आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

सत्यमेव जयते

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN: 20220364SW0000222B79

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1511/2021-APPEAL /6117-21

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-82 to 84-2021-22**
दिनाँक Date : **21-03-2022** जारी करने की तारीख Date of Issue 21.03.2022

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

ग Arising out of Order-in-Original No. **53-55/JC/MT/2020-21** दिनाँक: **10.03.2021**, issued by Joint Commissioner, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Abhishek Associates
8, Parulnagar Shopping Centre,
Nr. Bhuyangdev Cross Road, Sola Road,
Ghatlodia, Ahmedabad

2. Respondent

The Joint Commissioner, CGST & C.Ex, Ahmedabad North
Custom House, 1st Floor, Navrangpura, Ahmedabad - 380009

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

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

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

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

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner 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.

(11) 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:
(xvi) amount determined under Section 11 D;
(xvii) amount of erroneous Cenvat Credit taken;
(xviii) 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

1. These orders arise out of three appeals filed by M/s. Abhishek Associates, 8, Parulnagar Shopping Centre, Nr. Bhuyangdev Cross Road, Sola Road, Ghatlodiya, Ahmedabad-380061 (having earlier office address at 24, Ambrish Society, Ranip, Ahmedabad-380005) (hereinafter referred to as '*appellant*') against Orders in Original Nos. 53-55/JC/MT/2020-21 dated 10.03.2021 (hereinafter referred to as '*the impugned order*') passed by the Joint Commissioner, CGST & C. Excise, Commissionerate:Ahmedabad-North (hereinafter referred to as '*the adjudicating authority*') covering the Show Cause Notices issued to the appellants, as mentioned below:

Sr.No.	SCN File No. & Date	Amount of Service Tax involved (Rs.)	Period involved (F.Y.)
1	STC/4-27/O&A/ADC/12-13 dated 05.10.2012	43,83,510/-	2007-08 to 2010-11
2	STC/4-44/O&A/12-13 dated 02.04.2013	31,95,563/-	2011-12
3	STC/4-77/O&A/2013-14 dated 12.05.2014	49,71,162/-	April, 2012 to Sept, 2013

2. Facts of the case, in brief, are that the appellant were holding Service Tax Registration No. ADZPD4239QST001 and were engaged in providing taxable services of 'Erection, Commissioning & Installation Service' (ECI Service, for short) and 'Management, Maintenance or Repair Service' (MMR Service, for short) as defined under Chapter V of the Finance Act, 1994. During scrutiny of ST-3 returns filed by the appellant, it was noticed that they were not paying Service Tax on ECI Service by claiming exemption for the same. Further, it was also observed that they were infact providing MMR Service of electrical items/fittings and electrification work. It further appeared that in some cases, the appellant were paying Service Tax on 33% of total value of Service by claiming benefit of abatement under Notification No. 1/2006-ST, as applicable to ECI Service. Thus, it appeared to the department that services provided by the appellant were in the nature of MMR Service and not ECI Service and, accordingly, abatement claimed in some cases was also wrong. Accordingly, a Show Cause Notice (SCN dated 05.10.2012) was issued to the appellant for recovery of the Service Tax not paid during the period from F.Y. 2007-08 to F.Y. 2010-11 and subsequently, a Show Cause Notice (SCN dated 02.04.2013) was also issued in the same matter, for the further period of F.Y. 2011-12.

2.1 The demands of Service Tax raised under the abovementioned Show Cause Notices dated 05.10.2012 and dated 02.04.2013, were confirmed vide the adjudication orders i.e. OIO Nos. 5-6/STC/AHD/ADC(JSN)/2013-14 dated 31.05.2013 passed by the Additional Commissioner of Service Tax, Ahmedabad. Against the said adjudication order, appeals were filed by the appellant before the Commissioner (Appeals), Ahmedabad for which the Commissioner (Appeals) vide OIA No. AHM-SVTAX-000-APP-368 to 369-13-14 dated 25.02.2014 partly rejected the appeal and also remanded certain part of the matter back to adjudicating authority. Being aggrieved with the OIA dated 25.02.2014, the department as well as the appellant had filed appeals with CESTAT, Ahmedabad. The Hon'ble CESTAT vide Order No. A/11402-11403/2014 dated 17.07.2014 decided the appeal filed by the appellant (department's appeal is still pending for decision) and set aside the orders passed by the lower authorities and remanded the matter back to the adjudicating authorities for deciding all the issues afresh in remand proceedings. Meanwhile, the third Show Cause Notice dated 12.05.2014 was also issued to the appellant, covering the period from April, 2012 to September, 2013.

2.2 Thereafter, as per the directions of Hon'ble Tribunal, Ahmedabad vide Order dated 17.07.2014 to decide all the issues afresh in remand proceedings, the demand raised vide SCN No. STC/4-27/O&A/ADC/12-13 dated 05.10.2012 and SCN No. STC/4-44/O&A/ADC/12-13 dated 02.04.2013 as well as subsequent SCN No. STC/4-77/O&A/2013-14 dated 12.05.2014 were taken up for *denovo adjudication*/adjudication by the Additional Commissioner, erstwhile Commissionerate of Service Tax, Ahmedabad (hereinafter referred to as '***the earlier adjudicating authority***') and had been decided vide OIO Nos. **AHM-SVTAX-000-ADC-14-15-16-2016-17 dated 29.09.2016** (hereinafter referred to as '***the earlier adjudication order***'). The findings of the 'earlier adjudicating authority' while issuing the 'earlier adjudication order' are briefly reproduced below:

> *"16.4 Services provided to Airport Authority of India: Thus, I hold that the claim of the assessee that they have provided Erection, Commission and Installation Service or Work Contract Service as they have carried out the work with material is not sustainable and the charges leveled in the show cause notice that the said assessee have provided Management, Maintenance or Repair Service is proved and upheld on the basis of above discussions and findings. As the works carried out by the said assessee falls under the ambit of Management, Maintenance or Repair Service, the exemption and abatement under Notification No. 01/2006-ST claimed by the*

said assessee is also not admissible and in view of the above discussion, I disallow the exemption and abatement claimed by the assessee.

***16.5 Services provided to ISRO**: Thus looking to the nature of work carried out by the said assessee the same cannot be classified under Erection, Commission and Installation Service but is appropriately classifiable under Management , Maintenance or Repair Service and therefore, I hold that the claim of the assessee that they have provided Erection, Commission and Installation Service in ST-3 returns is not sustainable.*

As the works carried out by the said assessee falls under the ambit of Management, Maintenance or Repair Service, the exemption and abatement under Notification No. 01/2006-ST claimed by the assessee is also not admissible and in view of the above discussion, I disallow the exemption and abatement claimed by the assessee.

***16.6 Services provided to NBCC & to NBCC (as a sub contractor)**: I find that the initial claim of the assessee and declaration in ST-3 returns that they have provided Erection, Commission and Installation Service and availed exemption from paying service tax is not correct as looking to the sample letter of award of NBCC, the said assessee was required to carry out work involving more of repairing and maintenance work of the existing electrical installations and not of installation of electrical and electronic devices, including wirings or fittings thereof and also admitted by Shri Sanjay Narbada Dubey, Proprietor of the assessee in his statement dated 24.08.2012. The monthly fixed labor charges in the contract further gives strength that the work was not in the nature of erection, commissioning or installation but was in form of annual maintenance contract (AMC) for a maintenance or repair service on monthly basis. Thus, I hold that the claim of the assessee that they have provided Erection, Commission and Installation Service in ST-3 returns is not sustainable.*

***16.6.2**.....Therefore, I am unable to accept the assessee pleas that they have provided work contract service based on the facts and discussions as detailed above and accordingly, I hold that the claim of the assessee to consider the services provided as works contract as they have carried out the work with materials is not sustainable.*

***16.6.3**.....As the works carried out by the said assessee falls under the ambit of Management, Maintenance or Repair Service, the exemption and abatement under Notification No. 01/2006-ST claimed by the said assessee is also not admissible and in view of the above discussion, I disallow the exemption and abatement claimed by the assessee.*

***16.7 Services provided to ESIC**:-*

16.7.1.....Thus I hold that the claim of the assessee that they have provided Erection, Commission and Installation Service in ST-3 returns is not sustainable.

16.7.2.....Therefore, I am unable to accept the assessee pleas that they have provided work contract service based on the facts and discussions as detailed above and accordingly, I hold that the claim of the assessee to consider the services provided as works contract as they have carried out the work with material is not sustainable.

16.7.3.....As the work carried out by the said assessee falls under the ambit of Management, Maintenance or Repair Service, the exemption and abatement under Notification No. 01/2006-ST claimed by the said assessee is also not admissible and in view of the above discussion, I disallow the exemption and abatement claimed by the assessee.

***16.8 Services provided to Railways**:...The initial claim of the assessee and declaration in ST-3 returns that they have provided Erection, Commission and Installation service and availed exemption from paying service tax on the basis of Circular No. 123/5/2010-TRU dated 24.05.2010 is not sustainable as looking to the nature of work carried out by the said assessee as detailed above and thus, I hold that the claim of the assessee that they have provided Erection, Commission and Installation service in ST-3 returns is not sustainable.*

16.8.1.....accordingly, I hold that the claim of the assessee to consider the services provided as works contract as they have carried out the work with material is not sustainable.

16.8.2..... As the works carried out by the said assessee falls under the ambit of Management, Maintenance or Repair service, the exemption and abatement under Notification No. 01/2006-ST claimed by the said assessee is also not admissible and in view of the above discussion, I disallow the exemption and abatement claimed by the assessee.

***16.9 Services provided to All India Radio**:.....Thus I hold that the claim of the assessee that they have provided Erection, Commission and Installation Service or Work Contract Service as they have carried out the work with material is not sustainable and the charges leveled in the show cause notice that the said assessee have provided Management, Maintenance or Repair Service is proved and upheld on the basis of above discussions and findings. As the works carried out by the said assessee falls under the ambit of Management, Maintenance or Repair Service, the exemption and abatement under Notification No. 01/2006-ST claimed by the said assessee is also not admissible and in view of the above discussion, I disallow the exemption and abatement claimed by the assessee.*

***17. As regards the services provided by the assessee during the period from 01.07.2012 to 30.09.2013** and claimed exemption as well as abatement thereon, I find that post 01.07.2012 there is no service wise classification due to introduction of negative list, and the activity carried out*

by the said assessee falls under the purview of definition of 'Service' in terms of Section 66B read with Section 66D of Finance Act, 1994 as the same is neither covered by negative list nor by any exemption notification. Thus, I hold that the claim of the assessee that they have provided Erection, Commission and Installation Service or Work Contract Service as they have carried out the work with material is not sustainable and the charges leveled in the show cause notice that the said assessee have provided 'service' as defined under Section 65B (44) of the Finance act, 1944 is proved and upheld on the basis of above discussions and findings. As the works carried out by the said assessee falls under the ambit of 'Service', the exemption and abatement under Notification No. 01/2006-ST claimed by the said assessee is also not admissible and in view of the above discussion, I disallow the exemption and abatement claimed by the assessee.

21. *Now, I take up the issue whether the demand under Show Cause Notice dated 05.10.2012 is time barred or otherwise? I find that ..... Thus the* ***invocation of the extended period*** *is based on the fact that there has been gross misquotation of notification/circular and fraud perpetrated on the Department with sheer intention to evade payment of service tax. In view of the above facts and findings, I therefore find no legality in the plea of the assessee and held that the SCN has been issued within the time frame along within the necessary ingredients required for invoking proviso to Section 73(1) of Finance Act, 1994.*

22. *Now, I take up the issue whether late fee of Rs. 27,000/- is payable by the assessee under Section 70 of the Finance Act, 1994 read with Rule 7C of Service Tax Rules, 1994 for delay filing of ST-3 returns as demanded in Show Cause Notice dated 05.10.2012. I find that..... In view of above, I uphold the charges for demand of* ***late fee of Rs. 27,000/- for delay filing of ST-3 returns*** *for the two half yearly returns pertaining to April, 2010 to September, 2010 and October, 2010 to March, 2011 filed on 19.07.2011 as alleged in the Show Cause Notice dated 05.10.2012.*

23. As regards the penalties proposed under Section 76, 77 & 78 of Finance Act, 1994 *for Show Cause Notice dated 05.10.2012 and penalties under Section 76 and 77 of Finance Act, 1994 for Show Cause Notice dated 02.04.2013 and 12.05.2014. I find that.....*

23.1*.....I further find that all these contraventions, omissions and commissions on the part of the said assessee have been committed deliberately with an intention to evade the payment of service tax by willful suppression of nature and value of the service provided and wrongly availing the exemption and abatement by them. All these act of contravention appears to constitute offence of nature as described in Section 68, 69 and 70 of the Finance Act, 1994 read with Rule 6 and 7 of Service Tax Rules, 1994*

and thereby liable for penal action under Section 76, 77 and 78 of the Finance Act, 1994 as amended from time to time.

23.3 *..... I further find that since the said assessee failed to properly assess the taxable value, they have rendered themselves liable for penal action under Section 77 of the Finance Act, 1994, as well".*

2.2.1 Accordingly, the 'earlier adjudicating authority' vide the 'earlier adjudication order' had issued the order, briefly summarized as here below:

(i) The demand of Service Tax amounting to Rs. 43,83,510/- raised vide SCN F.No. STC/4-27/O&A/ADC/12-13 dated 05.10.2012, has been confirmed against the appellant and ordered to be recovered under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994;

(ii) Penalty of Rs. 10,000/- has been imposed on the appellant under Section 77 of the Finance Act, 1994 for not correctly assessing the value of Service Tax, during the material period;

(iii) Late fees of Rs. 27,000/- has been confirmed against the appellant under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for delay in furnishing the ST-3 returns;

(iv) Penalty of Rs. 43,83,510/- has been imposed on the appellant under Section 78 of the Finance Act, 1994 for suppressing the value of taxable service provided by them before the department with intent to evade the payment of service tax;

(v) The demand of Service Tax amounting to Rs. 31,95,563/- raised vide SCN F.No. STC/4-44/O&A/12-13 dated 02.04.2013 has been confirmed against the appellant and ordered to be recovered under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994;

(vi) Penalty of Rs. 3,19,556/- has been imposed on the appellant under Section 76 of the Finance Act, 1994 for failure to determine and pay service tax within the stipulated period;

(vii) Penalty of Rs. 10,000/- has been imposed on the appellant under Section 77 of the Finance Act, 1994 for failure to pay appropriate service tax and failure to file correct service tax returns under the provisions of Section 70 of the Finance Act, 1994;

(viii) The demand of Service Tax amounting to Rs. 49,71,162/- raised vide SCN F.No. STC/4-77/O&A/2013-14 dated 12.05.2014 has

been confirmed against the appellant and ordered to be recovered under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994;

(ix) Penalty of Rs. 4,97,116/- has been imposed on the appellant under Section 76 of the Finance Act, 1994 for failure to determine and pay service tax within the stipulated period;

(x) Penalty of Rs. 10,000/- has been imposed on the appellant under Section 77 of the Finance Act, 1994 for failure to pay appropriate service tax and failure to file correct service tax returns under the provisions of Section 70 of the Finance Act, 1994.

2.3 Subsequently, being aggrieved with the 'earlier adjudication order' passed by the 'earlier adjudicating authority', an appeal was filed by the appellant with the Commissioner (Appeals), Central Tax, Ahmedabad (hereinafter referred as 'the original appellate authority'). The original appellate authority has vide OIA Nos. AHM-EXCUS-002-APP-86-87-88-17-18 dated 21.11.2017 (hereinafter referred as 'the original appellate order') decided the matter and has partly remanded the matter back to the adjudicating authority in case of services given to Airport Authority and Railways by the appellant. The relevant para of the original appellate order is reproduced below:

"8. I therefore find that the impugned order requires no interference except, as far as it relates to the services provide to AAI and Railways, where adjudicating authority has relied upon the Proprietor's statement recorded before the Central Excise Officer to highlight the work done by the appellant. Since present matter is more about correct interpretation of facts than the law, the contracts relating to work done for AAI and Railways need to be gone through to decide taxability and classification of the activities involved. Accordingly, matter needs to be remanded back to the adjudicating authority to study the contracts awarded by AAI and Railways and decide the matter accordingly. Further, adjudicating authority needs to break up the entire demand, service recipient-wise, so as to segregate the demand pertaining to services provided to AAI and Railways and pass a speaking order after going through all/representative contracts with these entities. The appellant is also directed to produce the copies of relevant contracts before the adjudicating authority for his examination and other details as required by him. Needless to mention, principles of natural justice would be followed".

2.4 In pursuance of the directions of the 'original appellate authority' issued vide the 'original appellate order', the adjudicating authority vide issuance of impugned order, passed the order as reproduced below:

(i) *Therefore I confirm the classification of services rendered to AAI and Railways by the assessee as MMR (Management, maintenance and repair) service and also confirm tax liability as per the SCNs and previous adjudicating order dated 29.06.2016.*

(ii) *The Appellate Authority have already decided the services given to the other parties than AAI and Railways and upheld the findings of adjudicating authority vide OIO dated 29.06.2016. So the party wise and period wise taxability as previous adjudicating order dated 29.06.2016 would prevail in the matter.*

(iii) *Thus the denovo proceedings in respect of OIA No. AHM-EXCUS-002-APP-86-87-88-17-18 dated 21.11.2017 is concluded in the above manner.*

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds, which are briefly summarized herebelow:

(i) *The services provided by them were classifiable under the category of 'Works Contract Service' in terms of the provisions of Section 65A and Section 65(105)(zzzza) of the Finance Act, 1994 and accordingly, the demand confirmed, by classifying the services under 'Management, maintenance and repair Services' in the present case is not legally correct;*

(ii) *The services provided to Airport Authority of India as well as Railways are not liable to Service Tax as it was execution of turnkey job for the electrical fitting & ancillary thereof and being erection service to the specified authority i.e. "specified infrastructure projects namely roads, airports, railways transport terminals, bridges, tunnels and dams are specifically excluded from the scope of the levy";*

(iii) *As per Sr. No.5 of the Notification No. 1/2006 dated 01.03.2006, they are also eligible for abatement since they fulfilled all the conditions of the said notification and discharged service tax on gross value;*

(iv) *The extended period of limitation cannot be invoked in the present case since there was no suppression or willful misstatement on the part of the appellant;*

(v) *In the present case, the show cause notice has not brought any evidence/fact which can establish that the appellant have suppressed anything from the department and accordingly, the*

penalty under Section 78 of the Finance Act, 1994 cannot be imposed. They relying upon the judgment of Hon'ble High Court of Gujarat in the case of Steel Cast Ltd. [2011 (21) STR 500 (Guj)] contended that they are entitled to entertain the belief that their activities were not taxable and that cannot be treated as suppression of facts.

(vi) *They were under bonafide belief that they are not liable for payment of service tax and hence, no penalty imposable on them under Section 76 & 77 of Finance Act, 1994. They relied upon the following judgments of Hon'ble Supreme Court, in support of their contention:*

- *M/s. Hindustan Steel Ltd. Vs. The State of Orissa reported in [AIR 1970 (SC) 253] which was also followed by the Tribunal in the case of Kellner Pharmaceuticals Ltd. Vs. CCE, reported in [1985 (20) ELT 80]*
- *M/s. Pushpam Pharmaceuticals Company Vs. CCE 1995 (78) ELT 401 (SC)]*
- *CCE Vs. Chemphar Drugs and Liniments [1989 (40) ELT 276 (SC)]*

(vii) *Penalties under Section 76 and 78 of the Act cannot be simultaneously imposed.*

(viii) *In the present case, there was a bonafide belief that the activities carried out by them are not taxable and accordingly, there was reasonable cause for failure, to pay service tax and to file service tax return. Hence, in terms of Section 80 of the act, penalties under Section 76, 77 and 78 of the act are not imposable on them.*

4. The appellant was granted opportunity for personal hearing on 12.11.2021 through video conferencing. Shri Vipul Khandhar, Chartered Accountant, appeared for hearing as authorised representative of the appellant. He re-iterated the submissions made in Appeal Memorandum as well as the additional submission given on 11.11.2021 though e-mail.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum, additional submission and oral submissions made by the appellant at the time of hearing. In the present case, all the three appeals have been filed by the appellant against the impugned order passed by the adjudicating authority which covers the demands raised by the department vide three nos. of Show Cause Notices issued for the different periods, as per the details mentioned in Para-1

above. Accordingly, all the three nos. of appeals have been taken up for consideration, under common appeal proceeding at present. The issues to be decided in the present appeals are as under:

(i) *Whether the classification of services confirmed by the adjudicating authority under 'Management, maintenance and repair services' vide the impugned order in respect of the services rendered by the appellant to AAI and Railways and accordingly also confirming the tax liability as per the SCNs and previous adjudicating order dated 29.06.2016, is legally correct or otherwise?*

(ii) *Whether the duty confirmed as per* SCN F.No. STC/4-27/O&A/ADC/12-13 dated 05.10.2012 invoking the extended period, *is legally correct or otherwise?*

(iii) *Whether the Penalty imposed on the appellant under Section 76, 77 and 78 of the Finance Act, 1994, is legally correct or otherwise?*

6. In the present case, it is observed that the matter to the extent of it relates to the services provided by the appellant to AAI and Railways was remanded back by the 'original appellate authority' vide 'original appellate order' to examine the contracts awarded by AAI and Railways to decide the taxability and classification of the activities involved and to decide it afresh.

6.1 As the issue involved in the present case is regards the determination of classification of services, I find it proper to go through the relevant provisions of Section 65 of the Finance Act, 1994, which are reproduced below:

Section 65(39a):

"erection, commissioning or installation" means any service provided by a commissioning and installation agency, in relation to, –

(i) erection, commissioning or installation of plant, [machinery, equipment or structures, whether pre-fabricated or otherwise]; or

(ii) installation of –

(a) electrical and electronic devices, including wirings or fittings therefor; or

(b) plumbing, drain laying or other installations for transport of fluids; or

(c) heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work; or

(d) thermal insulation, sound insulation, fire proofing or water proofing; or

(e) lift and escalator, fire escape staircases or travelators; or

(f) such other similar services;

Section 65 (105) (zzzza):

"taxable service" means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation. – For the purposes of this sub-clause, "works contract" means a contract wherein, –

*(i) **transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods**, and*
(ii) such contract is for the purposes of carrying out, –
(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
(c) construction of a new residential complex or a part thereof; or
(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects

Section 65 (64):

"management, maintenance or repair" means any service provided by –

(i) any person under a contract or an agreement; or
(ii) a manufacturer or any person authorised by him, in relation to, –
(a) management of properties, whether immovable or not;
(b) maintenance or repair of properties, whether immovable or not; or
(c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;]

6.2 As regards the services provided by the appellant to the Airport Authority of India, it is observed that the appellant has produced copies of work orders/contracts, as mentioned at Para-10 of the impugned order. Further, the adjudicating authority has also reproduced the relevant portions of the scope of work and other conditions covered by the heading 'additional terms and conditions of the contract'. As per the conditions and scope of the work of the said contracts, it is apperant that the service provided by the appellant is of the nature of routine maintenance, testing and operations of electrical installations of the Airport Authority of India and to attend complaints/faults/breakdowns and to carry out repairing/rectification wherever required. I find that the appellant has neither disputed the said facts nor produced any relevant documentary evidences substantiating their claim that the services provided by them to Airport Authority of India are not covered under the category of "management, maintenance or repair service", as defined in Section 65(64) of the Finance Act, 1994.

6.2.1 Further, I find that the appellant has not submitted any documentary evidences i.e. work order, contract etc. before the adjudicating authority or even during appeal proceedings which supports their contention that the scope and nature of the work done by the appellant are covered under the definition of "work contract" as per the explanation of Section 65(105)(zzzza) of the Finance Act, 1994. Accordingly, the contention of the appellant that the services provided to Airport Authority of India as well as Railways are not liable to Service Tax as it was execution of turnkey job for the electrical fitting & ancillary thereof and being erection service to the specified authority i.e. "specified infrastructure projects namely roads, airports, railways transport terminals, bridges, tunnels and dams are specifically excluded from the scope of the levy" is without any justification and also not backed by any legal provisions.

6.2.2 As regards the contention of the appellant that they are eligible for abatement as per Sr. No.5 of the Notification No. 1/2006 dated 01.03.2006 under "Erection, Commissioning or Installation Service", I find that the work carried out by the appellant for Airport Authority of India falls under "management, maintenance or repair service" as discussed in Para-6.2 above and hence, the said contention of the appellant are also liable to be rejected. In view thereof, I do not find any reason to intervene in the findings of the adjudicating authority that "the services provided by the appellant to the Airport Authority of India falls under the ambit of "Management, Maintenance or Repair Service" as defined under Section 65(64) of the Finance Act, 1994".

6.3 As regards the services provided to Railways, it is observed that the appellant has produced copies of work orders/contracts before the adjudicating authority and some of them are mentioned at Para-14 of the impugned order. On perusal of the said work orders/contracts, it was observed that the appellant had provided the services of electrical work for maintenance and improvement of staff quarters, improvement of building safety installations, electrical work in connection to wheel lathe machine which is being used in repair and maintenance of railway coaches wheels, tracks and braking systems. Accordingly, I find that the scope and nature of the work/services provided by the appellant is similar to the maintenance and repair service.

6.3.1 I also find that the appellant has referred Circular No. 123/5/2010-TRU dated 24.05.2010 and contended that the electrification work at railway line either at on track and any other place, which has been termed as

railway electrification, is not a taxable activities and hence no tax is applicable on such activities. It is observed as per the findings of the adjudicating authority mentioned in Para-15 to Para-17 of the impugned order that it is evident from the copies of railway contracts that the appellant have only provided the services regarding (i) improvement and maintenance of electrical installations at railway establishment; (ii) rewiring of old service building/administrative office in loco shed including replacement of old switch board and electric work in connection with (i) maintenance and improvement of staff quarters (ii) provision of wheel lathe machine at Sabarmati (iii) commissioning of UPS system etc. Further, I find that the appellant has neither disputed the said facts at any point of time nor produced any documentary evidences which substantiating their claim that the services provided by the appellant to Railways qualifies for the benefit under the said notification.

6.3.2 In view of the discussion made above, I am in agreement with the finding of the adjudicating authority that the appellant has not provided the services under 'Erection, Commissioning or Installation Service' or 'Works Contract Service'. Further, the services provided by the appellant are rightly classifiable under the category of 'Management, Maintenance or Repair Service' as defined under Section 65 (64) of the Finance Act, 1994 and such services are taxable under Section 65 (105) (zzg) of the Finance Act, 1994.

6.3.3 As regards the exemption/abatement claimed by the appellant in respect of the services provided by them during the period from 01.07.2012 to 30.09.2013 (i.e. negative list regime), I find that post 01.07.2012, there is no service wise classification due to introduction of negative list, and the activity carried out by the appellant falls under the purview of definition of 'Service' in terms of Section 66B read with Section 66D of the Finance Act, 1994. Further, the appellant has not produced any documentary evidences like contract, agreement etc. either before the adjudicating authority or even during the appeal proceedings showing that the said activity are covered under the negative list or any particular exemption notification. Accordingly, I find that in absence of verification about the genuineness of quantification of the revenue shown against a particular service head, the claims of appellant regarding non taxability of services or export of services or exemption and abatements cannot be taken at its face value and hence, not sustainable. The Apex Court has also held in the case of Mysore Metal Industries [1988 (36) ELT 369 (SC)] that the burden is on the party who claims exemption, to prove the facts that entitled him to exemption. Accordingly, I find that the contention of the appellant claiming the benefit of

exemption and abatement in respect of the services provided by them during the negative list regime is not backed by any documentary evidence and hence, legally not sustainable.

6.4 As regards the contention of the appellant against the invocation of extended period of limitation while raising the demand of Service Tax amounting to Rs. 43,83,510/- from them vide SCN F.No. STC/4-27/O&A/ADC/12-13 dated 05.10.2012, I find as per the facts available on record that the appellant has suppressed the value of taxable service from the department in as much as they have not disclosed the facts regarding the nature and scope of the service provided and accordingly have wrongly claimed exemption. They had deliberately short paid service tax by misquoting and mis-applying exemption notification and exemption circular. Further, it is observed that the appellant was already a registered assesse of the department and in case of any confusion, they should have sought clarification from the department but no such issue raised by the appellant at any point of time. Accordingly, I find that there is a clear act of suppression of facts or willful misstatement observed on the part of the appellant with an intent to evade payment of service tax in the present case which makes them liable to demand and recover the service tax short paid/not paid, from them invoking the extended period of limitation. Hence, the contention of the appellant against the invocation of extended period of limitation is not legally sustainable.

6.5 It is also observed as per the contention of the appellant that no penalty is leviable under Section 76, 77 and 78 of the Finance Act, 1994 as the issued involved in the present case is of interpretation of statutory provisions. As regards the said contention, I find that the government have taken measures like self-assessment etc. and placed full trust on the service provider and they do not even required to maintain any statutory or seperate records under the provision of Service Tax rules. All these operate on the basis of honesty of the service provider and therefore the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider. In the present case, the appellant failed to include the correct value in ST-3 returns for the taxable services rendered by them and by not paying the due service tax at the appropriate time rendered themselves disregarding the requirement of law and breach of trust deposed on them. Further, it is also observed that all these contraventions, omissions and commissions on the part of the appellant have been committed deliberately with an intention to evade the payment of service tax by wilful suppression of nature and value

of the services provided and wrongly availing the exemption and abatement by them. I find that all these act of contravention on the part of appellant, constitute offence of nature as described in Section 68, 69 and 70 of the Finance Act, 1994 read with Rule 6 and 7 of Service Tax Rules, 1994 which makes them liable for penal action under Section 76, 77 and 78 of the Finance Act, 1994.

6.5.1 Further, it is also observed that the appellant has also contended that "there was a bonafide belief that the activities carried out by them are not taxable and accordingly, there was reasonable cause for failure, to pay service tax and to file service tax return. Hence, in terms of Section 80 of the act, penalties under Section 76, 77 and 78 of the act are not imposable on them". In the present case, I find as per the facts available on record that there is a gross failure on the part of the appellant with an intention to evade payment of service tax which constitutes offence of nature liable for penalty and hence, the contention of appeal is not legally sustainable.

7. In view of the foregoing discussion and findings, I do not find any merit in the contentions of the appellant so as to intervene in the impugned order passed by the adjudicating authority. Accordingly, I uphold the impugned order passed by the adjudicating authority and all the appeals (3 Nos.) filed by the appellant are rejected.

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

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 21/March/2022

Attested

(M.P.Sisodiya)
Superintendent (Appeals)
Central Excise, Ahmedabad

By Regd. Post A. D

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Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Commissionerate:Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, Central GST, Division-VII, Commissionerate:Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Commissionerate:Ahmedabad-North.
5. Guard file
6. PA File