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- **टेलेफैक्स**07926305136

स्पीड पोस्ट

क फाइल संख्या : File No : V2(68)98/North/Appeals/2019-20/ 15609 TO 15613

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-024/20-21**
दिनाँक़ Date : **28-08-2020** जारी करने की तारीख Date of Issue 08/09/2020

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

ग Arising out of Order-in-Original No. **05/DC/D/AKJ/19-20** दिनाँक**: 13.09.2019** , issued by Deputy Commissioner, Central GST & Central Excise, Division-III, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s MBM Precast India Pvt. Ltd.,

Survey No. 109/3/1, B/H Pratham Hyundai Show Room,

Sanand-Viramgam Highway, Sanand, Ahmedabad

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 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 अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गत:–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd **माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद** –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. 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 not withstanding 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.

(6) 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 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. MBM Precast India Pvt. Ltd., Survey No. 109/3/1, Behind Pratham Hyundai Show Room, Sanand-Viramgam Highway, Sanand, Ahmedabad*(hereinafter referred to as 'appellant')*,engaged in manufacture of prefabricated structural components falling under Ch No.6810 91 00 of the Central Excise Tariff Act,1985 for which they are registered under Central Excise ECC No.AAGCM8382CEM001, have filed the present appeal against the Order-in-Original number 05/DC/D/AKJ/19-20 dated 13.09.2019 *(hereinafter referred to as 'impugned order')* passed by the Deputy Commissioner, CGST, Div-III, Ahmedabad-North *(hereinafter referred to as 'adjudicating authority'). The* appellant is also holding ST registration with Service Tax, Mumbai-South Commissionerate for providing the taxable services.

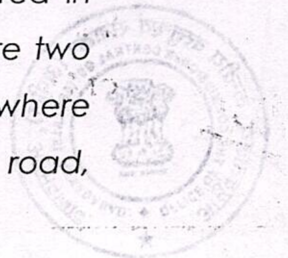
2. During the EA-2000 Audit of the records of the appellant for the period from April 2014 to March 2017 and as per Final Audit Report No.969/2017-18 dated 30.01.2018, following unsettled revenue paras were raised:

1. Credit has been availed twice on single invoice: Duty involved Rs.24582/-
2. Non-payment of service tax collected on consideration received for taxable service provided by the appellant: Service Tax involved Rs.28,83,031/-.
3. Non-payment of service tax under RCM on GTA service received: Service Tax involved Rs.1,76,657/-.
4. Non-payment of service tax under RCM on security service(Man power Supply service) received: Service Tax involved Rs.16,494/-.
5. Penalty for non obtaining Service Tax Registration: Penalty Rs.10,000/-
6. Penalty for non filing ST-3 Returns: Penalty Rs.20,000/-

Accordingly, a show cause notice dtd. 20.04.2018 was issued proposing demand of service tax based on aforementioned revenue paras and also proposed imposition of penalties and recovery of service tax with interest. The adjudicating authority, vide Order-In-Original No. 06/AC/D/BJM/18-19 dated 18.07.2018, confirmed the demands of service tax of Rs. 24,582/-, Rs. 28,83,031/-, 1,76,657/- and of Rs. 16,494/- respectively; imposed penalties under various sections of the Finance Act, 1994 (for brevity 'the Act') and imposed penalty of Rs. 30,76,182/- under Section 78 of the Act. Adjustment of Rs. 24,582/- paid by them against the demand was also ordered. Being

aggrieved with said order dated 18.07.2018, the appellant preferred appeal which was decided by the Commissioner, CGST Appeal, Ahmedabad vide Order-In-Appeal No.AHM-EXCUS-002-APP-139-18-19 dated 28.12.2018 remanding the matter back to the original adjudicating authority observing as under:

> *"6. I find that the issue to be decided in this appeal is whether service tax has been correctly demanded and penalties imposed when the appellants did not file required returns and did not pay service tax on the taxable service for which they were registered. The appellant have contended that they had paid the central excise duty under the central excise registration number of their Mumbai unit and have been regularly filing monthly returns.*
>
> *7. I find that the main issue to be decided here is whether the appellant can pay duty from their Mumbai office whereas the manufacturing activities are being carried out from their Sanand Unit. It would be helpful to understand the concept of registration and the importance of registration number in central excise. Section 6 of the Central Excise Act, 1944 provides for registration of certain person, among other things, who is engaged in the production or manufacture or any process of production or manufacture of any specified goods included in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986). Central Excise Rules, 2002 provide under Rule 4 that every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or under any other law. Rule 9 of the Central Excise Rules provide that every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered. CBEC's Excise Manual of Supplementary Instructions that, in respect of provisions for registration under Rule 9 of the Central Excise Rules, 2002, separate registration is required in respect of separate premises, only except in cases where two or more premises are actually part of the same factory (where process are interlinked) but are segregated by a public road,*



canal, railway line, etc. Notification No.35/2001-Central Excise (N.T.)dtd.26th June,2001 as amended gives detailed procedure for registration under central excise and as per that notification, if the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises. From the above detailed provisions of central excise rules and Act and Notification, it is very clear that each premise has to have separate registration except under one circumstance when the premise is separated by public road, rail etc. So it cannot be legitimate that central excise registration is for one unit and is used for different unit. I therefore hold that the argument given by the appellant that they have paid central excise duty by using central excise registration number of Mumbai unit is not acceptable and I therefore reject the same.

8. The appellant have contended that confirming demands of service tax of various amounts for various services is not proper as no value or rate of tax or nature of service has been given in the show cause notice. I find that the details of the value of the concerned services and the service tax leviable thereon have been detailed in the show cause notice and in the impugned order. Furthermore this dispute is not related to the method of valuation of service liable to payment of central excise duty or service tax. Accordingly, I reject this contention of the appellant.

9. Appellant's contention that since duty with interest is paid before issuance of notice there was no requirement to issue the notice as matter is deemed to be concluded is not acceptable as it is applicable only where there is no fraud, no suppression or no mis-statement of facts. It was only during the course of audit proceedings that the entire event of non-payment of tax had come to the knowledge of department. Had it not been the audit scrutiny of the financial statements of the appellant, the payment of Service tax would have gone unheeded. My view is supported by decision in the case of Machino Montel (I) Ltd.-2006 (202) ELT 398 (P&H) wherein it was stated that mere deposition of the duty demand before issuance of SCN cannot give the benefit to the Assessee for

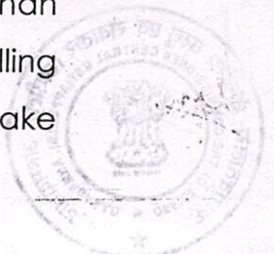
non-imposition of penalty. Hence, I agree with the findings of the adjudicating authority and uphold impugned OIO.

10. As promised …….. ..

I have perused the copies and since it is a matter of payment of service tax which can only be verified by the adjudicating authority, I find it appropriate to remand the case to the adjudicating authority to ascertain the genuineness of the challans submitted by the appellants and the payment made by them and whether the payment made can be correlated with the appellants against the liabilities of Sanand address and the same can be adjusted. In view of the above findings, I find it appropriate and justified to remand the issue to the adjudicating authority on the conditions specified herein above. In case the payment of the service tax is proved beyond doubt, the demand of service tax and the penalty under section 78 (1) of the Act to the extent of confirmation of service tax amount shall stand set aside. "

3. Following the directions as mentioned above of the Commissioner, CGST,Appeal, Ahmedabad the adjudicating authority has passed the impugned order confirming tax along with interest, penalty and late fee observing as under:

- With reference to <u>genuineness of Challan,</u> the adjudicating authority observed that the assessee has paid the amount under service tax registration number of their Mumbai unit, filed service tax returns unde said code of Mumbai unit. Therefore it is clear that challans submitted by the assessee pertains to their Mumbai unit.
- With reference to the directions that <u>whether the payment can be correlated/can be adjusted against Service tax liability of Sanand unit,</u> the adjudicating authority placed reliance on CBEC's Excise Manual of Supplementary Instruction, Rule 9 of Central Excise Rules,2002 and Notification No.35/2001-CE(NT) dated 26.06.2001, Rule 4(3A) of the Service Tax rules, 1944 which requires the assessee providing taxable services from more than one premises or offices and does not have centralize billing system or central accounting system shall have to make



separate application for registration and held that payment made by the assessee under service tax Mumbai registration cannot be correlated and cannot be adjusted against service tax liability of their Sanand unit.

- On the issue of providing ST-3 Returns,audited statement of P&L of the Financial Year 2016-17 and 2017-18 alongwith note on account etc by the appellant, the adjudicating authority observed that remaining ground has already been rejected by the Commissioner(Appeal) under OIA to which he did not addressed/discussed.

4. Being aggrieved with the impugned order, the appellant have preferred this appeal contesting, *inter alia,* that:-

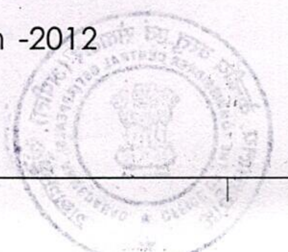
a) Confirming demand of Rs.24,582/- is time barred as they had paid the amount with interest and the show cause notice was issued after more than one year. They seek support from the case law of Prakash Construction – 2009 (15) STR-579 (Commr.Appl.);

b) Penalty imposed Rs.12291/- under Section 11AC(1)(c)of the Central Excise Act,1944 in absence of evidence to show any fraud, collusion, willful mis-statement, suppression or contravention of any provisions of the Act or Rules with intent to evade payment of duty or tax is not sustainable.

c) Confirming demands of service tax of various amounts for various services is not proper as no value or rate of tax or nature of service has been given in the show cause notice;

d) It is a settled law that service tax cannot be demanded twice on the same activity and particularly when CBEC vide its Circular No. 58/7/2003-S.T., dtd. 20.05.2003 has categorically clarified that for wrong accounting code, service tax cannot be demanded again and they have paid the service tax and filed returns under their Mumbai office service tax code. They seek support from the case laws of Chaudhary Yatra Co. Pvt. Ltd. vs. CCE – 2013 (29) STR-240 (Tri. Mum.), CST vs. Air Charter Services Pvt. Ltd. -2017 (5) GSTL-107 (Tri. Del.), CCE vs. Veena Industries Ltd. -2013 (30) STR-318 (Tri. Ahd.);

e) the penalties under various Sections of the Act are not tenable in view of their submissions made as there is no suppression of facts and no short payment of tax. They rely on the case of Fortune Network Pvt. Ltd. vs. CCE -2015 (39) STR-689 (Tri. Ahmd.), S-Mac Security Services Pvt. Ltd. vs. CST -2016 (45) STR-209 (Tri. Bang.), CCE vs. Mukesh Jain -2012



(28) STR-277 (Tri. Del.), Gujarat Guardian Ltd. vs. CCE -2016 (46) STR-737 (Tri. Ahmd.), Murugappa Morgan Thermal Ceramics Ltd. vs. CCE -2016 (45) STR-74 (Tri. Chenn.) and Trichem Enterprises Pvt. Ltd. vs. CCE -2016 (46) STR-592 (Tri. Ahmd.);

f) Service tax is applicable uniformly across Gujarat and Maharashtra and the revenue thereof goes to same central government and under the minor technical mistakes should not be a reason for imposing penalties under Section 77(1)(a) of the Finance Act,1994.

5. Personal hearing in the case was held on 27.07.2020. Shri Nilesh V Suchak, Chartered Accountant, appeared for hearing. He reiterated the submissions made in the grounds of appeal. He stated that the tax were paid from their Mumbai office registration number and requested to the allow appeal as confirmation of demand would be double taxation. He also provided additional submissions dated 27.07.2020 during hearing mainly stating as under:

a) In respect of the issue of **cenvat credit amounting of Rs.24582/- availed twice which was paid on 10.03.2017 alongwith interest of Rs.12169/-**, they argued that it is settled law that on reversal of MODVAT Credit the assessee cannot be said to have taken credit of duty. In this context they relied on case law in case of Chandrapur Magnet Wire Products Ltd v/s CCE 1996 81 ELT 3 (SC) and Prakash Construction 2009 (15) STR 579(Commr.Appl) wherein it is held that once the wrong availment of credit was paid back before issuance of the SCN, it is to be concluded that the appellant has nt availed wrong credit.

b) In respect of the issue of **Non-payment of service tax collected on consideration received for taxable services** provided, they argued that confirming demands of service tax of various amounts for various services is not proper as no value or rate of tax or nature of service has been given in the show cause notice; that as per the service tax return for the period from 01.04. 2016 to 30.06.2017, there is no short payment of service tax; due tax has been paid & returns are filed under service tax code of Mumbai office; that it is settled law that service tax cannot be demanded twice on same activity and particularly when CBEC has categorically clarified that for wrong accounting code, service tax cannot be demanded; that the said audit report itself has accepted payment made under

Mumbai office for Rs.13630/- which pertains to another para of said audit report; that CA certificate dated 23.08.2019 issued by statutory auditor of the appellant states that " Service tax paid by the said company during 01.04.2016 to 30.06.2017 under service tax code No. AAGCM8282CSD001 is in respect of its activities carried out at Sanand unit only and there was no activity at Mumbai office during that period; that the lower authority has blindly decided that the appellant should pay tax again for the same reason and also imposed penalty.

c) When service tax has been paid under Mumbai code and proper reconciliation is submitted duly supported by audited Profit & Loss account,ST-3 returns and CA certificate, demand is not sustainable.

5.1 In further submission dated 19.08.2020, the appellant contested that as per reconciliation submitted by them for the period 01.04.2016 to 30.06.2017, their total service tax liability was Rs.2945358/- which includes Rs.4702/- for construction service,Rs.2702033/- for works contract service Rs.179523/- for GTA service under Reverse Charge and Rs.19730/- for Manpower related services; that as against this service tax liability they have paid Rs.2429480/- as reflected in ST3 returns and utilized CENVAT credit for Rs.541532 during 01.04.2016 to 30.06.2017 and there appears excess payment; that gross value matches with the audited statement; that they have not carried out any activity at Mumbai office during 2016-17 and service tax paid under Mumbai office service code is in respect of Sanand unit; that one revenue para is settled by audit and arbitrarily not taking same view in respect of other audit para.

6. I have carefully gone through the facts of the case available on records, grounds of appeal in the Appeal Memorandum, written submissions made by the appellant as well as oral submissions made at the time of personal hearing. I find that the issue to be decided in the case is whether the appellant can pay tax using their Mumbai office registration number against their service tax liability of Sanand Unit from where services were discharged. I find this issue was dealt with at length by the Commissioner Appeal under Order-In-Appeal No.AHM-EXCUS-002-APP-139-18-19 dated 09.01.2019 in the earlier round of litigation who remanded the matter to the adjudicating authority with directions contained in part of para 10 of said order which is reproduced:

"I have perused the copies and since it is a matter of payment of service tax which can only be verified by the adjudicating authority, I find it appropriate to remand the case to the adjudicating authority to ascertain the genuineness of the challans submitted by the appellants and the payment made by them and whether the payment made can be correlated with the appellants against the liabilities of Sanand address and the same can be adjusted. In view of the above findings, I find it appropriate and justified to remand the issue to the adjudicating authority on the conditions specified herein above. In case the payment of the service tax is proved beyond doubt, the demand of service tax and the penalty under section 78 (1) of the Act to the extent of confirmation of service tax amount shall stand set aside. "

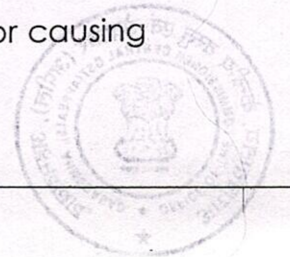
6.1 Hence the matter was remanded back only for the portion of service tax demand and penalty.

7. Following the directions as above, the adjudicating authority passed the impugned order observing the following at para 18:

"The assessee vide written submission 26.08.2019 submitted reconciliation of Service income and details in ST-3 returns for the period 01.04.2016 to 30.06.2017, audited statement of Profit and Loss for the year ended 31.03.2017 and audited statement of Profit and Loss for the year ended 31.03.2018 alongwith Note (Schedule 15) showing details of Income from operations. However, I find that the matter has been remanded back by the Commisioner(Appeals) for limited purpose only i.e. to ascertain the genuineness of challans submitted by the appellant and the payment made by them and whether the payment made can be correlated with the appellants against the liabilities of Sanand address and the same can be adjusted. I find that remaining grounds of appeals of the assessee has already been rejected by the Commisioner(Appeals) under OIA. Therefore, I do not discuss

the said issue further even though the assessee has talked about in their written submission."

8. From the above observations of the adjudicating authority, I find that the exercise of verification of challan against the entire liability of the appellant, including the same from Sanand unit, has not been completely attended by him. Since, the appellant had provided the documents viz. the reconciliation of Service income and details in ST-3 returns for the period 01.04.2016 to 30.06.2017, audited statement of Profit and Loss for the year ended 31.03.2017 as well as for the year ended 31.03.2018 alongwith Note (Schedule 15) showing details of Income from operations, it was not at the liberty of the adjudicating authority to ignore the same and to pass order without verification of the same mentioning the reason that remaining grounds of appeals of the assessee has already been rejected by the Commisioner(Appeals) under OIA. In view of the generally accepted principle that 'there cannot be double taxation on same taxable activity", the lower authority has erred in observing the above and by not addressing suitably the plea of the appellant wherein they contested the issue of double taxation in the present case. It is also contested by the appellant that in case of one revenue para under same audit report wherein payment was made using Mumbai office code is settled by audit and arbitrarily not taking same view in respect of other audit paras. I find in this context that said argument of the appellant is not irrelevant as same standard is not applied in the preset issue. Further, it was categorically mentioned in the directions in OIA dated 09.01.2019 that *in case the payment of the service tax is proved beyond doubt, the demand of service tax and the penalty under section 78 (1) of the Act to the extent of confirmation of service tax amount shall stand set aside.* In view of this, it was emphasized upon the adjudicating authority to scrutinize/correlate all the challans, returns with financial statements showing details of income from operations of the appellant and to pass a suitable order. However, I observe that in so far as the said financial records put forth by the appellant have not been considered by the adjudicating authority, the *denova* proceedings attended by him is deficient in term of the directions of the appellate authority which has not been followed *in toto*. In absence of non verification of such records by adjudicating authority, it was not possible for him to ascertain whether the tax liability discharged included the liability against the service provided at Sanand unit. The matter, therefore, needs to be remanded back to the original authority for causing

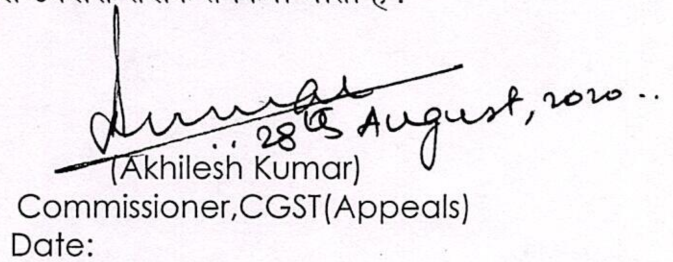


necessary verification as above and to pass order afresh. In order to leave no ambiguity, I repeat the directions passed under OIA dated 09.01.2019 that whether the payment made can be correlated with the liability against the Sanand address and whether can be adjusted and in case the payment of the service tax is proved beyond doubt, the demand of service tax and the penalty under section 78 (1) of the Act to the extent of confirmation of service tax amount shall stand set aside.

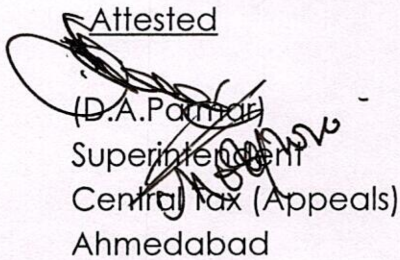
9. In view of the discussions above, I remand the case to the original adjudicating authority who shall observing the principle of natural justice order afresh scrutinizing/considering the financial records, returns, challans or any other documents which the appellant may submit in the matter.

10. The appeal filed by the appellant stand disposed off in above terms.

अपीलकर्ता द्वारा दर्ज की गयी अपीलों का निपटारा उपरोक्त तरीके से किया जाता है !



(Akhilesh Kumar)
Commissioner,CGST(Appeals)
Date:



Attested

(D.A.Parmar)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. MBM Precast India Pvt. Ltd.,
Survey No. 109/3/1, B/H Pratham Hyundai Show Room,
Sanand-Viramgam Highway, Sanand, Ahmedabad

Copy to:

(1) The Chief Commissioner of Central Tax, Ahmedabad.
(2) The Commissioner of Central Tax, Ahmedabad-North.
(3) The Additional Commissioner, Central Tax (System), Ahd-North.
(4) The Asstt./Deputy Commissioner, Central Tax, Division-III, Ahd-North.
(5) Guard File
(6) P.A.File