



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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क फाइल संख्या : File No : V2(ST)38 to 54 /North/Appeals/2018-19

7429 to 7450

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-89 to 105-18-19

दिनांक Date : 25-Oct-18 जारी करने की तारीख

Date of Issue

9/11/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

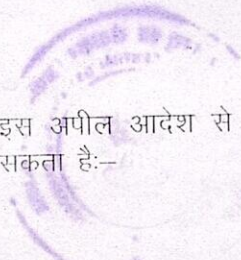
ग Arising out of Order-in-Original No 09/ADC/2018/RMG Dated 27-Mar-18 Issued
by **Additional Commissioner** , Central GST , Div-VII , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

1. M/s Narayan Litho Offset Works
2. Smitaben Dipak Bhai Patel
3. Asheshbhai jashbhai Patel
4. Jashbhai Chhotabhai Patel
5. Mahendrabhai Chhotabhai Patel
6. Geeta ben Dineshbhai Patel
7. Dinesh bhai Chhotabhai Patel
8. Devalben Pranavbhai Patel
9. Sudhakarbhai Chhotabhai patel
10. Dipakbhai Chhotabhai patel
11. Shalinbhai Sudhakarbhai patel
12. Khushbuben Shalinbhai Patel
13. Chhotabhai Naranbhai Patel
14. Rishibhai dineshbhai patel
15. Sanjay bhai jashbhai patel
16. Krishnakant Dipakbhai Patel
17. Pranavbhai Mahendrabhai Patel

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 विरुद्ध 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 वहाँ 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 वहाँ 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 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) (उसमें से प्रमाणित प्रति होगी) और अपर

आयुक्त, सहायक / उप आयुक्त अथवा **अधीक्षक** 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-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा 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 चर्चित 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, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 13 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 अर्जी एवं अपील को लागू नहीं होगा।

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.

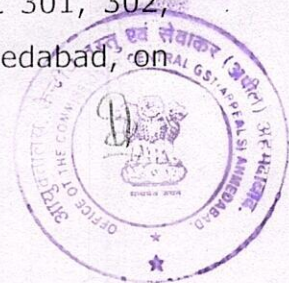


ORDER IN APPEAL

M/s.Narayan Litho works and others 16 as listed below and having office at Anision, 2nd Floor, Plot No 4/1, Swastik Society, Navrangpura, Ahmedabad-380009 (*hereinafter referred to as 'the appellants'*) have filed the present appeals against the Order-in-Original number 09/ADC/2018/RMG dated 27.03.2018 (*hereinafter referred to as 'the impugned order'*) passed by the Addl. Commissioner, CGST & CE, Ahmedabad-North, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

- (1) M/s. Narayan Litho Offset Works
- (2) Shri Asheshbhai Jashbhai Patel
- (3) Shri Sanjaybhai Jashbhai Patel
- (4) Shri Shalinbhai Sudhakarbhai Patel
- (5) Smt. Khushbuben Shalinbhai Patel
- (6) Shri Pranavbhai Mahendrabhai Patel
- (7) Smt. Devalben Pranavbhai Patel
- (8) Shri Rishibhai Dineshbhai Patel
- (9) Smt. Geetaben Dineshbhai Patel
- (10) Shri Krishnakant Dipakbhai Patel
- (11) Smt. Smitaben Dipakbhai Patel.
- (12) Shri Jashbhai Chhotabhai Patel, Karta of HUF Chhotabhai Naranbhai Patel
- (13) Shri Jashbhai Chhotabhai Patel, Karta of HUF Jashbhai Chhotabhai Patel
- (14) Shri Sudhakarbhai Chhotabhai Patel Karta of HUF Sudhakarbhai Chhotabhai Patel
- (15) Shri Mahendrabhai Chhotabhai Patel, Karta of HUF Mahendrabhai Chhotabhai Patel
- (16) Shri Dineshbhai Chhotabhai Patel, Karta of HUF Dineshbhai Chhotabhai Patel
- (17) Shri Dipakbhai Chhotabhai Patel, Karta of HUF Dipakbhai Chhotabhai Patel

2. It was noticed by the department that the above (17) persons (referred to as "The AOP" i.e. "The Association of Persons") all having office at Anision, 2nd Floor, Plot No 4/1, Swastik Society, Navrangpura, Ahmedabad-380009 have given jointly owned office situated at 301, 302, 303, 'Avdhesh House', opposite Gurudwara, S.G. Highway, Ahmedabad, on



lease to M/s Astron Research Ltd, Ahmedabad (herein after referred to as lessee). Whereas the AOP as an independent person was neither registered with the service tax department nor charging service tax to the lessee by claiming separate exemption under Notification No. 6/2005-ST dated 01.03.2005.

3. The Lessee used the said premises for commercial purpose therefore the rental income received by the AOP was taxable under the category of "Renting of Immovable Property Service" as defined under Section 65 (90a) of the Finance Act, 1994, which was a taxable service as per Section 65(105)(zzzz) of the Act. All members of the AOP had separately entered into a Lease and Licence Agreement dated 05.12.2008 and 05.12.2009 with M/s. Astron Research Ltd. for renting said co-owned property. The AOP is claiming that the rental income received/collected individually by the AOP, as shown below in TABLE-A, for the above property for the period, i.e., 2009-10 to 2013-14 did not exceed the threshold limit of the Small Scale exemption for all above mentioned financial years, therefore liability of the AOP to pay service tax for the said period did not arise. Accordingly they had not obtained the Service Tax Registration under "Renting of Immovable Property Service".

TABLE-A

Name of Service Provider	% of share	Amount of Rent received by individual (in Rs.)				
		2009-10	2010-11	2011-12	2012-13	2013-14
Chhotabhai Narainbhai Patel HUF	5	112700	158197	169212	178963	189640
Rishibhai Dineshbhai Patel	6	135240	189836	203045	214751	227565
Smitaben Dipakbhai Patel	6	135240	189836	203045	214751	227565
Krishnakant Dipakbhai Patel	6	135240	189836	203045	214751	227565
Gitaben Dineshbhai Patel	6	135240	189836	203045	214751	227565
Devalben Pranavbhai Patel	6	135240	189836	203045	214751	227565
Pranavbhai Mahendrabhai Patel	6	135240	189836	203045	214751	227565
Khushbuben Shaileshbhai Patel	6	135240	189836	203045	214751	227565
Shalinbhai Sudhakarbhai Patel	6	135240	189836	203045	214751	227565
Sanjaybhai Jashbhai Patel	6	135240	189836	203045	214751	227565
Asheshbhai Jashbhai Patel	6	135240	189836	203045	214751	227565
Narayan Litho Offset Works	5	112700	158197	169212	178963	189640
Mahendrabhai C. Patel HUF	6	135240	189836	203045	214751	227567
Dineshbhai Chhotabhai Patel HUF	6	135240	189836	203045	214751	227567
Dipakbhai Chhotabhai Patel HUF	6	135240	189836	203045	214751	227567
Sudhakar Chhotabhai Patel HUF	6	135240	189836	203045	214751	227565
Jashbhai Chhotabhai Patel HUF	6	135240	189836	203045	214751	227562
Total	100	2254000	3163934	3384099	3579191	3792758

4. The AOP, as an independent person, was neither registered with the service tax department nor charging service tax to the lessee by claiming separate exemption under Notification No. 6/2005-ST dated 01/03/2005. As

per revenue department it is rendering of an indivisible single service of renting and tax liability should be discharge by the AOP on single amount arrived by summation of all individual receipt. The AOP received total rent of Rs. 1,61,73,982/- for the period from 2009-10 to 2013-2014. Accordingly, the AOP was required to pay service Tax amounting to Rs. 18,17,781/- during the said period. In view of above, the Show Cause Notice dated 1.7.2014 was issued to all the members of the AOP. Demand was dropped vide impugned OIO.

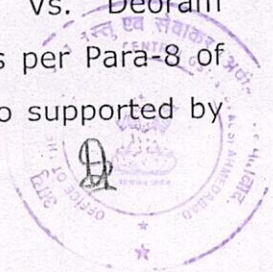
5. Being aggrieved with the impugned order the revenue preferred an appeal before the Commissioner (Appeals-II) wherein it is argued that-

- I. A new section 66E was introduced w.e.f. 01.07.2012 in Finance Act, 1994. Under Sub-clause (a) of the said section, renting of immovable property would constitute a declared service. As per Guidance Notes on service tax issued by CBEC on 20th June, 2012, Renting of immovable property is taxable.
- II. The term "person" has not been defined in the Finance Act, 1994 but the term person has defined in clause (42) of Section 30 of General Clause Act, 1897 as person shall include any company or association or body of individuals, whether corporate or not. Also, explanation to Section 73D of the Finance Act, 1994 elaborates the category of "person" with their respective authorized representative which includes Association of Persons (AOP) as one of the category of person. Further it is clarified by CBEC as FAQ on Service Tax (November 2007) that the word "person" shall include any company or association or body of individuals, whether incorporate or not, thus this expression include any Individual, HUF, Proprietary Firm or Partnership Firm, Company, Trust. The obligation to pay service tax in case of Renting of Immovable Property for commercial use rests with the owner / lessor of the property as a "person" liable to pay service tax. Person may be Individual, Body of Individuals (BOI), Association of Persons (AOP), Company, Trust, HUF, etc. and accordingly Lessor / Joint Owner will be treated as single entity for liability of service tax.
- III. The definition of assessee includes Individual, Proprietary Firm, Partnership Firm (as per Rule 6 of Service Tax Rules) Body of Individuals, Association of Persons, whether or not incorporated. The term 'person' being an inclusive and having wider meaning, under the General Clauses Act, 1897, it is clear that the legislature intended to include Joint Owners (a particular class of service provider) for



providing of taxable service falling within the meaning of Section 65(105)(zzzz) of the said act.

- IV. M/s. Narayan Litho Offset Works & 16 Others, the Joint Owners of the said immovable property have rendered the service of renting of the said property vide a single legal document and entered into transaction with the service recipient as a single / joint party and as such they are covered under the definition of the word "Person" under the category of Association of Person (AOP).
- V. For renting, they acted as a Class of Persons - Joint Owners, persons who have grouped together for a single common purpose. The title of the immovable property is collectively as joint owner.
- VI. Said premises were purchased jointly with the individual share/ investment. Moreover, in terms of the conditions in the lease deed, the monthly specific percentage of rent has also been agreed upon to be payable to each of the joint owner of the subject property as can be seen from the statement of Shri Dipak Chotabhai Patel recorded on 03.06.2014
- VII. The service has been provided jointly to the lessee namely M/s. Astron Research Ltd. The service provided is a taxable service falling in the category of Renting of Immovable Property. The recipient of the service has received a single service. It is immaterial whether the recipient of the service has made payment by a single Cheque or multiple Cheques as per the directions of the said noticees i.e. the joint owners of the property. Thus an indivisible single service has been provided jointly by individuals, which cannot be considered to be divided into individual services on the ground that such service has been provided jointly by different individuals, which the adjudicating authority failed to appreciate.
- VIII. The noticees contention that when the immovable property is collectively or jointly owned with specific shares therein, it can not be treated as association of persons & Law nowhere prescribed that they should be treated as association of persons and should be taxed as single unit is neither proper nor acceptable. Which the Adjudicating Authority failed to appreciate and decided in favour of the assessee on this count.
- IX. The adjudicating authority has relied upon decision reported in 2015-TIOL-1936-CESTAT-Mum in case of CCE, Nashik Vs. Deoram Vishrambhai Patel, to drop the entire proceedings. As per Para-8 of the order it is held that:...."the appellant's case is also supported by

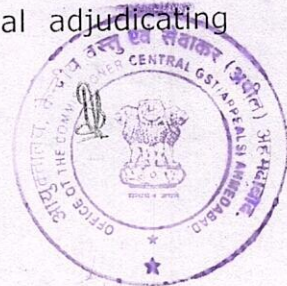


the Tribunal's decision in the case of Dinesh K Patwa Vs. CST Ahmedabad which is referred in Para 3(ii) above. However, in the Financial Year 2009-10 and 2010-12, the receipt of rent by each appellant exceeded the statutory exemption limit of Rs. 10 lakhs and the appellants have paid service tax alongwith interest on their own before receipt of SCN. This fact is not disputed by the department also and no additional liability has been worked out for the said period in OIO." However, the adjudicating authority failed to appreciate that the case of M/s Dinesh K. Patwa v. Commissioner of Service tax, Ahmedabad is still not decided by the CESTAT, Ahmedabad and pending with CESTAT, Ahmedabad for final decision.

6. The Commissioner (Appeals) vide OIA No. AHM-SVTAX-000-APP-0242-16-17 dated 15.03.2017 remanded the case back to the original adjudicating authority and held that-

Under para 8 of the OIA: "Hence, I hold that the service rendered is indivisible and it is to be treated as a single service rendered collectively. So, the benefit of SSI exemption under Notification number 8/2008-ST as amended can be availed by the appellants only in the form of AOP and not as individual partners. In view of the definition of the service and the nature of service provided by the appellants, I hold that the service of Renting of the property as stated above by the appellants fall under the category of "Renting of Immovable Property Service" and the rent for the said property received by them is taxable under the said service. Accordingly, the total rent received by the respondent is well beyond the threshold limit of exemption and therefore, the respondent are liable to pay Service Tax with appropriate interest under section 75 of FA, 1994, on the rent income received by them as AOP."

Under para 10 of the OIA: "since the period involved in the present case is after 16.05.2008, penalty under Section 78 is imposable. I hold that imposition of penalty under Section 76 *ibid* is not sustainable in the eyes of law. I find that respondent have not taken registration, have not correctly assessed their liability and have not filed ST-3, therefore they are liable for penalty under section 77. To decide the quantum of all penalty and interest under section 75 proposed under SCN, keeping in mid facts of the case and my above conclusion, I remand the case back to original adjudicating authority."



7. The adjudicating authority decided the remanded case and confirmed the following vide the impugned order-

- (a) interest under Section 75 of the Finance Act 1994;
- (b) imposed Penalties under Section 77(1)(a),(b) & (e);
- (c) also imposed penalties under Section 77(2) and Section 78 of the Finance Act 1994;
- (d) imposed late fee for each return under rule 7C read with Section 70 of the Finance Act, 1994.

8. Aggrieved of the same, the appellants filed these Appeals. In the grounds of appeals the appellants mainly submitted that:

(a) The appellants have filed appeals individually before the Hon'ble CESTAT, Ahmedabad against the Commissioner (Appeals) OIA No. AHM-SVT-AX-000-APP-0242-16-17 dated 15.03.2017 and the subject matter is sub-judice/pending before the Hon'ble CESTAT, Ahmedabad. In view of this, the calculation of interest and penalty ought to be kept pending till the final decision of CESTAT.

(b) The appellants were eligible for the benefit of exemption from payment of service tax up to the taxable value of Rs. 10.00 lakhs in a financial year.

(c) The adjudicating authority has erred in not condoning/waiving the penalty under section 80 of the Finance Act, 1994 in as much as there was a reasonable cause and bonafide belief on the part of the appellants that the service tax was not payable and general exemption was available individually to each co-owner.

(d) Even the calculation of service tax has not been done on cum-tax basis as the service tax has neither been charged nor has been recovered.

(e) There is no malafide intention on the part of the appellants and there is no intend to evade payment of tax. Thus, no penalty can be levied under section 78 or section 77, etc.

(f) The Hon'ble CESTAT, Ahmedabad in the matter of 'Sarojben Khusalchand vs Commissioner of Service tax, Ahmedabad' reported in 2017(4) G.S.T.L 159(Tri. Ahmd.), has allowed the appeal in a similar case. Thus the penalties imposed by the adjudicating authority are not tenable.

(g) Cited various case laws in support of their submissions and requested to set aside the impugned order.

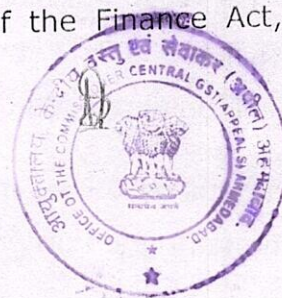


9. Personal hearing in the case was granted on 09.10.2018. Shri Mukesh Matreja and Shri Rajesh Mehuriya appeared before me on behalf of the appellants and reiterated the contents of appeal memorandum. They requested for leniency in penalties.

10. I have carefully gone through the records of the case and the submissions given in the grounds of appeals and citation referred in the appeals. It is evident that the Lessee used the said premises for commercial purpose therefore the rental income received by the AOP was taxable under the category of "Renting of Immovable Property Service" as defined under Section 65 (90a) of the Finance Act, 1994, which was a taxable service as per Section 65(105)(zzzz) of the Act. They were engaged in providing 'Renting of Immovable Property Service' without discharging their proper tax liability on the rent collected in respect of commercial property rented by them and the AOP, as an independent person, was neither registered with the service tax department nor charging service tax to the lessee by claiming separate exemption under Notification No. 6/2005-ST dated 01/03/2005. As per the provisions of the Finance Act, 1994 and rules made thereunder, the Service Provider was required to assess correct value for the service provided by them as well as to pay service tax on the amount received by them for rendering Renting of Immovable property service on due time as prescribed and to follow all the procedure laid down in the Act and Rules. It is further observed that the said service provider has not obtained service tax registration as required under Section 69 of the Finance Act, 1994 and they have not discharged their service tax liability and hence evaded service tax payment as mentioned in para supra.

11. Further, I find that the taxability has already been upheld in the said OIA and the case had been remanded to the adjudicating authority to decide the quantum of interest and penalties proposed under the SCN. It was also held in the OIA that imposition of penalty under Section 76 ibid is not sustainable in the eyes of law. Therefore, the adjudicating authority had to decide the quantum of interest and penalties proposed under the SCN, as per direction given in the OIA.

12. I would like to reproduce the relevant sections of the Finance Act, 1994 for ease of reference:



Chapter V of the Finance Act, 1994

SECTION 77. Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. — (1) Any person, —

(a) who is liable to pay service tax or required to take registration, **fails to take registration** in accordance with the provisions of section 69 or rules made under this Chapter **shall be liable to a penalty which may extend to ten thousand rupees;**

(b) who **fails to keep, maintain or retain books of account and other documents** as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a **penalty which may extend to [ten thousand rupees];**

(c) who fails to —

(i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or

(ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or

(iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry,

shall be liable to a penalty which may extend to ten thousand rupees or two hundred rupees for everyday during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to ten thousand rupees;

(e) **who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to ten thousand rupees.**

(2) Any person, who contravenes any of the provisions of this Chapter or any rules made there under for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees.

SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —

(1) **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 willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax,** the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also **liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :**

Provided that

[Emphasis supplied]



13. In view of the above, I find that -

(i) the AOP have failed to take registration in accordance with the provisions of section 69 or rules made under this Chapter, therefore the adjudicating authority has rightly imposed penalty under section 77 (1) (a) of the Finance Act, 1994.

(ii) the AOP have failed to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, therefore the adjudicating authority has rightly imposed penalty under section 77 (1) (b) of the Finance Act, 1994.

(iii) the AOP have issued invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, therefore the adjudicating authority has rightly imposed penalty under section 77 (1) (e) of the Finance Act, 1994.

(iv) when other penalties are available to be imposed, then I don't find any requirement to impose penalty under section 77 (2) of the Finance Act, 1994. Therefore, I drop the penalty imposed under section 77 (2) of the Finance Act, 1994.

(v) the AOP have suppressed the taxable value and facts with the intent to evade payment of service tax, therefore the adjudicating authority has rightly imposed penalty under section 78 of the Finance Act, 1994.

(vi) the AOP have not filed the prescribed ST-3 returns for the period 2009-10 to 2013-14, therefore they are liable for late fee for non/delayed filing of Service Tax returns in terms of Section 70 read with Rule 7C of Service Tax Rules, 1994.

(vii) the AOP is also liable to pay interest at appropriate rate under Section 75 of the Finance Act 1994.

14. I observe that the appellants have cited some judgments in support of their defense. On examination of the same, I find that the same are either concerned with the taxability or not relevant to the present situation. Since taxability has already been confirmed in my previous OIA No. AHM-SVTAX-000-APP-0242-16-17 dated 15.03.2017 and the present issue involves only with the quantum of interest and penalties proposed under the SCN, the judgments relied upon would not help the appellants cause.



15. In view of my above discussions and findings, the appeals are disposed off accordingly.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

16. The appeal filed by the appellant stands disposed off in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)



Attested

Vinod Lukose

(Vinod Lukose)
Superintendent (Appeals)
Central Tax, Ahmedabad

To,

M/s.Narayan Litho works and others 16 as listed in OIA,
Anision, 2nd Floor, Plot No 4/1,
Swastik Society, Navrangpura,
Ahmedabad-380009.

Copy to:

- (1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- (2) The Commissioner, Central GST, Ahmedabad North.
- (3) The Additional Commissioner, Central GST, Ahmedabad North.
- (4) The Assistant Commissioner(RRA), Central GST, Ahmedabad North.
- (5) The Asstt. Commissioner(System), Central GST HQ, Ahmedabad.
(for uploading the OIA on website)
- (6) Guard file



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