केंद्रीय कर आयुक्त (अपील)
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय कर भवन,सातवाँ मंजिल,पोलिटेकनिक पास, आंबावाडी,अहमदाबाद-380015
Floor, Central Excise Building,
Near Polytechnic, Ambavadi, Ahmedabad-380015
दूरभाष: 079-26305065 टेलेफैक्स: 079-26305136

क फाइल संख्या : File No : V2(ST)163/A-II/2016-17 1005

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-291-17-18

दिनाँक Date : 29/01/2018 जारी करने की तारीख Date of Issue 15/2/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No. AHM-SVTAX-000-ADC-011-16-17 Dated 22.08.2016 Issued by ADC-STC, Service Tax, Div-HQ, Ahmedabad

घ अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s. Laxmi Engineering Pvt Ltd.
Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

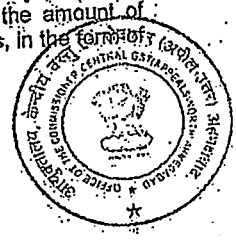
वित्तीय अधिनियम,1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad – 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी– 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरूद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम,1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त,, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA)(उनमें से प्रमाणित प्रति होगी) और अपर
आयुक्त, सहायक / उप आयुक्त अथवा A2l9k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची–I के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 6.50/– पैसे का न्यायालय शुल्क टिकट लग होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१५(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है –

(i) धारा 11 डी के अंतर्गत निर्धारित रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇨ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

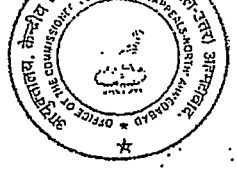
Under Central Excise and Service Tax, "Duty demanded" shall include:

(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.

⇨ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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

This is an appeal filed by M/s Laxmi Engineering Pvt. Ltd., Ahmedabad (hereinafter referred to as the appellants) against the OIO No. AHM-SVTAX-000-ADC-011/16/17 dtd. 22.08.2016 (hereinafter referred to as the impugned order) passed by the Additional Commissioner, Service Tax, Ahmedabad (hereinafter referred to as the adjudicating authority).

2 On an enquiry by the Range office dated 27.09.2010, the appellants informed that they are providing Erection and Commissioning Services and they receive the orders from the parties for material and installation separately. They raise invoices for material and erection/ Installation (service) separately. So their contracts are not composite contracts.

3 Further during the course of audit, on verification of records maintained by the appellants, it was noticed that the appellants had rendered Erection, Commissioning and Installation service to M/s Gujarat State Petronet Ltd (GSPL) and M/s Gas Authority of India Limited (GAIL) on behalf of M/s Jaihind Projects Ltd (M/s JPL) That is to say that they have rendered services to the clients of M/s JPL. It is noticed that M/s JPL had raised bills on above named service receivers namely M/s GSPL and M/s GAIL to whom services were rendered by the appellants and had discharged the service tax liability. However, when the appellants had raised bills on M/s JPL towards services rendered to M/s GSPL and M/s GAIL on behalf of M/s JPL, these bills were raised without charging any service tax and thus no service tax has been collected from M/s JPL. In other words, the appellants had not collected and paid service tax on the services rendered by them on sub-contract basis on behalf of M/s JPL. Whereas, the circular issued by CBEC bearing No. 96/7/2007 dated 23.8.2007 clarifies that the sub contractor is necessarily a service provider and the tax liability should be discharged by them. For the service receiver (M/s JPL), it was be input service. With regard to main and sub contractor relationship (M/s JPL and the appellants), it is an admitted position that if assessee providing taxable service as sub contractor to their principal then Sub Contractor is essentially a taxable service provider. In the present category, the appellants had earned income to the tune of Rs.1,26,22,597/-. The appellants however paid the service tax of Rs. 15,60,153/- alongwith interest of Rs. 7,91,653/- vide challan no. 00340 dated 08.06.2011 and challan no. 00007 dated 22.06.2011.

4 On scrutiny of the documents submitted by the appellants, it appeared that they provided complete service from design, supply, erection, commissioning and installation. However, they bi-furcated the composite

contracts into supply portion and service portion and they were not paying service tax on supply portion. It was also found that the appellants were *supplying the materials to the site at customers store from manufactures/dealers and from their godown. The goods procured from manufactures were supplied directly from manufactures' factory on the invoice raised by the manufactures. Erection, Installation, Testing and Commissioning is done by their staff/from local labour/contractors. They had paid Service Tax @ of 10.30% on the total value of Rs. 3,83,56,551/- and they had taken cenvat credit of inputs used in the above contract.* It appears that the appellants had artificially bifurcated the composite contract into supply and construction. It appears that goods were used by the appellants in erection, commissioning and installation service. To evade service tax the appellants raised separate invoices for supply and erection, commissioning and installation. The orders from the clients were for composite contracts and the clients didn't give them any separate purchase orders for supply.

5 Further, scrutiny of the documents submitted by the appellants revealed that they had also availed the benefit of exemption as provided under Notification No. 12/2003-ST dated 20.06.2003 which exempted *so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service, from the service tax leviable thereon under section (66) of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials subject to the condition that no credit of duty paid on such goods and materials sold, has been taken under the provisions of cenvat credit rules 2004*

6 As per the above notification the benefit of the exemption is available only when goods and materials are sold by the service provider to the recipient of service and no credit of duty paid on such goods and materials sold has been taken under the provisions of cenvat credit rules 2004.

Scrutiny of the records of the appellants revealed that since the contract awarded to the appellants was composite in nature, the appellants procured items like cables etc. from various manufacturers on payments applicable Excise duty/Sale Tax.

They directly procured goods and materials from the manufacturers. These goods /materials were consigned to the site address, the invoice showed the appellants as the customer and recipient of the services as consignee. In such cases, the said goods /materials were shown by the appellants as trading.

The recipient of the services i.e. the clients of the appellants availed the cenvat credit on such invoices.

7 It was thus evident from the above table that M/s Jaihind Projects Ltd availed cenvat credit amounting to Rs. 20,16,952.06/- on the strength of invoices issued by various manufacturers showing the appellants as customer and M/s JPL as consignee. Accordingly, it was noticed that the appellants had contravened the provisions of the said section as they failed to make the payment of service tax amounting to Rs. 2,41,64,485/- for which a show cause notice bearing F.No. STC/4-9/O&A/12.13 dated 23.10.2012 was issued to the appellants proposing why the amount of taxable value of Rs. 1,26,22,597/- received by them for providing service under the category of 'Erection Commissioning and Installation service' received by them from M/s JPL during the year 2007-08 should not be considered as taxable value as per provisions of Section 67 of Finance Act, 1994 and service tax of Rs. 15,60,153/- thereon should not be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of five years. The service tax of Rs. 15,60,153/- already paid should not be appropriated against the service tax liability. Further The amount of Rs. 20,55,26,239/- shown as trading for the period 2007-08 to 2010-11 should not be considered as the taxable value and the exemption as claimed by the said appellants under notification No. 12/2003 should not be disallowed and service tax of Rs. 2,26,04,332/- alongwith interest should not be recovered with imposition of penalties under various sections of the Finance Act.

8 Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

a) The adjudicating authority is also referring to the disputed value as the value of goods traded;

b) That they are ready to pay service tax on gross value of contracts provided they are allowed to pay service tax as per Rules of Valuation Rules after taking abatement;

c) The confirmation of demand for the period prior to 01.07.2012 is not sustainable as when there is a works contract but the terms and conditions required to be fulfilled for a contract to be called a 'works contract' are not fulfilled, and the value of service is explicitly mentioned therein, it would fall under the specific service category like 'erection, commissioning or installation service' in their case;

d) That they have shown the value of sale of goods separately in their trading account and profit and loss account and the figures would

not tally with the audited Profit & Loss account as these accounts are for part of the financial year;

e) That the observations of the adjudicating authority that they cannot opt for composition rules or abatement benefits under Rule 2A of Valuation Rules, 2006 at this stage is not correct as it is only a procedural law and they are ready to pay service tax on 40% of gross value of contracts post 01.06.2007 and at 4% before this period;

f) That the exemption notifications or the valuation rules or composition scheme restricts the cenvat credit to the service provider only and it is nobody's case that the appellants as service providers have taken cenvat credit of the goods traded by them and used by them on behalf of the service receiver for rendition of service;

g) That the adjudicating authority has not dealt with the issue whether the goods which are consumed by the service provider while rendering service to service receiver can be considered as sale of goods and whether the service receiver to whom the property in goods is transferred after completion of service can avail cenvat credit on the goods consumed in such service. In view of this, the presumption that the cenvat credit is not available is not correct;

h) That it is accepted position that the restriction from taking cenvat credit is only for the service receiver who avails abatement in value and pays the service tax and this restriction is not applicable to service receiver;

i) That if the cenvat credit is wrongly taken by the service receiver, the department should initiate action for recovery of cenvat credit from service receivers instead of denying the abatement benefit to the appellants;

j) The cenvatable invoices have been issued directly in the name of the customer (service receiver). It is not the case of the department that the service receiver has availed cenvat credit on the strength of invoices issued by the appellants;

k) That they have issued sales invoices and paid VAT at full rate for the contracts which were purely for supplying materials. Where the contracts were composite in nature, the service receiver themselves have bifurcated the value of entire contract towards material portion and towards service portion and the third type of contracts which were only for providing service, the appellants have classified the

contracts under Erection, Commissioning and Installation service and paid service at the full rate;

l) It has never been the intention of the legislature to demand service tax on the value of goods and materials;

m) That the department is not right in demanding service tax from them on the amount which department itself terms as "trading amount";

n) That they were classifying the service on the basis of nature of contracts viz. under ECI or under WCS and discharged VAT and service tax accordingly;

o) That the Larger Bench of Tribunal in the case of Bhayana Builders Pvt. Ltd.. Vs. CST Delhi reported in 2013 (32) STR-049 (Tri-LB) has clearly held that the value of free supply materials supplied by the service receiver to the service provider is not required to be included in the taxable value on which service provider pays the service tax by claiming abatement under Notification No. 1/2006-ST;

p) That the availment or otherwise of cenvat credit by the service recipient is not in the control of the appellants;

q) That in terms of Rule 3 of the Cenvat Credit Rules, 2004, it is not necessary that the manufacturer or provider of output service must receive the inputs or input services in the factory or the premises of output service provider;

r) The cost of the goods and materials traded or sold has been borne by the service receiver and the credit has also been taken by the service receiver;

s) That even on assuming that all the contracts under which the appellants have provided service are to be classified under Works Contract Service, they have provided figures of sales value under each contract and value on which VAT/ST is paid and they are legally eligible for deduction of such value before demanding service tax;

t) That they have different pre-fix on invoice number indicating whether it pertains to service or material and they have already paid service tax on the services provided;

u) That no enquiry has been conducted as to how value has been shown by the service recipients towards service and materials;

v) That they place reliance in the case of Sobha Developers Ltd. Vs. CCE – 2010 (19) STR-75 (Tri. Bang.) and PLA Tyre Works vs. CST -

2009 (14) STR-32 (Tri. Chen.) wherein it has been held that seeking service tax on value on which VAT/Sales Tax is already paid is contrary to the fiscal federalism of Constitution of India. They also put reliance on judgement of the Hon'ble Supreme Court in the case of UOI vs. Kamlakshi Finance Corporation Ltd. – 1991 (55) ELT-0433 (SC); in the case of BSNL vs UOI – 2006 (2) STR-161 (S.C.), it has been held that once it is possible to bifurcate any transaction into sales portion and service portion, the respective tax is to be levied on the respective portion only;

w) That the CBEC Circular No. 59/8/2003-S.T dtd. 20.06.2003 has clarified that the cost of goods and material shall not form part of the value to be subjected to service tax and the department is bound by the departmental circulars as held in the case of CCE, Vadodara vs. Dhiren Chemicals Industries – 2002 (143) ELT-19 (SC);

That they also put reliance in the case laws of Sunil HI Tech Engineers Ltd. – 2014 (36) STR-408 (Tri-Mum.)

9 Personal hearing in the matter was held on 19.07.2017 and Shri Bhavesh Patel, Chartered Accountant appeared on behalf of the appellants. He reiterated the submissions made in their grounds of appeal dated 19.10.2016 and gave further submission dated 18.07.2017 and requested to drop the proceedings.

10 I have gone through the contents of show cause notice, case records put forth before me, written submission of the appellants and record of personal hearing. I observe that it is not disputed that the appellants are engaged in providing service of "Erection Commissioning and Installation Service" and "Management, Maintenance or Repair Service" which are taxable services as defined under Sub Clause (105) (zzd) and Sub Clause (105) (zzg) respectively of Section 65 of the Finance Act,1994. I observed that there are three central issues involved in the present case to be decided which are as under.

(A) Whether an amount of Rs.1,26,22,597/- received by them for providing service under the category of Erection Commissioning and Installation Service from M/s JPL during the year 2007-08 on which service tax of Rs. 15,60,153/- was not paid by them as the said service rendered by them in the capacity of sub contractors to M/s GAIL and M/s GSPL on behalf of M/s JPL demanded under proviso to section 73(1) of the Finance Act, 1994 along with interest is liable to be confirmed?

(B) Whether the receipt of Rs. 20,55,26,239/- towards value of traded goods for the period 2007-08 to 2010-11 proposed to be included in the taxable value by denying exemption availed under Notification No. 12/2003-ST and accordingly service tax amounting to Rs. 2,26,04,332/- [as worked out in Annexure A to the SCN] under the category of Erection, Commissioning or Installation Service demanded under proviso to section 73(1) of the Finance Act,1994 is liable to be confirmed along with Interest ?

(C) Whether the penalties as proposed under section 76, 77 and 78 of the Finance Act,1994 is imposable upon them?

11 First of all, I take up the issue of the Demand of service tax on the service rendered by them in the capacity of sub contractors to M/s. GAIL and M/s GSPL on behalf of M/s JPL.

12 I find that there is no dispute that the issue came to notice during the course of Audit carried out by the department. It is noticed that M/s JPL had raised bills on above named service receivers namely M/s GSPL and M/s GAIL to whom services were rendered by The appellants and had discharged the service tax liability. However, when the appellants had raised bills on M/s JPL towards services rendered to M/s GSPL and M/s GAIL on behalf of M/s JPL, these bills were raised without charging any service tax and thus no service tax has been collected from M/s JPL. In other words, the appellants had not collected and not paid service tax on the services rendered by them on sub-contract basis on behalf of M/s JPL. In this regard, page 16 of the circular issued by CBEC bearing No. 96/7/2007 dated 23.8.2007, discusses in detail the aforesaid issue. As per the clarification given in the said circular it is evident that the sub contractor is necessarily a service provider and the tax liability should be discharged by them. In the present case, relationship between M/s JPL and LEPL is a main contractor and sub contractor relationship as The appellants provided taxable service as a sub contractor to their principals i.e M/s JPL. Thus, for the service receiver (M/s JPL), the services provided by the appellants were input services. Section 68 of the Finance Act, 1994 has imposed liability on every service provider to pay service tax. Accordingly, the appellants in the capacity of a sub contractor become a taxable service provider. The tax so paid by the sub-contractor becomes eligible for CENVAT credit for the main contractor and main contractor (Principal) was required to discharge the tax liability on the bills raised on the service receivers namely M/s GSPL and GAIL. The whole idea of CENVAT credit gets defeated if every input supplier or the input service provider does not pay due tax on the ground that either the final product manufacturer

or the output service provider was paying the tax. Similarly, the government machinery cannot be put to task of verification of the facts, whether final product manufacturer or the output service provider has paid the tax.

13 I find that the service tax of Rs. 15,60153/- was pertaining to the period 2007-08. The relevant circular No. 96/7/2007 was issued on 23.8.2007 which was an open document for the trade. This circular was displayed on CBEC's web site. The audit was carried out and audit report was issued on 14.03.2011. The perusal of audit para clearly reveals that initially they did not agree with the objection raised in this regard. However the payment of service tax along with Interest was paid on 22.06.2011. Perusal of events clearly reveals that had the observation not been pointed out by the audit, the appellants would not have paid the said amount. The circular was issued on 23.08.2007 and payment of service tax involved was made on 22.06.2011 i.e. nearly after four years. During this period the appellants never came forward for payment of Service Tax. Therefore I find that this act of omission and suppression of information is with intention to evade payment of service tax. Accordingly I find that their case falls under the category of Section 73(4) of the Finance Act, 1994 and cannot be governed under the provisions of Section 73(3) of the Finance Act, 1994. Accordingly I find that they are liable to penalty as proposed under section 77 of the Finance Act,1994.

14 Now I take up the issue of Denial of exemption under Notification No. 12/2003-ST thereby leading to demand of service tax amounting to Rs. 2,26,04,332/-. I find that during the period 2007-08 to 2010-11, the appellants entered in to contracts with various customers for providing "Erection Commissioning and Installation Service". It is the submission of the appellants that they had discharged their service tax liability in various contracts on the service portion only and not on supply.

15 From the case records, it is evident that the appellants have availed Cenvat credit while executing some of the contracts that they had received. The said service requires utilization of various material which they had purchased in their name and in some cases they purchased material in their account for providing service, however, the cenvat of the same have been availed at the recipient end. In his regard I find that this has been clearly done to irregularly avail benefit of Notification No. 12/2003-ST. This notification clearly states that no service tax is payable on the value of materials if it is established that such materials were sold under invoices on which the appellants had discharged VAT, and no cenvat is availed by the appellants. I also find that the appellants have not produced any evidence which indicates that they had issued invoices for

such materials and VAT have been paid on such materials which have been used by them for providing service to the recipient. Therefore I hold that the materials were not sold separately and accordingly the value of materials has to be included in the value of taxable service.

16 As regard to suppression of facts and penalty under Section 76, 77 and 78, they failed to include the value of material in the taxable value under section 67 of the Finance Act,1994. I find that the appellants have consequently not paid the applicable service and availed the exemption notifications wrongly even when they knew all the procedures and provisions.

17 Under the circumstances, I find that there is no ground to interfere with the impugned order and therefore is accordingly upheld and the appeal is rejected.

18 The appeal is disposed off accordingly with consequent relief.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

(उमा शंकर)
केंद्रीय कर आयुक्त (अपील्स)
अहमदाबाद
दिनांक:

सत्यापित

(धर्मेंद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

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1. The Chief Commissioner, CGST, Ahmedabad Zone,
2. The Commissioner, CGST, Ahmedabad (North),
3. The Dy./Astt. Commissioner, CGST, Div.-VI, Ahmedabad (North),
4. The Dy./Astt. Commissioner(Systems),CGST, Ahmedabad (North),
5. Guard File,
6. P.A.File.