आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलेफैक्स07926305136

DIN: 20220964SW0000444BE7

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2313/2021-Appeal /3741 - 3745

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-32/2022-23**
दिनाँक Date : 09.09.2022 जारी करने की तारीख Date of Issue 14.09.2022

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

ग Arising out of Order-in-Original No. **CGST/A'bad North/Div-VII/ST/DC/31/2021-22** दिनाँक: **04-08-2021**, issued by The Deputy Commissioner, CGST, Division-VII, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
   M/s Yogi Aircon Pvt. Ltd.
   39, Stadium House,
   Stadium Panch Rasta, Navrangpura,
   Ahmedabad, Gujarat - 380009

2. Respondent
   The Deputy Commissioner
   CGST, Division-VII, Ahmedabad North
   4th Floor, Sahajanand Arcade,
   132 ft. Road, Helmet Circle,
   Memnagar, Ahmedabad - 380052

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 तों 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.

(23) 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:

(lii) amount determined under Section 11 D;
(liii) amount of erroneous Cenvat Credit taken;
(liv) 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

The present appeal has been filed by M/s. Yogi Aircon Pvt. Ltd., 39, Stadium House, Stadium Panch Rasta, Navrangpura, Ahmedabad-380009 (hereinafter referred to as "the appellant") against Order–in–Original No. CGST/A'bad North/Div-VII/ST/DC/31/ 2021-22 dated 04.08.2021 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST and Central Excise, Division-VII, Ahmedabad North (hereinafter referred to as the "adjudicating authority"). The appellant is holding Service Tax Registration Number AAACY3445NST001 for providing taxable services defined under Section 65B (44) of the Finance Act, 1994, in the form of Work Contract; Maintenance and Repair; Erection, Commissioning & Installation; Legal Consultancy; Goods Transport Agency and Business Auxiliary.

2. The facts of the case, in brief, are that during the course of audit of the financial records of the appellant, the officers of Central GST Audit, Ahmedabad noticed that for the F.Y. 2013-14 (October-2013 onwards) to F.Y. 2016-17 (upto June-2017), the appellant was rendering repair and maintenance service of air conditioners and was also doing trading of air conditioners and its spare parts, for which they issued separate invoices. On scrutiny of sample invoices, it was noticed that in some of their invoices they mentioned Maintenance or Repair services as Works Contract service and claimed abatement of 60% to 30% which appeared as intent to evade payment of service tax. The appellant were therefore asked to provide works order/ agreements in respect of the works contract services provided but they could not submit any evidence. Further, it was also noticed that they claimed abatement in revenue reconciliation deeming their services as Works Contract Service without submitting any evidence. The appellant later vide letter dated 20.03.2019, informed that they were providing comprehensive AMC of material plus labour for maintenance or repair of air conditioners and were paying service tax on 70% of the value of gross amount charged. However, for the invoices where they were charging service tax on only 40% of gross amount, no such clarification was provided by the appellant.

2.1 As no documents or explanation was provided by the appellant evidencing nature of service to be Works Contract Service, a Show Cause Notice (SCN) No. CTA/04/--195/Cir-VII/AP-49/2018-19 dated 16.04.2019 was issued wherein service tax demand of Rs.14,76,392/- under Repair and Maintenance Services was proposed under Section 73(1) of the F.A., 1994 alongwith interest and penalty u/s 75 & 78 respectively.

2.2 The said SCN was adjudicated vide the impugned order wherein the demand proposed in the SCN was confirmed alongwith interest and penalty equivalent to service tax demand was also imposed.

3. Being aggrieved by the impugned order, the appellant has preferred the present appeal contesting the demand, primarily on following grounds:-

- The demand is time bared as all the data was provided by the appellant in the ST-3 returns which were filed regularly.

- Abatement of 40%, 60% & 70% during the respective period was claimed as per Rule 2A of the Service Tax (Determination of Value) Rules, 2006, which have been shown in the respective invoices.
- They claim to have submitted the work flow chart of the "Installation & Commissioning" of complete Air Conditioning units and also for the "All in One Maintenance Contract"
- They also placed reliance on following decision of Hon'ble CESTAT, passed in the case of;
  - UB Engineering Ltd Vs CCE, Pune-III-2015(37) STR 999
  - Xerox India Ltd.- 2019 (20) GSTL 96 (Tri-Chan)
- In view of the settled case laws, they claim demand of service tax, interest and penalty is not imposable.

4. Personal hearing in the matter was held on 17.08.2022 through virtual mode. Shri R. Subramanya, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He further stated that part of the demand is barred by limitation.

5. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as in the submissions made at the time of personal. The issue to be decided under the present appeal is whether the activities carried out by the appellant should be considered taxable under Works Contract Service or under Maintenance & Repair service? The period involved in the dispute is F.Y. 2013-14 to F.Y. 2016-17(upto June, 2017).

6. The adjudicating authority upheld the demand and liability of the appellant predominantly on the ground that the appellant could not produce any documentary evidence to establish that they were providing Works Contract service. It was further held that there was no transfer of property in goods involved in execution of the work hence, the service rendered by the appellant is rightly classifiable under Maintenance and Repair service. On the issue of demand being time barred, he held that the above facts were not disclosed by the appellant as the abatement claimed was not reflected in their ST-3 returns, hence suppression can be invoked.

6.1 After the introduction of negative list, with effect from 1st July, 2012, the nomenclature based classification of service tax was done away with and '**service**' was specifically defined under Section 65B (44) of the Finance Act, 1994, which read as:

*(44)"**service**" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include -*

(a) an activity which constitutes merely, -

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

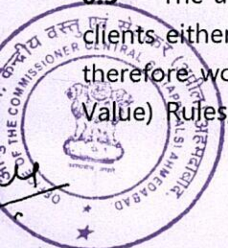
(c) fees taken in any Court or tribunal established under any law for the time being in force.

6.2 Further, clause (55) of Section 65B defines '**Works Contract**' as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof, in relation to such property. Since the new definition of works contract, after 01.07.2012, includes the services related to movable properties also, but to fall under the said definition of works contract service, there should be transfer of property in goods, which are involved in the execution of such contract and are leviable to tax as sale of goods.

6.3 The appellant are claiming that the services rendered were in nature of works contract service as installation, commissioning of air conditions fall under 'original work' defined in Explanation 1 to Rule 2A. Therefore, in terms of sub-clause (c)(ii) (A) of clause 2A of Service Tax (Determination of Value) Rules, 2006, they paid 40% of the total amount charged for the works contract. They claim to have supplied material and equipments and components like piping, ducting, cabling, gas, rubber parts etc on which VAT was paid but since they have opted composition scheme, they cannot charge VAT hence they paid VAT @2% separately. Further, they claim that they also provided Annual Maintenance/Comprehensive Annual Maintenance contract wherein they replaced spare parts and used consumables on which VAT was paid. As the value of material used cannot be determined, they charged 70% of the total amount charged for such works contract in terms of clause (c)(ii)(B) of clause 2A of Service Tax (Determination of Value) Rules, 2006.

6.4 However, in support the above contention, the appellant could not produce copy of contracts or invoices evidencing transfer of goods to prove that repair and maintenance was in relation of such property, either before the audit team or before the adjudicating authority. Even in the present appeal, they failed to submit relevant invoices, contracts or any other relevant documents substantiating their above claim. The adjudicating authority classified the service under 'Maintenance & Repair service' holding that in the absence of any documentary evidence proving the nature of service as works contract or reflecting the abatement in their ST-3 return, such benefit cannot be extended to the appellant. I find no reasons to interfere with the findings of the adjudicating authority because any composite contract, where both service and material value is involved, shall be covered under works contract service, only where the sale of goods is established.

6.5 The appellant also claimed that they provided works contract service to various clients either directly or through M/s. Carrier Air Conditioning & Refrigeration Ltd and therefore would fall under Explanation-1 to Rule 2A of Service Tax (Determination of Value) Rules, 2006. As per Rule 2A of the Service Tax Rules (Determination of Value)



Rules, 2006, the service portion involved in the execution of original works is 40% of the total works contract and the service portion involved in the execution of works contract other than original works is 70% of the total works contract. Original Work for the purpose of above rule is defined as

(a) ***"original works"*** *means-*
- *(i)* *all new constructions;*
- *(ii)* *all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;*
- *(iii)* *erection, commissioning or installation of plant, machinery or equipment Or structures, whether pre-fabricated or otherwise;*

Thus, in case of works contract entered into is for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent of the total amount charged for the works contract provided sale of goods involved in execution of such contract is established.

6.6 The appellant has however, failed to produce any work contract agreement entered either with M/s. Carrier Air Conditioning & Refrigeration Ltd or with their client. They also failed to produce any purchase order or the invoices showing purchase of various parts subsequently sold in execution of works contract. In the absence of any of the above documentary evidences, their contention that the Works Contract service rendered was in the nature of original work, is not sustainable. Though the appellant claimed to have submitted certain documentary evidences alongwith their appeal memorandum but on going through the records, I find that none of these documents were actually produced to corroborate their claim. In fact photographs of certain sites and the goods used for installing the Air conditioners were produced, which in no way establish the nature of service to be Works Contract. Hence, I find that their contentions appears to be without any base and merits and therefore is legally unsustainable.

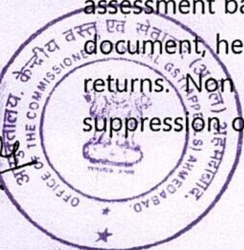
7. The appellant have strongly relied on the decisions passed in the case of Xerox India Ltd.- 2019 (20) GSTL 96 (Tri-Chan) & UB Engineering Ltd Vs CCE, Pune-III-2015(37) STR 999. I have gone through the above decisions. I find that in the case of Xerox India Ltd, the demand for Maintenance and Repair services was for the period from July, 2003 to December, 2006 i.e. prior to negative list. M/s. Xerox was in the business of manufacture/import and sale of photocopiers, printers, scanners, fax machines, MFDs, etc., their parts and accessories and were providing the service of maintenance of the said products sold by them and was required to replace the parts and accessories at the time of repair or maintenance. They were required to provide service to their clients along with paper, envelopes and ink. M/s. Xerox was, therefore, availing standard abatement under Sales Tax/VAT provisions and paying Works Contract Tax on the balance portion towards materials involved in the execution of maintenance contracts. For the remaining part i.e. labour portion of FSMA and SSMA contracts, they were paying service tax under the category of Maintenance and Repair services. Hon'ble Tribunal, by relying on the decision of Hon'ble Apex Court judgment passed in the case of *Wipro GE Medical Systems Limited*- 2012 (28) S.T.R. J44 (S.C.), therefore, held that the activities undertaken by M/s. Xerox under various contracts for maintenance and repair were in the nature of works contract and are therefore liable to pay service tax only on Labour Portion. In the case of Wipro, the Appellate Tribunal in its impugned order had

held that spare parts used in the course of maintenance service under Annual Maintenance Contract are to be considered as sold. Sale tax was paid on materials representing 70% of value and Service Tax was not leviable simultaneously on such portion. Demand beyond 30% of total value of contract was held not sustainable.

7.1 Similarly, in the case of UB Engineering Ltd also, the period of dispute was prior to negative list, therefore, the judgments relied upon by the appellant are not applicable in the present case as the facts are distinguishable as in the instant case the demand covers the period subsequent to negative list. It is also observed that all the above decisions involve period prior to negative list and were challenged before Apex Court. As the matter is sub-judice decisions of aforesaid case-laws cannot be made applicable to the present case considering the fact that the period involved in the present appeal is post introduction of negative list.

8. Before the introduction of negative list, only contracts relating to immovable property were considered as works contract but in the negative list regime, contracts relating to both immovable and movable property will be covered under works contract provided the contract involves transfer of property in goods in execution of such contract, leviable to sales tax/VAT and the contract must be for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. As the appellant could not produce any documents evidencing the fulfillment of above conditions, I find that the services rendered by them is in the nature of 'Repair and Maintenance service' which is covered within the ambit of the definition of service, defined under clause (44) of Section 65B and not under Works Contract service as transfer of property in goods in execution of such contract not established. I, therefore, hold that the appellant are not eligible for any abatement and are required to discharge service tax on the gross amount charged.

9. Further, the argument of demand being time barred is also not maintainable. In the ST-3 return, the assessee is required to disclose the total value of service which includes the exemption/abated value of services and also the exempted/abated value of services before computing the service tax. The demand in the instant case was raised based on reconciliation of income shown in ST-3 return vis-a-vis the income shown in their financial records. Non-disclosure of income in the ST-3 returns or non-disclosure of exemption/abatement and merely reflecting the net amount of tax also results in suppression. The appellant is registered both under Works Contract Service as well as under Maintenance & Repair Service but no declaration of 40% or 70% abatement was made in their ST-3 return. Wrong classification of service came to the notice of the department only during audit, where income of Rs.1,14,57,968/- was found not reflected in their ST-3 returns. I, therefore, do not find merit in the above contention and hold the same as untenable. The onus to disclose full and correct information about the value of taxable services lies with the service provider. The assessee pays the tax on self assessment basis and files the ST-3 returns, which is a report of transactions and a basic document, hence they are duty bound to disclose all and correct information in the ST-3 returns. Non disclosure of full and correct information in returns would amount to suppression of facts. Non-payment of tax, by classifying the service under wrong head



and thereby claiming ineligible abatement clearly establishes the conscious and deliberate intention to evade the payment of service tax. I, therefore, find that all these ingredients are sufficient to invoke the extended period of limitation provided under proviso to Section 73(1) of the F.A, 1994.

10. Further, I find that the penalty imposed on the appellant under Section 78 of the Finance Act, 1994, is also justifiable as it provides for penalty for suppressing the value of taxable services. The crucial words in Section 78(1) of the Finance Act, 1994, are *'by reason of fraud or collusion'* or *'willful misstatement'* or *'suppression of facts'* should be read in conjunction with *'the intent to evade payment of service tax'.* Hon'ble Supreme Court in case of *Union of India* v/s *Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], considered such provision and came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. As the demand was raised based on the audit objection and it is the responsibility of the appellant to correctly assess and discharge their tax liability. The suppression of taxable value, non-payment and short payment of tax, clearly show that they were aware of their tax liability but chose not to discharge it correctly instead tried to mislead the department by wrongly classifying the repair and maintenance service under works contract service so as to avail ineligible abatement, which undoubtedly bring out the willful mis-statement and fraud with an intent to evade payment of service tax. If any of the ingredients of proviso to Section 73(1) of the Finance Act, 1994 are established the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined.

11. When the demand sustains there is no escape from interest, hence, the same is therefore also recoverable under Section 75 of the F.A., 1994. Appellant by failing to pay service tax on the taxable service are liable to pay the tax alongwith applicable rate of interest.

12. In view of the above discussions and findings, I uphold the service tax demand of Rs.14,76,392/- alongwith interest and penalty imposed under Section 78(1) in the impugned order. Accordingly, the appeal filed by the appellant is rejected.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

(अखिलेश कुमार) 29 September 2022.
आयुक्त(अपील्स)

Date: 9.2022

Attested

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST
To,
M/s. Yogi Aircon Pvt. Ltd., - **Appellant**

39, Stadium House, Stadium Panch Rasta,
Navrangpura,
Ahmedabad-380009

The Deputy Commissioner - **Respondent**
CGST, Division-VII,
Ahmedabad North,
Ahmedabad.

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
   (For uploading the OIA)
4. Guard File.