



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:20230364SW0000555F5F

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2701/2022-APPEAL / 9314 - 18
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-182/2022-23
दिनांक Date : 06-03-2023 जारी करने की तारीख Date of Issue 10.03.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 61/AC/DEMAND/2022-23 दिनांक:
16.06.2022/20.06.2022, issued by Deputy/Assistant Commissioner, CGST, Division-I,
Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Kamal Pratabrai Chhabria,
7- Valmiki Society, Nr. Indira Bridge,
Sardar Nagar, Ahmedabad-382475

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-I, Ahmedabad North
, Ground Floor, Jivabhai Mansion Building, Aashram Road, 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 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, 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 किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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 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. 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.

के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क 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

M/s. Kamal Pratabrai Chhabria, 7-Valmiki Society, Nr. Indra Bridge, Sardar Nagar, Ahmedabad-382475 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No.61/AC/DEMAND/2022-23 dated 16.06.2022/20.06.2022 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the adjudicating authority*').

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the appellant had earned substantial income by providing taxable services but they neither obtained registration nor paid service tax. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2015-16. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability was, therefore, quantified considering the income of Rs.15,75,480/- as taxable income, based on the data provided by the Income Tax Department and the service tax liability of Rs.2,28,445/- for the F.Y. 2015-2016 was accordingly worked out.

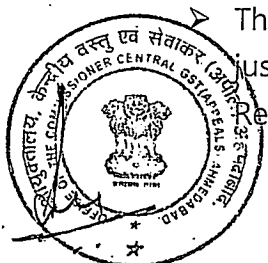
2.1 Thereafter, a Show Cause Notice (SCN) No. STC/AR-1-15-16/UNREG/2021-22 dated 23.04.2021 was issued to the appellant proposing recovery of service tax demand of Rs.2,28,445/- not paid on the value of income received during the F.Y. 2015-16, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Sections 77(1) and under Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.2,28,445/- was confirmed alongwith interest. Penalty of Rs.50,000/- was imposed under Section 77 (1) and equivalent penalty of Rs.2,28,445/- was also imposed under Section 78.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the grounds elaborated below:-

- The service tax demand can be raised by invoking the extended period only in cases where any 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 any wilful mis- statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty. However, no such allegation is brought out in the SCN and was issued merely on the basis of the income tax return data which was available with the department right from the beginning, hence, suppression cannot be invoked.

➤ The SCN does not allege on which taxable service the income was earned. Without justifying the services rendered the demand cannot be raised on vague allegation. Reliance is placed on Deltax Enterprises vs. CCE, Delhi 2018 (10) GSTL 392 (Tri-Del)



wherein Hon'ble Tribunal held that "No service tax liability can be fastened on an unidentified service"

- The SCN has been issued in violation of Board's Instruction dated 26.10.2021 which states that SCN based on ITR-TDS data should be issued only after proper verification of facts.
- The documents like Work Orders issued by Ahmedabad Municipal Corporation (AMC) and M/s. Kam Avida Enviro Engineers Pvt. Ltd.; Contracts entered with M/s. Hitesh Clean, Form26AS showing TDS deducted by Proprietor M/s. Hitesh Clean and sub-contract of drainage cleaning services, copy of their ledgers etc. clearly depict that the activity undertaken was the work of drainage, cleaning service which are exempted vide Notification No.25/2012-ST. However, these documents were ignored by the adjudicating authority.
- Small Scale exemption available under Notification No.33/2012-ST dated 20.06.2012 was sought but was not considered in spite of the fact that the appellant had not provided any taxable service during the previous financial year.
- When the services are exempt, the service tax demand is not sustainable. Accordingly, the interest and penalties imposed shall also not sustain.

4. Personal hearing in the matter was held on 15.02.2023. Shri Punit P. Jhamtani, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He stated that he would also submit relevant documents as part of additional submission.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing. Till date the appellant has not made any additional submission. Hence, I proceed to decide the case based on the available documents and the submissions made in the appeal memorandum. The issue to be decided in the present appeal is as to whether the service tax demand of Rs.2,28,445/- confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise? The demand pertains to the period F.Y. 2015-16.

6. I find that the entire demand has been raised based on ITR data provided by Income Tax Department. The appellant are not registered with the department, hence the income reflected by the appellant in the ITR filed during the F.Y. 2015-16 was considered as a taxable income. In reply to the SCN, the appellant, before the adjudicating authority, have submitted that they were engaged in rendering drainage cleaning services to Ahmedabad Municipal Corporation (AMC) and the work was sub-contracted to them by M/s. Hitesh Associates, which is exempted vide Entry No.25 of Notification No.25/2012-ST. They submitted the P&L Account for the F.Y. 2015-16 mentioning the sales income of Rs.98,950/-; Contract receipt showing income of Rs.15,75,480/-; Copy of Contract dated 22.10.2022 entered with M/s. Hitesh Associates. They also submitted copy of Contracts dated 25.10.2013, 25.05.2015 entered with M/s. Hitesh Clean & Care Associates; Copy of



ST-1, Ledger Accounts, Copy of Invoices issued by M/s. Hitesh Clean & Care Associates; Copy of Bank Statement and Copy of Work Order of KAM-AVIDA.

6.1 The adjudicating authority, based on the documents submitted by the appellant, observed that in Form-26AS filed by the appellant for the F.Y.2015-16, the income of Rs.15,75,480/- was shown from Shweta Chandur Lachhwani whereas the P&L account of the appellant for the said F.Y. 2015-16 shows Rs 15,75,480/- as income from sale of service, on which no tax was paid. As per the Work Order STP/Jetting/1928/15-16 dated 31.07.2015, issued by AMC, the work order was granted to M/s. Hitesh Associates, who vide letter dated 22.03.2022 sub-contracted this work to the appellant. Thus, it appeared that said sub-contracting was done in 2022 and not in F.Y. 2015-16. Further, there is no mention of the period of work order and the rate or details of value of work involved to be done. Another contradiction noticed and recorded by the adjudicating authority was that the appellant vide reply dated 16.05.2022 have submitted that they carried out the work, sub-contracted to them by M/s. Hitesh Clean & Care, Vadodara, who were given the original contract by M/s. Kam Avida Enviro Engineers Pvt. Ltd., Pune. As per the Work Order No.STP/Jetting/810/2015-16 dated 14.05.2015, the total amount for work order is Rs.11,70,000/-, whereas in Form 26AS and P&L Account for the F.Y. 2015-16, the income is reflected as Rs.15,75,480/- for the alleged drainage cleaning services. Thus, there is contradiction in the contract amount vis-à-vis the income reflected in IT Returns. Based on above observation, the adjudicating authority has confirmed the demand.

6.2 On going through the Form 26AS, I find that the income of Rs.15,75,480/- was received by the appellant from Shweta Chandur Lachhwani, who is the Proprietor of M/s. Hitesh Clean & Care, as mentioned in GST Registration Form-06. Further, as per the Balance Sheet of M/s. Hitesh Clean & Care submitted by the appellant, in the Leger of the appellant, an amount of Rs.15,59,725/- is shown as credited during the F.Y. 2015-2016 for 'Operation & Maintenance Expenses'. Further, the appellant have also submitted the Work Order dated 10.10.2013 issued by Sewage Treatment Plant Department of Ahmedabad Municipal Corporation (AMC) wherein '*Comprehensive Operation & Maintenance*' of Jetting cum Suction (Combined) Machines is granted to M/s. Kam Avida Enviro Engineers Pvt. Ltd. for three years. Similarly, AMC vide Work Order No.STP/Jetting/810/2015-16 dated 14.05.2015 has also granted the contract to M/s. Kam Avida Enviro Engineers Pvt. Ltd for '*Comprehensive Operation & Maintenance*' of Jetting cum Suction (Combined) Machines for two years involving amount of Rs.11,70,000/-. This work was further sub-contracted by M/s. Kam Avida Enviro to M/s Hitesh Clean & Care vide letter No. O&M/Agreement/AMC/2015-16/04 dated 19.05.2015 at the proposed rate of Rs.1950/shift/ machine. Thereafter, M/s Hitesh Clean & Care vide letter dated 25.05.2015, further sub-contracted the said work to the appellant. This letter also mentions that the execution of project is as per AMC Order which is valid till the contract period; that the work carried out is on behalf of AMC and is exempt from service tax as per the notification.

6.3 Going by the above facts, it is clear that the appellant was carrying out the work of '*Comprehensive Operation & Maintenance*' of Jetting cum Suction (Combined) Machines, used by Sewage Treatment Plant Department of the AMC. The Ahmedabad Municipal Corporation is a local body and is responsible for the civic infrastructure and administration of the city of Ahmedabad. They have to perform certain obligatory service and discretionary services. The appellant have claimed that their activities are exempted



vide Entry No.25 of Notification No.25/2012-ST dated 20.06.2012. The relevant entry is re-produced below:-

25. Services provided to Government, a local authority or a governmental authority by way of -

(a) *carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or*

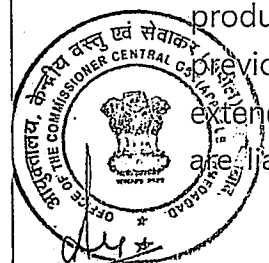
(b) *repair or maintenance of a vessel or an aircraft;*

6.3.1 The said entry of the notification was amended vide Notification No.06/2014-ST dated 11.07.2014, vide clause (viii) wherein in entry 25, for item (a), the following item shall be substituted, namely:-

"(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or"

6.4 On plain reading of the above text, it is clear that any service relating to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation provided to a government, local authority and governmental authority are exempted. The term 'sanitation conservancy' is not defined in the notification, however, it refers to services which are concerned with regard to maintaining sanitation services for e.g. provision of clean drinking water, sewage disposal etc. The appellant, in the instant case have been providing 'Comprehensive Operation & Maintenance' of Jetting cum Suction (Combined) Machines, which are used by AMC for de-choking the clogged sewer lines. These machines are generally loaded over a vehicle to reach a particular destination and are capable of sucking silt from heavily silted sewer manhole. It separates the silt and water from the sewage sucked from the hole. The appellant by operating & maintaining these jetting cum suction machines was rendering service to AMC, which is a local body.

7. It is noticed that the adjudicating authority has made an observation that the contract amount mentioned in the AMC Work Order dated 14.05.2015 and the Work Order dated 19.5.2015 issued by M/s. Kam Avida Enviro Engineers Pvt. Ltd is Rs.11,70,000/-, whereas the amount received by the appellant and reflected in their Form 26AS is Rs.15,75,480/- which contradicts the claim made by the appellant that the income earned was against the exempted services rendered. The appellant have submitted computer generated invoices raised in the name of M/s. Hitesh Clean & Care, wherein they have charged Rs.15,75,480/- for sale of 750 quantity sold at the rate of Rs.2100/piece, meant for comprehensive operation and maintenance, which appears to be illogical as the value of sub-contract generally does not exceeds the value of original contract. Since the appellant could not make any submission countering this observation of the adjudicating authority, I, therefore, find that the benefit of above exemption shall be limited to the taxable income of Rs.11,70,000/- for which a work order was provided. For the remaining income, the appellant have not submitted any proof nor did they produce any proof regarding the income earned or income not earned during the previous F.Y. 2014-15. Hence, the benefit of threshold limit exemption cannot be extended to them. Thus, for the remaining taxable income of Rs.4,05,480/-, I find that they are liable to pay service tax alongwith interest. Accordingly, for the limited purpose of



calculation of the tax payable, I remand the matter to the adjudicating authority, who shall determine the tax liability & interest on said taxable income.

8. As the service tax demand on taxable income of Rs.4,05,480/- is held legally sustainable, I find that the imposition of penalty under Section 78, is also justifiable as it provides penalty for suppressing the value of taxable services. 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. I find that the appellant was rendering a taxable service but did not obtain registration and hence such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined. However, as the tax liability is to be determined, the penalty imposed under Section 78 shall also stand modified accordingly.
9. As regards the imposition of penalty under Section 77, is concerned, I find the same is also imposable. The appellant were rendering the taxable service and were liable to pay service tax, however, they never considered to obtain the registration in accordance with the provisions of Section 69. They also failed to produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder. I, therefore, find that all such acts make them liable to a penalty. Considering the reduction in demand, I, reduce the penalty from Rs.50,000/- to Rs.10,000/- to be imposed under Section 77 of the Finance Act, 1994.
10. In view of above discussion, I set-aside the service tax demand on taxable income Rs.11,70,000/- alongwith interest and penalties and uphold the service tax demand on taxable income of Rs.4,05,480/- alongwith interest and penalties. Accordingly, the appeal is partially allowed and partially rejected to the above extent.
11. 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.

Arun Kumar
6th March, 2023 ..
(अखिलेश कुमार)
आयुक्त(अपील्स)

Date: 03.2022

Attested

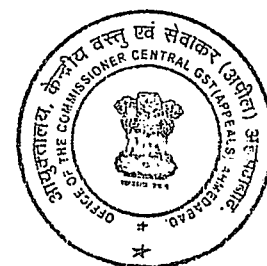
Rekha Nair

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

By RPAD/SPEED POST

To,
M/s. Kamal Pratabrai Chhabria,
7-Valmiki Society,

Appellant



Nr. Indra Bridge,
Sardar Nagar,
Ahmedabad-382475

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

Respondent

Copy to:

1. The 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 (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
- ✓ 5. Guard File.



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