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

सत्यमेव जयते

NATION TAX MARKET

DIN: 20231064SW0000002E4B

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2440/2023-APPEAL /3311-18

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-119/2023-24**
दिनाँक Date : **20-10-2023** जारी करने की तारीख Date of Issue 20.10.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **CGST/WT07/HG/813/2022-23** दिनाँक:**30.1.2023** , issued by The Assistant Commissioner, CGST Division-VII, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
M/s.Jay Ambe Refrigeration,G7, Arjun Ratna Apartment,Opp. Vardhman Apartment, CP Nagar,Ghatlodiya, Ahmedabad - 380061.

2. Respondent
The Assistant Commissioner, CGST Division-VII, Ahmedabad North,4th Floor, Shajanand Arcade, Nr. 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 तो प्रत्येक मूल आदेश 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 notwithstanding 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.

(7) 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 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. Jay Ambe Refrigeration, G7, Arjun Ratna Apartment, Opp. Vardhman Apartment, C. P Nagar, Ghatlodiya, Ahmedabad -380061 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WT07/HG/813/2022-23 dated 30.01.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, CGST Division-VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority"). The appellant were holding Service Tax Registration No. AAFFJ5501JSD001.

2. Facts of the case in brief are that on scrutiny of the data received from the Central Board of Direct Taxes (CBDT) and on reconciliation of the gross value of service shown in the ITR and the gross value of service shown in Service Tax Return filed by the appellant for the F.Y 2015-16 and F.Y 2016-17, differential value amounting to Rs.14,73,496/- and Rs.18,12,587/- was noticed during the F.Y 2015-16 & F.Y 2016-17 respectively. The appellant were called upon to submit clarification for difference along with supporting documents, for said period. However, the appellant had not responded to the letters issued by the department.

Table-A

Sr. No.	*F.Y.*	*Value of STR*	*Higher Value of Form 26AS*	*Differential Value*	*Service Tax rate*	*Service Tax Payable*
1	2015-16	11,36,842	26,10,338	14,73,496	14.5%	2,13,657
2	2016-17	8,30,259	26,42,846	18,12,587	15%	2,71,888
					Total	**4,85,545**

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST/A'bad North/Div-VII/AR-III/TPD-UR/39/2020-21 dated 26.09.2020 demanding Service Tax amount totaling to Rs. 4,85,545/- for the F.Y 2015-16 and F.Y 2016-17, under proviso to sub-section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(c), Section 77(2)and Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period F.Y 2017-18 (up to Jun-17).

2.2 The said Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the Service Tax demand amounting to Rs.4,85,545/- was confirmed under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from F.Y 2014-15. Penalty of Rs. 4,85,545/- was imposed under Section 78; Penalty of Rs. 3,000/- was imposed on the appellant under Section 77(1)(c) and Penalty of Rs. 3,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994 for not submitting documents to the department, when called for.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the grounds elaborated below;

- The appellant are engaged in providing services of Works Contract which includes goods (spare parts) and they have also provided Manpower Supply Services for the Repair and Maintenance in F.Y 2015-16 to F.Y 2016-17 and were registered under Service Tax department.

- They have executed a contract with CARRIER AIRCONDITIONING & REFRIGERATION LTD (CARL), and have carried out activities of repair and maintenance using material and such contract will also qualify to be a works contract and according the service tax under work contract was payable on the value of works contract after deducting value of goods from the gross value. The gross amount included will not include value added tax and sales tax. The value of works contract shall include Labour charges and that the Service tax is payable at composite rate on 70% in case of all other works contract. Hence, as per Works Contract their liability to pay service tax for the Invoices of CARRIER AIR CONDITIONING &REFRIGERATION LTD is 50% of the 70% of Invoices as per the Notification No. 30/2012-ST dated 20.06.2012. The adjudicating authority however did not give the benefit of said notification in the impugned order and confirmed the demand of service tax.

- As they are liable to pay 50% of service tax, which they claim was paid by them during the relevant financial year, hence, they are not liable for Interest under Section 75 of Finance Act, 1994.

- The appellant further submitted that for imposing penalty under Section 78(1) of the Act, there should be an intention to evade payment of service tax, or there should be suppression or concealment of material facts. The appellant at no point of time had the intention to evade service tax or suppressed any fact wilfully from the knowledge of the department, there for penalty under Section 78 cannot be imposed on the appellant in the present case.

4. Personal hearing in the case was held on 12.10.2023. Shri Kuldeep Prajapati, Authorised Representative appeared on behalf of the appellant for personal hearing and reiterated the submissions made in appeal memorandum and requested to set-aside the impugned order.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents submitted vide letter dated 01.09.2023. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise.

The demand pertains to the period F.Y 2015-16 to F.Y 2016-17.

5.1 The adjudicating authority confirmed the demand as no written reply or documents were furnished by the appellant. The appellant however, before the appellate authority have submitted Form-26AS, Contract entered with Carrier Air Conditioning & Refrigeration Ltd. (CARL), Balance Sheet and Invoices. The appellant claim that they have discharged service tax on the labour income and on the differential income they are not supposed to discharge any tax liability as the same pertains to sale of goods while rendering repair & maintenance service.

5.2 On going through the above documents submitted by the appellant, I find that the appellant was granted the AMC sub-contract of repair & maintenance service on behalf of M/s. CARL The contract provides repair & maintenance service alongwith transfer of property in goods on which VAT is applicable. In terms of the definition of works contract defined in clause (54) of Section 65B, "**works contract**" means 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 movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. As per the invoices raised by the appellant, I find that they were rendering maintenance and repair services to M/s. CARL which includes sale of goods hence shall be classified as works contract service.

5.3 As per the Balance Sheet, the appellant have earned labour income of Rs.25,05,634/- and Rs. 23,44,105/- during the F.Y. 2015-16 & F.Y. 2016-17 respectively. However, in their ST-3 Return they have shown taxable income of Rs.11,36,842/- and Rs.8,30,259/- only during the F.Y. 2015-16 & F.Y. 2016-17 respectively. They have claimed that the amount of Rs. 13,66,581/- and Rs. 14,74,228/- needs to be excluded from the labour income as it pertains to sale of goods which is exempted under works contract service. Accordingly, they have claimed abatement in terms of Rule 2(A) of the Service Tax (Determination of Value) Rules, 2006.

5.4 Rule 2(A) of SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006 provides that the determination of value in the execution of a works contract shall be;

RULE [2A. Determination of value of service portion in the execution of a works contract. *— Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely :-*

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods [or in goods and land or undivided share of land, as the case may be] transferred in the execution of the said works contract.

Explanation. *- For the purposes of this clause,-*

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services;

(c) where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause;

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely :-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

*[**Provided** that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract.]*

[(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for, -

(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

service tax shall be payable on seventy per cent. of the total amount charged for the works contract.]

5.5 In terms of **clause (i)** where value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods *[or in goods and land or undivided share of land, as the case may be]* transferred in the execution of the said works contract, then service tax shall be levied on the service portion only. And in terms of **clause (ii)** where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract (i.e. where bifurcation of service and sale is not possible as the gross amount charged includes both goods & service) then the service tax shall be determine after granting the abatement prescribed above.

5.6 In the present case, the appellant has been charging service tax on the service portion and VAT on the sale of goods by raising separate invoices. Therefore, in terms of

clause (i) above they are liable to discharge service tax on the service portion only. They have shown labour income and sale of goods separately in their books of account. Amount earned as labour income shall be taxable and accordingly service tax needs to be discharged on the same. However, the amount which is reflected as sale of goods shall not attract service tax liability as VAT is discharged on such income. So, I find that the appellant cannot be granted any deduction for sale of goods from the labour income as separate invoices were raised for such sales and income from such sales is reflected under sale of goods head in their books of account. I, therefore, do not find any reason to grant further abatement to the appellant. The appellant therefore shall be liable to discharge service tax on the differential labour income. The department however has calculated the tax liability considering the higher value of income reflected in Form -26AS though the income reflected in the Balance Sheet is much less. I would therefore restrict the demand to the difference in the labour income reflected in the Balance Sheet vis-à-vis the income reflected in the ST-3. Accordingly, the labour income shall get reduced from Rs. 32,86,083/- to **Rs.28,82,638/-**

TABLE-B

Sr. No.	*F.Y.*	*Value of STR*	*Labour Income*	*Value for TDS*	*Differential value as per SCN*	*Actual difference*
1	2015-16	11,36,842	25,05,634	26,10,338	14,73,496	13,68,792
2	2016-17	8,30,259	23,44,105	26,42,846	18,12,587	15,13,846
					32,86,083	**28,82,638**

6. Further, the appellant have also claimed that in terms of Notification No.30/2012-ST dated 20.06.2012, their tax liability shall be 50% under RCM. To examine their claim, relevant text of the notification is reproduced below:-

[Notification No. 30/2012-S.T., dated 20-6-2012]

The Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely :—

I. The taxable services,—

XXXX

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

TABLE

Sl. No.	*Description of a service*	*Percentage of service tax payable by the person providing service*	*Percentage of service tax payable by the person receiving the service*

9.	*in respect of services provided or agreed to be provided in service portion in execution of works contract*	*50%*	*50%*

6.1 In terms of above clause, if the Works Contract Service is rendered by individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory, then the service provider has 50% tax liability and the remaining tax liability is on the service recipient. The appellant is a partnership firm and have rendered services to body corporate. Body corporate include Private Company, Public Company, One person Company, Small Company, LLP i.e. a business organization registered under Companies Act. Thus, I find that the appellant's tax liability shall be only on 50% of the taxable value and the remiaing 50% liabity shall be on the recipient.

6.2 In view of above discussion, I find that the appellant shall be liable to discharge 50% service tax on the differential labour income of Rs.28,82,638/- Accordingly, the tax liability shall be determined as under:-

Table-B

Revised Calculation of Service Tax					
Sr. No.	*F.Y.*	*Differential Value*	*Abatement of 50%*	*Service Tax rate*	*S.Tax liability*
1	2015-16	13,68,792	6,84,396	14.50%	99,237
2	2016-17	15,13,846	7,56,923	15%	1,13,538
			Total		2,12,776

Thus, the tax liability after considering 50% liability shall get reduced from Rs.4,85,545/- to Rs. 2,12,776/- and the appellant shall be required to pay service tax only on such amount.

7. When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest on the tax held sustainable in the para supra.

8. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. 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.)], concluded that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the appellant was rendering a taxable service but they short paid the service tax which came to light only when the data was shared by CBDT. This act thereby led to suppression of the value of taxable service and such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to

in Section 73(1) are established, the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined.

9. As regards, the imposition of penalty under Section 77 (1) is concerned; I find that the same is also imposable. The appellant were rendering the taxable service and were liable to pay service tax, however, they failed to self-assess their tax liability correctly. They also did not submit the documents called for by the Central Excise Officer. I, therefore, find that all such acts make them liable to a penalty. However, considering the reduction in tax liability, I reduce the penalty imposed under Section 77(1) of the Finance Act, 1994 from Rs.3,000/- to Rs. 1,000/-. I also reduce the penalty of Rs.3000/- imposed under Section 77(1) to Rs.1,000/-.

10. In view of the above discussion, I partially uphold the impugned order confirming the service tax demand of **Rs. 2,12,776/-** , alongwith interest and penalties.

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.

20.10.23

(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date: 10.2023

Attested

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

By RPAD/SPEED POST

To,
M/s. Jay Ambe Refrigeration, - **Appellant**
G7, Arjun Ratna Apartment,
Opp. Vardhman Apartment,
C. P Nagar, Ghatlodiya,
Ahmedabad -380061

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

Copy to:

1. The Principal 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.