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: 20221264SW000000B6AA

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/814/2022-APPEAL 1628 -32

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-80/2022-23**
दिनाँक Date : **15-12-2022** जारी करने की तारीख Date of Issue 20.12.2022

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

ग Arising out of Order-in-Original No. **GST-06/D-VI/O&A/94/Vinodbhai/AM/2021-22** दिनाँक: **24.02.2022**, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s Jay Ambe Bus Services,
   (Prop. Vinodbhai Govindbhai patel),
   9, Vrundavan Bunglows, Nr. Shreeji Society,
   Behind CIMS Hospital, Sola,
   Ahmedabad-380063

2. Respondent
   The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad North , 7th Floor, B D Patel House, Nr. Sardar Patel Statue , Naranpura, Ahmedabad - 380014

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

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

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे 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. Jay Ambe Bus Services, (Prop. Vinodbhai Govindbhai Patel), 9, Vrundavan Bunglows, Nr. Shreeji Society, Behind CIMS Hospital, Sola, Ahmedabad – 380063 (hereinafter referred to as "the appellant") against Order-in-Original Number GST-06/D-VI/O&A/94/Vinodbhai/AM/2021-22 dated 24.02.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant was holding Service Tax Registration No. AESPP1696PSD001. On scrutiny of the data received from CBDT for the FY 2016-17, it was noticed that the Sales / Gross Receipt from Services (Value from ITR) were not tallied with Gross Value of Service Provided, as declared in ST-3 Return of the FY 2016-17. There was a difference of Rs. 1,67,39,427/- between the Gross Value of Service Provided, as declared in ST-3 Return and Sales / Gross Receipt from Services shown in ITR in the FY 2016-17. The appellant was called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not respond to the letters issued by the department.

2.1 Subsequently, the appellant was issued a Show Cause Notice No. GST-06/04-1244/Vinodbhai/2021-22 dated 12.10.2021 demanding Service Tax amounting to Rs. 25,10,914/- for FY 2016-17, under proviso to Section 73(1) 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 76, 77 & 78 of the Finance Act, 1994.

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. 9,72,978/- 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 FY 2016-17 and dropped the remaining amount. Further, Penalty of Rs. 9,72,978/- was imposed on the appellant under Section 78 of the Finance Act, 1994 and Penalty of Rs. 10,000/- was also imposed on the appellant under Section 77 of the Finance Act, 1994.

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

- The appellant is engaged in providing renting of motor vehicle services to education institution and business corporate for its staff and is holding Service Tax Registration No. AESPP1696PSD001.

- As per Notification No. 30/2012-ST dated 20.06.2012, the appellant is not required to pay the service tax in respect of service provided or agreed to provided by way of renting

of a motor vehicle designed to carry passenger on abated value to any person who is not engaged in the similar line of business.

- The entire Service Tax demand confirmed by the adjudicating authority is wrong and interpretation of law is erroneously done.

- SCN had been issued without considering the fact that the appellant falls under Reverse Charge Mechanism, where service provider has not required to pay the service tax in case of renting of motor vehicle services, hence, the adjudicating authority invoked the extended period of limitation under Section 73(1) of the Finance Act, 1994, however, such charge of suppression is not sustainable due to following reasons:
  (a) The extended period has been invoked on difference in service tax due to reconciliation between values of books of account and ST-3 returns. But from the facts submitted above it is beyond doubt that the appellant is not liable to pay tax due to reverse charge mechanism.
  (b) The demand confirmed in OIO by invoking extended period is not justifiable and as per the provision of Section 73 of the Finance Act, 1994, it is clear that when the tax is not paid by reason other than fraud the period of service of notice shall be thirty months is considered then the service tax liability for the period from April, 2016 to July, 2017 is time barred and is liable to be dropped.

- In terms of Section 78, if transaction are recorded in books of accounts, maximum penalty is 50% of the tax payable. As it is clear from the SCN that taxable value is derived from the Income Tax Records which are filed based on books of accounts maintained by the appellant, maximum penalty that can be imposed is 50% of the tax short paid or not paid.

4. Personal hearing in the case was held on 14.12.2022. Shri Parth Desai, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He stated that the service in question were under Reverse Charge Mechanism (100%) and reiterated submission made in appeal memorandum.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The dispute involved in the present appeal relates to non payment of service tax by the appellant on the service provided by them as Renting of Motor Vehicles. The demand pertains to the period FY 2016-17. The main issue which is required to be decide in the case is whether the services provided by the appellant for differential income on which Service Tax confirmed in the impugned order is taxable or exempted / under RCM.

6. The adjudicating authority had confirmed the demand on the value arrived at by excluding Gross Value of service provided as mentioned in ST-3 Return and Value of service provided to educational institutes i.e. Adani Vidya Mandir. From the ledger of income, the adjudicating authority has also arrived at the conclusion that the rest of income is from the service provided to business entity. While confirming the demand, the adjudicating authority, in the impugned order, held that the recipient of "Renting of Motor Vehicle" are either public limited company or private limited company and hence falls under the definition of Body Corporate. The adjudicating authority also observed that as per clause II (8) (b) of the Notification No. 30/2012-ST dated 20.06.2012, in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in the similar line of business, the liability to pay service tax is divided among the service provider and service receiver in the ratio of 50% and the appellant has failed to produce any documents that could establish they have discharged service tax on the abated value or non-abated value when discharging their service tax liability and paid service tax on the total value of Rs. 46,47,028/- as reflected in ST-3. Further, the adjudicating authority observed that the appellant failed to discharge their service tax liability on the value of Rs. 1,29,73,037/- in the manner as prescribed under clause II (8) (b) of the Notification No. 30/2012-ST dated 20.06.2012 and confirmed the demand of Rs. 9,72,978/- on the 50% of the taxable value of Rs. 1,29,73,037/-. The relevant portion of the impugned order is as under:

"On perusal of the above, I find that the renting of motor vehicle service provided to a body corporate falls under reverse charge mechanism i.e. service tax is to be paid by the service recipient if it is a body corporate. On perusal of the sales ledger, Form 26 AS for the FY 2016-17 of the assessee, I find that the assessee has provided services to body corporate.

25. Further, it is necessary to look in to the definition of "body corporate" as service recipient is liable to pay service tax under reverse charge mechanism for Manpower supply service is only when it is a body corporate.

.....

.....

25.3. In the instant case, recipient of "renting of motor vehicle" are either public limited company or private limited company and hence falls under the definition of Body corporate.

26. Now, on perusal of the clause II (8) (b) of the Notification No. 30/2012-ST dated 20.06.2012, I find that in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in the similar line of business, the liability to pay service tax is divided among the service provider and service receiver in the ratio of 50%. The assessee has failed to produce any documents

that could establish they have discharged service tax on the abated value or non-abated value. They were discharging their service tax liability and paid service tax on the total value of Rs. 4647028/-. However, they failed to discharge their service tax liability on the demand of Rs. 12973037/- in the manner as prescribed under clause II (8) (b) of the Notification No. 30/2012-ST dated 20.06.2012."

7. I find that the main contention of the appellant is that they had provided service of "Renting of Motor Vehicle" to the body corporate and in respect of service provided or agreed to provided by way of renting of motor vehicle designed to carry passenger on abated value to body corporate, the liability to pay service tax is on service recipient under Reverse Charge Mechanism basis as per the Notification No. 30/2012-ST and they are not liable to pay service tax.

8. For ease of reference, I reproduce the relevant provision for abatement as provided under Notification No. 26/2012-ST dated 20.06.2012 as amended and relevant provision for reverse charge mechanism as provided under Notification No. 30/2012-ST dated 20.06.2012 as amended, which reads as under:

Notification No. 26/2012-Service Tax dated 20.06.2012, as amended vide Notification No. 08/2014-ST dated 11.07.2014

Sl. No.	*Description of taxable service*	*Percentage*	*Conditions*
(1)	*(2)*	*(3)*	*(4)*
9A.	*Transport of passengers, with or without accompanied belongings, by – a. a contract carriage other than motor cab. b. a radio taxi*	*40*	*CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004*

Notification No. 30/2012-Service Tax dated 20.6.2012, as amended vide Notification No. 10/2014-ST dated 11.07.2014

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*
7.	*(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not*	*NIL*	*100%*

	engaged in the similar line of business *(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business*	*50%*	*50%*

9. In view of the above provisions of Notification No. 30/2012-ST dated 20.06.2012, I find that there are two options under reverse charge mechanism, viz., (i) if an assessee, who opted for payment of Service Tax on abated value, will issue invoices indicating service tax on abated value and in that case if the recipient of service is a Body Corporate, the assessee is not required to pay any service tax and the recipient of service is required to pay service tax on 40% of gross value of Invoice on reverse charge basis; and (ii) if an assessee, who had not opted for payment of Service Tax on abated value, will issue invoices indicating full service tax on non-abated value and in that case if the recipient of service is Body Corporate, the assessee is required to pay service tax on 50% of gross value of Invoice and the recipient of service is required to pay service tax on remaining 50% of gross value of Invoice on reverse charge basis. I find that in the present case, the appellant has not produced any documentary evidence demonstrating that they had opted for payment of service tax on abated value as per the Notification No. 26/2012-ST dated 20.06.2012. On perusal of the invoice No. 0009/16-17 dated 01.06.2016 issued by the appellant to M/s. Subros Ltd., as reproduced by the adjudicating authority in Para 22.2 of the impugned order, I also find that the appellant has charged full amount for services in the said invoice and no where showing the Service Tax amount or no where mentioned about the abated value for charging service tax. Under such circumstances, I find that the appellant has merely made a bold contention, without submitting any supporting documentary evidence either to the adjudicating authority or to this authority under appeal memorandum, that their service falls under RCM and in terms of Sr. No. 7(a) of Notification No. 30/2012-ST dated 20.06.2012 and they are not required to pay any service tax. Their contentions are not legally tenable.

10. I find that the appellant has not disputed the taxability of services provided by them i.e. "Renting of Motor Vehicle" and on verification of case records, I also find that the appellant has also discharged their service tax liability and paid service tax on the total value of Rs. 46,47,028/- as reflected in ST-3 filed by them, however, the appellant has not provided any details showing that whether they have opted for abatement or otherwise. They have, in the appeal memorandum, simply claimed that the services provided by them were under RCM and under clause II (7) (a) of the Notification No. 30/2012-ST dated 20.06.2012. However, I find that the appellant has failed to provide any supporting documents to the adjudicating authority to prove that they have provided services by issuing abated value invoices / bills or issuing non-abated value invoices / bills. It is also observed that the appellant has

not provided any such detail while filing the appeal with this office. Thus, without any supporting documents / details countering the findings of the adjudicating authority, the contention of the appellant that their service falls under RCM and under clause II (7) (a) of the Notification No. 30/2012-ST dated 20.06.2012, and that they have not required to pay service tax as demanded, is not legally tenable.

11. I find that in the present case, as the service provided by the appellant is taxable and not exempted by way of any exemption notification, the appellant was required to discharge their Service Tax liability during the said period. However, the appellant had not discharged Service Tax liability on the whole amount received by them from providing taxable services which resulted in confirmation of this demand. Also, the appellant has never informed the department about not paying service tax on whole amount, the said fact could be unearthed only at the time of investigation / issuance of the show cause notice on the basis of the data provided by the Income Tax department. After introduction of measures like self assessment etc., a 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 on the assessee 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 Service Tax on whole value of taxable amount is utter dis-regard to the requirement of law and breach of trust deposed on them. Therefore, I find that on account of 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, the essential ingredients exist in the present case which makes them liable to pay the demand 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.

12. 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 on the basis of the data provided by the Income Tax 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 service provided by the appellant taxable are one, and the appellant had not paid whole service tax as required by suppressing the value of service provided and not showing correct value in ST-3 returns filed by them, they cannot avoid demand of service tax or penalties. 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, made the appellant liable to impose penalty on them under the provisions of Section 78 (1) of the Finance Act, 1994

12.1 As regards penalty imposed under Section 78 of the Act, the Appellant has pleaded that since there was no suppression of facts, no penalty can be imposed upon them under Section 78 of the Act. I have already upheld invocation of extended period of limitation on the grounds of suppression of facts as per discussion in para *supra*. Hence, penalty under Section 78 of the Act is mandatory, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, hold that the Appellant is liable to penalty under Section 78 of the Act.

13. As regards the penalty of Rs. 10,000/- imposed on the appellant under Section 77 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 of the Finance Act, 1994. Hence, I find that the impugned order to the extent of penalty of Rs. 10,000/- imposed on the appellant under Section 77 of the Finance Act, 1994 is legally correct.

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

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.

15th December, 2022.

(Akhilesh Kumar)
Commissioner (Appeals)

Attested

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

Date : 15.12.2022

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

By RPAD / SPEED POST

To,
M/s. Jay Ambe Bus Services,
(Prop. Vinodbhai Govindbhai Patel),

Appellant

9, Vrundavan Bunglows,
Nr. Shreeji Society,
Behind CIMS Hospital, Sola,
Ahmedabad – 380063

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

Respondent

Copy to :

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