25% of the Service Tax which was earlier liable to be paid by service provider shifted to the hands of service recipient, thereby increasing the effective Service Tax liability to be paid by service recipient from 75% to 100% as amended by Notification No. 7/2015-ST dated 01.03.2015 by shifting the Supply of Manpower and Security Services from Partial Reverse Charge to Full Reverse Charge, thereby the service receiver would be liable to discharge 100% Service Tax under Reverse Charge. Thus, the appellant does not fall within ambit of person liable to pay the Service Tax as Supply of Manpower and Security services has been shifted from Partial Reverse Charge to Full Reverse Charge and thereby the service receiver would be liable to discharge 100% Service Tax and not the appellant.

- They fulfill all conditions for availing threshold exemption benefit vide Notification No. 33/2012-ST dated 20.06.2012 for the relevant period. The taxable income for the FY 2014-15 to FY 2017-18 (upto June-2017) was as under:

(Amount in Rs.)

Financial Year	Total Income as per ITR	Income covered under RCM	Net taxable Income
2014-15	10,65,059	2,18,278	8,46,781
2015-16	17,35,336	9,72,099	7,63,237
2016-17	6,65,553	25,000	6,40,553
2017-18 (upto June-2017)	2,30,400	32,000	1,98,400

- As aggregate turnover of the appellant is Rs. 8,46,781/- during FY 2014-15, i.e. below Rs. 10 lakh, the appellant is neither required to take registration nor required to pay Service Tax during the relevant period, i.e. FY 2015-16 to FY 2017-18 (upto June-2017).

- The services provided under Reverse Charge Mechanism are out of ambit of this notification as specified in Proviso (ii) of the Notification No. 33/2012-ST.

- There is no intention of fraud, collusion, wilful misstatement, suppression of facts etc. involved in their case, therefore, extended period of limitation cannot be invoked in present case.

- The amount received should be treated as inclusive of taxes as per Section 67(2) of the Finance Act, 1994.

- The demand itself is not sustainable and hence, the question of recovery of interest and imposing of penalty does not arise.

- There is no finding in the impugned order which can allege that the appellant has intend to evade payment of tax, hence, the penalty under Section 78 of the Finance Act, 1994 cannot be impossible and also larger period of limitation cannot imposable.

4. On going through the appeal memorandum, it is noticed that the impugned order was issued on 07.04.2022 and received by the appellant on 16.04.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 15.07.2022, i.e. after a delay of 30 days from the time limit for filing appeal. The appellant have also filed a Application seeking condonation of delay on 12.08.2022 stating that in the preamble of the impugned order, the time period mentioned to file the appeal is 3 months from the date of communication of order, therefore, the appellant was of view that the last day for filing the appeal would be 15.07.2022. Thus, it resulted in delay of 30 days, which was accidental and not intentional.

4.1 Personal hearing in the matter of Application for condonation of delay was held on 24.01.2023. Ms. Bhagyashree Dave, Chartered Accountant, and Ms. Foram Dhruv, Chartered Accountant, appeared on behalf of the appellant. They reiterated submission made in application for condonation of delay. They stated that the appellant was not registered with department and hence delay occurred due to unintentional reasons.

4.2 Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed

within a period of 2 months from the dates 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 Finance Act, 1994, 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. Considering the cause of delay given in application as genuine, I condone the delay of 30 days and take up the appeal for decision on merits.

5. Personal hearing in the case was held on 08.02.2023. Ms. Bhagyashree Dave, Chartered Accountant and Ms. Foram Dhruv, Chartered Accountant, appeared on behalf of the appellant for personal hearing. They reiterated submission made in appeal memorandum. They stated that they would submit copies of documents annexed with reply to SCN as part of additional written submission.

5.1 Subsequently, the appellant submitted copies of documents annexed with reply to SCN vide their letter dated 13.02.2023.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2015-16 to FY 2017-18 (upto June-2017).

7. It is observed that while confirming the demand of Service Tax in the impugned order, the adjudicating authority had held as under:

> *"20. .....*
> .....
>
> *In view of the above it is apparent that if supply of manpower to a business entity registered as body corporate, located in the taxable territory then service provider is made free from the liability of paying service tax under reverse charge mechanism. Therefore, it is essential to see whether condition supra is fulfilled by the noticee or otherwise. As such the service provided by the noticee and income earned from the same on the basis of their* ***Income and Expenditure Statement,*** *is as under:*

Sl. No.	*Financial Year*	*Income earned*		
		Labour Income	*Labour supply service income (RCM)*	*Total*
1	*2014-15*	*8,46,781*	*2,18,278*	*10,65,059*
2	*2015-16*	*7,63,237*	*9,72,099*	*17,35,336*
3	*2016-17*	*6,40,552*	*25,000*	*6,65,552*
4	*2017-18 (upto June-2017)*	*1,98,400*	*32,000*	*2,30,400*

21. On perusal of above income it reveals that income earned from supply of labour to a business entity registered as body corporate, as contended by them, is exempted by virtue of Notfn. No. 30/2012-ST as amended, this facts further is corroborated from the copy of invoice wherein they have raised the invoice only for labour charges. I feel it necessary to reproduce the relevant extract of Notifn. No. 33/2012-ST as under.

Meaning of Aggregate Value: "Aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification.

Thus, in a nutshell it may be said that in the case of a Provider of Service (except GTA) the FULL VALUE of taxable services provided must be considered for calculating the limit of Rs. 10 Lakhs irrespective of the fact as to who pays the service tax and upto what extent. Therefore SSI exemption is available if the full value of such taxable services rendered by the Assessee during the preceding financial year.

22. As regards benefit of Rs. 10 lacs by virtue of Notification No. 33/2012-ST during the financial year 2015-16, I find that their previous year i.e. 2014-15 Rs. 1065059 /- which is more then threshold limit of Rs. 10 lacs, hence they are not eligible for said exemption subsequent to that year. As instant show cause notice cover the period of demand from 2015-16 details of income is as under:

Sl. No.	*Financial Year*	*Income earned and chargeable to ST*		
		Labour Income	*ST Rate*	*Service Tax payable*
1	*2015-16*	*7,63,237*	*14.50%*	*1,10,669*
2	*2016-17*	*6,40,552*	*15%*	*96,083*
3	*2017-18 (upto June-2017)*	*1,98,400*	*15%*	*29,760*
Total				*2,36,512*

23. I, therefore, hold that income for the year 2015-16 to 2017-18 (upto June, 2017) as detailed above is taxable and is chargeable to service tax which comes to Rs. 2,36,512/- and to be recovered by virtue of proviso to Section 73(1) of Finance Act, 1994 along with interest by virtue of section 75 of the Finance Act, 1994 making the liable for penal action under section 78 of the Finance Act, 1994."

8. As regard the contention of the appellant that from 01.04.2015, the liability to pay Service Tax has been shifted 100% on the service recipient, i.e., under Full Reverse Charge Mechanism and, therefore, they were not liable to pay any service tax, I find that the condition to avail Reverse Charge Mechanism, in respect of Supply of Manpower Services are governed by Para I(A)(v) of the Notification No. 30/2012-ST dated 20.06.2012. According to which, if service recipient is a business entity registered as body corporate then only the Reverse Charge Mechanism is applicable in the case of the appellant being Individual. The relevant portion of the said Notification is as under:

"Notification 30/2012 Service Tax dated 20.6.2012 GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I. The taxable services, -

(A) (i) .....

(ii) ....

.....

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose [or security service- (Inserted by Notification No.45/2012-ST, dated 7-8-2012 w.e.f. 7-8-2012.)] or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;"

.....

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following table, namely: -

Table

Sl. No.	*Description of a service*	*Percentage of service tax payable by the person providing service*	*Percentage of service tax payable by any person liable for paying service Tax other than the service provider*
8.	*in respect of services provided or agreed to be provided by way of supply of manpower for any purpose or security services*	*NIL*	*100%*

9. As regard the contention of the appellant that they fulfill all conditions for availing threshold exemption benefit vide Notification No. 33/2012-ST dated 20.06.2012 for the relevant period, I find that in the impugned order the adjudicating authority had given the benefit of Notification No. 33/2012-ST dated 20.06.2012. However, the said benefit has been given taking into consideration the whole income of the appellant during the relevant year. To examine threshold exemption benefit under Notification No. 33/2012-ST dated 20.06.2012, it

is necessary to examine the provision of the said notification. I hereby reproduce relevant portion of the said notification, which reads as under:

"Notification No. 33/2012 - Service Tax dated 20.06.2012

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1 st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1 st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-

(i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or

(ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.

.....
.....

"Explanation.- For the purposes of this notification,-
(A) "brand name" or "trade name" means .....
(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."

9.1 In view of the aforesaid provision, I find that the value of the following services need not be considered in reckoning aggregate value:

(a) Value of services in the Negative List;

(b) service, on which no service tax is leviable under Section 66B of Finance Act;

(c) Value of services under Mega-Exemption Notification 25/2012-ST or any other notification which provides for full exemption from service tax.

9.2 In the present case, (i) the service provided by the appellant are not in the Negative List as defined under Section 66D of the Finance Act, 1994; (ii) the service provided by the appellant are chargeable to the Service Tax under Section 66B of Finance Act; and (iii) the service provided by the appellant to the body corporate falls under the 100% RCM as per Notification No. 30/2012-ST. However, the said notification specify the extent to which tax

liability has to be discharged by the service provider and the service receiver and not exempted any services, thus, in the present case, the service provided by the appellant to the Body Corporate are termed as 'taxable services' and not exempted one. Therefore, while calculating the aggregate value of Rs. 10 Lakhs, the sum total of value of taxable services charged by the provider in the first consecutive invoices issued or required to be issued has to be considered.

9.3 Since the definition of aggregate value given in this notification itself states that "not include value charged in invoices issued towards such services which are exempt from whole of service tax", therefore, value of services falls under Notification 30/2012-ST dated 20.06.2012, which not provides any exemption from service tax, is includible in the aggregate value to reckon value of service rendered to decide applicability of threshold limit. I also find that the adjudicating authority has correctly calculated Service Tax liability in this regard.

9.4 I also find that as per Para 3 of Notification No. 33/12-ST dated 20.06.2012 as amended, if ST on freight is paid by service receiver **under RCM, that value will be excluded from the aggregate turnover** to arrive at threshold exemption limit of ₹ 10 lakhs. When there is specific provisions for excluding the value of services on which Service Tax paid by the service receiver on **Reverse Charge Mechanism basis for GTA** in the Para 3 of the Notification No. 33/12-ST dated 20.06.2012, it can be concluded that the said facility is not available to other category of services under reverse charge.

9.5 As regard, the contention of the appellant that as per Proviso (ii) of the Notification No. 33/2012-ST the services provided under Reverse Charge Mechanism are out of ambit of the said notification, I find that as per Proviso (ii) of Notification No. 33/12-ST dated 20.06.2012, the value of taxable services in respect of which service tax shall be paid by any person as specified in Section 68(2) of the Finance Act, 1994, then the same is not to be considered in the aggregate value. From the said proviso, it can be concluded that threshold exemption is available only to the Provider of the service and not to the Receiver of the service. However, in the present case, the appellant is provider of the service and the value of taxable services in respect of which service tax has been paid as specified in section 68(2) of the Finance Act, 1994 is NIL, as in this case the service has been provided by the appellant to the Body Corporate, the service receiver, and thereby the Body Corporate, is the person who has paid the service tax as specified in Section 68(2) of the Finance Act, 1994 and not the appellant.

10. Further, in the present case, it clearly transpires that the appellant has intentionally suppressed the correct taxable value by deliberately withholding of essential information from the department though they were providing taxable services. They have suppressed the value

of taxable services, with an intent to evade taxes. Also, the appellant has never informed the department about the non payment of Service Tax and the said fact could be unearthed only upon initiation of the inquiry by the department after receipt of the data from the CBDT. Therefore, I find that all these acts of willful mis-statement and suppression of facts on the part of the appellant, with an intent to evade payment of Service Tax, are the essential ingredients, which exist in the present case which makes them liable to pay the demand raised against them invoking the extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994. When the demand sustains, there is no escape from the liability of interest, hence, the same is, therefore, recoverable under Section 75 of the Finance Act, 1994.

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

12. Further, I find that the appellant was not registered with the service tax during the relevant period. The appellant were required to obtain service tax registration in terms of Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994, however, they have not obtained the Service Tax Registration, though they were providing the taxable services to their clients. This failure in obtaining Service Tax Registration has resulted in the suppression of facts from the department and evasion of service tax. Thus, the appellant has contravened the provisions of Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994. This act of the appellant have rendered them liable for penalty under Section 77(1)(a) of the Finance Act, 1994. Hence, I find that the impugned order to the extent

of penalty of Rs. 5,000/- imposed on the appellant under Section 77(1)(a) of the Finance Act, 1994 is legally correct.

13. As regards the penalty of Rs. 5,000/- imposed on the appellant under Section 77(2) of the Finance Act, 1994, as amended, for contravention of the provisions of Section 70 of the Finance Act, 1994, I find that as per the provisions of Section 70 of the Finance Act, 1994 (as amended from time to time), "every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed. In the present case, it is observed that the appellant has not disclosed full and correct information about value of the services provided by them in the relevant ST-3 Returns and failed to self-assess the correct taxable value for the services provided by them and thereby contravening the provisions of Section 70 of the Finance Act, 1994. Accordingly, as the appellant has failed to comply with the provisions of Section 70 of the said act, they are liable to the penalty under Section 77(2) of the Finance Act, 1994. Hence, I find that the impugned order to the extent of imposition of penalty of Rs. 5,000/- on the appellant under Section 77(2) of the Finance Act, 1994 is legally correct.

14. I also find that the department had asked the appellant to furnish information & documents vide letters dated 06.10.2020, 20.11.2020 & 07.12.2020, but the appellant have failed to furnish information & documents as called for by the department till the date of issuance of the Show Cause Notice. Thus, the appellant have contravened the provisions of Section 77(1)(c) of the Finance Act, 1994. This act of the appellant has rendered them liable for penalty under Section 77(1)(c) of the Finance Act, 1994. Hence, I find that the impugned order to the extent of imposition of penalty of Rs. 5,000/- on the appellant under Section 77(1)(c) of the Finance Act, 1994 is legally correct.

15. 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)

Date : 27.02.2023

Attested

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

By RPAD / SPEED POST

To,

M/s. Ramshankar Ramshree Suthar, Appellant

209, Rohitnagar,

Nr. Jantanagar Railway Crossing

Ghatlodia, Ahmedabad – 380061

The Deputy Commissioner, Respondent

CGST, Division-VII,

Ahmedabad North

Copy to :

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