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

सत्यमेव जयते

NATION TAX MARKET

**DIN: 20220964SW000072377F**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2259/2021-APPEAL / 3346 - 59

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-43/2022-23**
दिनाँक Date : **29-09-2022** जारी करने की तारीख Date of Issue 30.09.2022

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

ग Arising out of Order-in-Original No. **CGST/A'bad North/Div-VII/ST/DC/40/2021-22** दिनाँक: **24.08.2021**, issued by Deputy Commissioner,Division-VII, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   **M/s Abhishek Associates,**
   **8, Parulnagar Shopping centre,**
   **Bhuyangdev Cross Road, Ghatlodiya,**
   **Ahmedabad-380061**

2. Respondent
   **The Deputy Commissioner, CGST,Division-VII, Ahmedabad North , 4th floor, Shajanand Arcade, Near Helmet Circle, 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 ड्यूटी 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**

M/s. Abhishek Associates, 8, Parulnagar Shopping Centre, Bhuyangdev Cross Road, Sola Road, Ghatlodiya, Ahmedabad-3800061 (hereinafter referred to as '*the appellant*') have filed the instant appeal against the OIO No. CGST/ A'bad North/Div-VII/ST/DC/40/2021-22 dated 24.08.2021 (in short '*impugned order*') passed by the Deputy Commissioner, Central GST, Division-VII, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

**2.** The facts of the case, in brief, are that based on the pre-audit observation made, while clearing a refund application filed by the appellant, it was noticed that the appellant had stopped charging service tax with effect from 01.03.2016, claiming the service to be exempted service therefore, direction was issued to recover the same. On verification of the ST-3 return filed by the appellant, it appeared that the appellant had provided 'Works Contract Service' to Air Port Authority of India ('AAI' in brief) by carrying out Electric Work related activities. It was also noticed that the service rendered by the appellant was in the nature of 'Maintenance or Repair service', which they wrongly classified as 'Original Works' to claim exemption under Notification No.25/2012-ST dated 20.06.2012. They charged service tax on 50% of the abated value i.e. on 70% of the total amount charged for works contract. It appeared that the activity carried out by the appellant does not fall under 'Original Work', hence, the exemption available under Notification No.09/2016-ST dated 01.03.2016 is not available to them. Information was therefore sought by the appellant. As per the details provided vide letter dated 13.10.2018, service tax liability of Rs.35,83,047/- for the period March,2016 to June,2017 and short payment of service tax amounting to Rs.2,05,195/- for the period April, 2016 to Sept,2016, was noticed.

**2.1** A Show Cause Notice (SCN) No. Div-VII/North/Dem-07/Abhishek Ass/18-19 dated 22.10.2018 was, therefore, issued proposing recovery of service tax demand to the tune of Rs.37,88,242/- alongwith interest under Section 73(1) & 75 respectively and penalty under Section 78 of the Finance Act, 1994.

**2.2** The said SCN was adjudicated vide the impugned order, confirming the demand alongwith interest and penalty.

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

- The exemption in respect of works contract income from AAI, Bhopal Airport has been claimed under Sr.No.14 of Notification No.12/2012-ST and as the agreement has been entered prior to 01.03.2015, and renewed every year as rate contract, exemption under Sr.No.14A of Notification No.09/2016-ST dated 01.03.2016, is also admissible. They relied on decision reported at 2021(44) GSTL 95 (Tri-Bang), CESTAT Bangalore in the case of GMR Projects Pvt. Ltd.
- Regarding the sub-contract receipt from M/s. M.V. Omni India Project Ltd., the service was provided to the Principal and is exempt in terms of Sr.No.29 (h) of Notification No.12/2012-ST dated 20.6.2012.
- The works contract service provided to ESI Mumbai Hospital and ESI Ahmedabad Hospital was to a clinical establishment hence covered under exemption provided under Sr.No.12 (c) of Notification No.12/2012-ST. As the contract has been entered prior to 01.03.2015, exemption under Sr.No.14A of Notification No.09/2016-ST dated 01.03.2016, is also admissible. They placed reliance on G.P.Ceramics Pvt. Ltd-2009(2) SC 90.

- Demand based on IT return data is not sustainable as the factual details regarding the exempted services provided were not taken into account. They relied on the decisions reported at 2010(20) STR 789 (Tri-Mum), 2013 (31) STR 673 (Tri-Mum) 2010(19) STR 242 (Tri-Ahm).
- They claim that another SCN dated 13.04.2021, covering same period has been issued to them by A.C., CGST Audit, Circle –VII, wherein the service tax demand is of Rs.19,46,380/-. They therefore requested to reduce the present demand to this amount in the interest of justice.
- Demand is time barred as suppression cannot be invoked because IT return and ST-3 returns were filed on time. Moreover they were under the bonafide belief that the activities are exempted. They relied on Steel Cast Ltd-2011 (21) STR 500 (Guj).
- As the issue involves interpretation of statutory provisions of statute or exemption notification. Unless malafide intention is proved suppression cannot be invoked and penalty is also not impossible. They placed reliance on Bharat Wagon-(146) ELT 118 (Tri-Kolkata), 2001(135) ELT 873 (Tri-Kolkata), 2001(129) ELT 458 (Tri-Del).

**4.** Personal hearing in the matter was held on 26.09.2022. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant. He re-iterated the submissions made in the appeal memorandum. He further stated that for the same period another SCN No.09/2021-22 dated 13.04.2021 has been issued by A.C., CGST Audit, Circle –VII which was adjudicated vide OIO dated 11.02.2022.

**5.** I have carefully gone through the facts and circumstances 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. The issue to be decided under the present appeal is whether the activities carried out by the appellant should be considered taxable under 'Original Work' or under 'Maintenance & Repair service' and consequently whether the impugned order, confirming demand against the appellant and imposing penalty, is legal and proper or otherwise? The period involved in the dispute is F.Y. 2016-17 to F.Y. 2017-18 (upto June, 2017).

**5.1** It is observed that clause (55) of Section 65B of the Finance Act, 1994, defines **'Works Contract'** as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof, in relation to such property. The present demand was issued based on the pre-audit observation made while clearing the refund application filed by the appellant. The appellant were carrying out electric work on which they were paying tax at applicable rate on 50% of the abated value i.e. on 70% of the total amount charged for works contract. But from 01.03.2016 onwards, they stopped charging service tax, claiming the service as 'original work', hence exempted vide Notification No.09/2016-ST.

**5.2** To examine whether the service tax liability discharged by the appellant is correct or otherwise, I will refer Rule 2A of the Service Tax (Determination of Value) Rules, 2006, relevant text is reproduced below:-

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

*(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-*

***(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;***

***(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent of the total amount charged for the works contract;***

*(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on sixty per cent. of the total amount charged for the works contract;*

In terms of Explanation-1 (a) to Rule 2A of the Service Tax (Determination of Value) Rules, 2006, 'Original Work' is defined as;

*(a) **"original works"** means-*

*(i) all new constructions;*
*(ii) all types of additions and alterations to abandoned or damaged structures on Land that are required to make them workable;*
*(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;*

**5.2.1** So, in terms of above Rule 2A (ii) of Service Tax (Determination of Value) Rules, 2006, where the works contract is entered into for execution of original works, service tax shall be payable on 40% of the total amount of charged and where works contract entered is for repair and maintenance, the service tax shall be payable on 70% of the total amount charged for the works contract. I find that the appellant were carrying out electric work and were discharging service tax liability on 70% of the abated value in terms of Rule 2A(ii)(B) of Service Tax (Determination of Value ) Rules, 2006, which clearly establish that they themselves were classifying their service under 'Repair & Maintenance' service. Therefore, subsequent non-payment of tax by classifying the said service under 'original work' is not tenable. Moreover, I find that the appellant has failed to produce any contracts either before the adjudicating authority or before me to corroborate the claim that the nature of service provided by them is covered under 'original work' and not under 'Repair & Maintenance' service.

**5.3** They, by classifying their activities under 'Original Works' have also availed exemption provided under Sr.No.12 (c) of Notification No.12/2012-ST and under Sr.No.14A of Notification No.09/2016-ST dated 01.03.2016, on the grounds that the contracts were entered prior to 01.03.2015. Relevant text of Notification is reproduced below:-

***[Notification No. 25/2012-S.T., dated 20-6-2012]***

*14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-*

*(a) **an airport, port or railways, including monorail or metro;***
*(b) a single residential unit otherwise than as a part of a residential complex;*
*(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;*
*(d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or*
*(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;*

***[Notification No. 9/2016-S.T., dated 1-3-2016]***

*(vii) after entry 14, with effect from the 1st March, 2016, the following entry shall be inserted, namely -*

*"14A. **Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port provided under a contract which had been entered into prior to 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date :***

*provided that Ministry of Civil Aviation or the Ministry of Shipping in the Government of India, as the case may be, certifies that the contract had been entered into before the 1st March, 2015 :*

*provided further that nothing contained in this entry shall apply on or after the 1st April, 2020;";*

**5.3.1** Thus, on plain reading of above notifications, it is obvious that only 'original work' pertaining to an airport is granted exemption. Since the electric work carried out by the appellant, though pertaining to Airport, does not qualify to be classified as original work, the benefit of said notifications cannot be granted to them as the claimant has not produced concrete documentary evidence to establish their claim of exemption. The burden to prove the admissibility of exemption lies with the appellant and in absence of any material brought on record as to how the service rendered is covered within the scope of original work, I find, the denial of exemption by the adjudicating authority is justified. It is observed that Hon'ble Apex Court in ***Novopan India Ltd, Hyderabad* v. *Collector of Central Excise and Customs, Hyderabad* - 1994 (73) E.L.T. 769 (S.C.)**, at para 18 held that;

*"18.........A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave [1978 (2) E.L.T. (J 350)] (SC) = 1969 (2) S.C.R. 253) that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be*

*governed wholly by the language of the notification, i.e., by the plain terms of the exemption."*

**5.4** The appellant have also claimed that some of the works contract services were provided to ESI, Mumbai & Ahmedabad, which are clinical establishment, hence exempted in terms of Sr.No.29(h) of Notification No.12/2012-ST. I find that the entire demand has been raised on the works contract service provided to AAI, as there is no mention of ESI, Mumbai or Ahmedabad, therefore, the argument that some of the service was rendered to the aforesaid clinical establishment seems to be extraneous. Moreover, this contention was not raised before the adjudicating authority hence in the absence of any documentary evidence, such contention is not legally sustainable. Their contention that the demand has been raised based on IT returns also appears to be irrelevant as the entire demand was quantified based on the information submitted by the appellant vide their letter dated 13.10.2018, I, therefore, do not find any reason to interfere in the findings of the adjudicating authority. The case laws relied by the appellant in support of the above contention are also not examined, being not relevant to the facts of the case.

**5.5** Furthermore, I also do not find any merit in the argument that the demand of the present SCN should be reduced to the amount of the subsequent SCN issued, covering similar ground and same period. It is observed that the second SCN was issued on 13.04.2021 involving amount of Rs.19,46,380/-whereas the present SCN was issued on 22.10.2018 i.e prior to second SCN, hence, the demand proposed in the present SCN does not gets vitiated as the demand raised in the subsequent SCN has no relevance to the present issue. Accordingly, the contention raised by the appellant is without any base and merits and hence legally unsustainable.

**5.6** Also the argument of demand being time barred is not maintainable. In the ST-3 return, the assessee is required to disclose the total value of service which includes the exemption/abated value of services and also the exempted/abated value of services before computing the service tax. The demand in the instant case was raised based on the pre-audit objection and from the data provided by the appellant. Though the appellant was discharging tax liability on 70% of the abated value under Maintenance & Repair Service, but by wrongly classifying the said service under 'original work', they took inadmissible exemption which came to the notice of the department only during pre-audit. As the onus to disclose full and correct information about the value of taxable services lies with the service provider and the assessee pays the tax on self assessment basis and files the ST-3 returns, which is a report of transactions and a basic document, hence they are duty bound to disclose all and correct information in the ST-3 returns. Non disclosure of full and correct information in returns would amount to suppression of facts. Non-payment of tax, by classifying the service under wrong head and thereby claiming ineligible exemption, clearly establishes the conscious and deliberate intention to evade the payment of service tax. I, therefore, find that all these ingredients are sufficient to invoke the extended period of limitation provided under proviso to Section 73(1) of the F.A, 1994.

**6.** I find that the penalty imposed on the appellant under Section 78 of the Finance Act, 1994, is also justifiable as it provides for penalty for suppressing the value of taxable services. The crucial words in Section 78(1) of the Finance Act, 1994, are *'by reason of fraud or collusion'* or *'willful misstatement'* or *'suppression of facts'* should be read in conjunction with *'the intent to evade payment of service tax'*. Hon'ble Supreme Court in case of *Union of India* v/s *Dharamendra Textile Processors* reported in 2008 (231) E.L.T. 3 (S.C.)], considered such provision and came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. The suppression of taxable value, non-payment and short payment of tax, clearly show that they were aware of their tax liability but chose not to discharge it correctly instead tried to mislead the department by wrongly classifying the repair and maintenance service under 'original works' to avail inadmissible exemption, which undoubtedly bring out the willful mis-statement and fraud with an intent to evade payment of service tax. If any of the ingredients of proviso to Section 73(1) of the Finance Act, 1994 are established the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined.

**7.** When the demand sustains there is no escape from interest, hence, the same is therefore also recoverable under Section 75 of the F.A., 1994. Appellant, by failing to pay service tax on the taxable service, are liable to pay the tax alongwith applicable rate of interest.

**8.** In view of the above discussions and findings, I disallow the exemption claimed by the appellant and uphold the service tax demand of Rs.37,88,242/- alongwith interest and penalty imposed under Section 78(1) in the impugned order. Accordingly, the appeal filed by the appellant is rejected.

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.

29th September 2022

(अखिलेश कुमार)
आयुक्त(अपील्स)

Date: 9.2022

Attested

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

केन्द्रीय वस्तु एवं सेवाकर (अपील) अहमदाबाद
OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS) AHMEDABAD

**By RPAD/SPEED POST**

To,
M/s. Abhishek Associates, - **Appellant**
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Bhuyangdev Cross Road,
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Ahmedabad-3800061

The Deputy Commissioner - **Respondent**
CGST, Division-VII,
Ahmedabad North,
Ahmedabad

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