



**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- टेलिफैक्स 07926305136**



DIN:20230564SW000000DB30

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/104/2022-APPEAL / 1146-50
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-022/2023-24  
दिनांक Date : 04-05-2023 जारी करने की तारीख Date of Issue 09.05.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 52/JC/LD/2022-23 दिनांक: 20.10.2022, issued by  
Joint/Additional Commissioner, CGST, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Devang Jayeshbhai Upadhyay,  
A-58, Abhishek Society,  
Bopal, Ahmedabad-380058

2. Respondent

The Joint Commissioner, CGST, Ahmedabad North, Custom House, 1<sup>st</sup>  
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 :**

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त 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, 4<sup>th</sup> 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 प्रक्रिया के दौरान हुई हो।

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 मामले 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 ड्यूटी क्रेडिट 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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक 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 रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac. or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

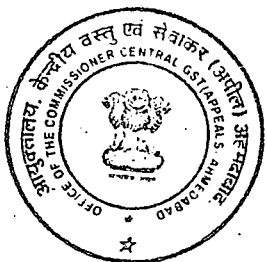
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

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

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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. Registrar 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 हैं।

Attention is 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) -

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेनवैट क्रेडिट की राशि;
- 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.

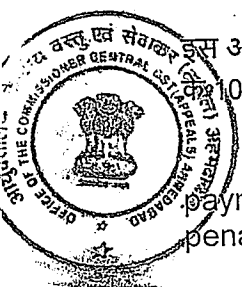
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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 मांग किए गए शुल्क 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. Devang Jayeshbhai Upadhyay, A-58, Abhishek Society, Bopal, Ahmedabad – 380058 (hereinafter referred to as “the appellant”) against Order-in-Original No. 52/JC/LD/2022-23 dated 20.10.2022 (hereinafter referred to as “the impugned order”) passed by the Joint Commissioner, Central GST & Central Excise, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

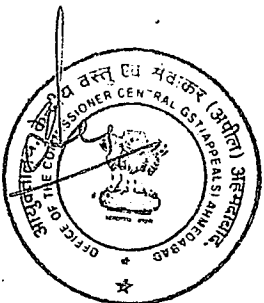
2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ACVPU6499ESD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 and FY 2016-17, it was noticed that the appellant has not filed ST-3 returns despite being the service turnover as shown in ITR for the FY 2015-16 and FY 2016-17. The appellant had shown an amount of Rs. 2,52,97,600/- as value of service in the FY 2015-16 and an amount of Rs. 3,44,64,733/- as value of service in the FY 2016-17. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. STC/15-170/OA/2020 dated 23.10.2020 demanding Service Tax amounting to Rs. 86,70,496/- for FY 2015-16 and FY 2016-17, under proviso to Section 73(1) 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 76, Section 77 and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 86,70,496/- 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 FY 2015-16 and 2016-17. Further, Penalty of Rs. 86,70,496/- was imposed on the appellant under Section 78 of the Finance Act, 1994 and Penalty of Rs. 10,000/- was also imposed on the appellant under Section 77 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant have preferred the present appeal on the following grounds:

- The portion of the service tax demand of Rs. 86,70,496/- pertaining to the services related to Transmission and Distribution of electricity and the same service provided to Madhya Gujarat Vij Company Limited (MGVCL) (Erstwhile GEB).



- The appellant denied that the services were taxable as any services related to Transmission and Distribution of electricity is under exemption list issued by the Ministry of Finance from time to time.
- This being a bonafide belief having absolutely no malafide intent to evade even though there is no merit in the demand and the appellant has fully complied with the departmental inquiry as far as their understanding of law is concerned.

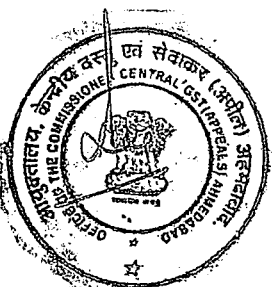
4. Personal hearing in the case was held on 18.04.2023. Shri Ravi Nilesh Mandaliya, Advocate, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He stated that he would submit relevant documents as additional written submission. However, till date, the appellant have not submitted any further / additional submission / documents.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. 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 FY 2015-16 & FY 2016-17.

6. I find that the adjudicating authority has, while confirming the demand, held that there is no exemption from payment of service tax on the services provided by the appellant. The relevant paras of the impugned order are as under:

"27. Thus, with effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted. The assessee in their reply to SCN are not contending that the taxable nature of service provided by them, however they are contending that the services provided by them are exempted by Mega Notification No. 25/2012 dated 20.06.2012 as amended, as they are providing services to departments of state government and other government agencies.

28. In view of the above, I find that the services provided by the assessee falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List as the services provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act.



29. Further, the assessee vide their submissions stated that during the financial year 2015-16 and 2016-17, their contract income or contract receipt is in respect of services provided in relation transmission and distribution of power to government. The said service provider claimed that these service are exempted from levy of whole of service tax leviable thereon under of Notification No. 25/2012-ST dated 20.06.2012 with effect from 01.07.2012. In this connection, I would like to reproduce herewith the relevant portion of the said Notification :

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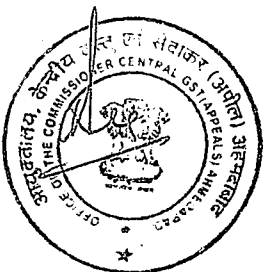
30. However, the exemption to Entry No. (a), (c) and (f) was withdrawn with effect from 01.04.2015 vide Notification 06/2015-ST dated 01.03.2015, hence, the assessee is not eligible for exemption under this entry from 01.04.2015. Further vide notification 09/2016-ST dated 01.03.2016 a new entry 12A was inserted in notification 25/2012-ST dated 20.06.2012 which read as under:

.....

.....

31. Vide this entry the exemption was partially restored but the condition specifically stated that the contract to provide the said service should have been entered into before 01.03.2015. Accordingly to which the services provided to Government, a local authority or a governmental authority by way of erection, construction, maintenance, repair, alteration, renovation or restoration of Canal, dam or other irrigation works for use other than for commerce, industry, or any other business or profession is exempted from the ambit of service tax.

32. At the outset, the assessee claimed that they are providing services of installation of underground cable lying works and works to Madhya Gujarat Vij Company formed by Gujarat Government provide and distribute the power to the people of Gujarat, Baroda, Rajpipla and Anand District on contract basis. All the service income received from Government company and as per Entry No. 12 and 12(a) of Notification No. 25/2012 dated 20.06.2012 as amended, all service provided to Government is exempted from service tax. They have also claimed that under new entry 12A they are entitled to get exemption from on payment of service tax as they are providing services to Govt. They claimed that they are exempted from payment of service tax under Entry as detailed below:



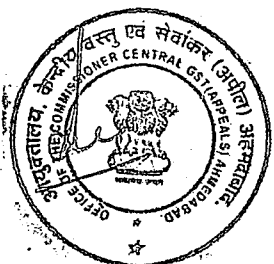
*"12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of--*

*(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession:"*

*According to which the services provided to the Government and also for the purpose other than commerce is exempted from payment of service tax. Herein the instant case, the assessee is providing the services to Uttar Gujarat Vij Company. No doubt the said service receiver is government agency as defined under the service tax; however, they are transmitting and distributing the electricity on commercial basis only. They are not supplying electricity for any government or government related projects without charging electricity energy charges. They are providing services of transmission and distribution of electricity by charging appropriate cost along with profit or other duties, hence it cannot be treated as non commercial in nature. Moreover, the assessee did not furnish any documentary evidence to prove that the services provided by them to the Uttar Gujarat Vij Co. Ltd. is not involved any commercial element. In the absence of any documentary evidence, the contention of the assessee cannot be accepted. So the contention of the assessee that they are providing services not for commerce has no merit and therefore they are no fall under entry No. 12(a) of the Notification No. 25/2012 dated 20.06.2012 as claimed by them. In view of the above I find that the assessee is liable to pays service tax on the receipts received from the service receiver and the same revenue is not covered as exempted under Entry No. 12A(a) of Notification No. 25/2012 dated 20.06.2012."*

7. I also find that the main contention of the appellant is that the portion of service tax demand of Rs. 86,70,496/- pertaining to the services related to Transmission and Distribution of electricity and the same service was provided to Madhya Gujarat Vij Company Limited, MGVCL (Erstwhile GEB). The appellant have claimed that the services were related to Transmission and Distribution of electricity is under exemption list issued by the Ministry of Finance time to time and hence not taxable.

7.1 I find that the appellant have not specified any notification or any provision of the Service Tax Act or Service Tax Rules to demonstrate that how the service provided by them is exempted from service tax. The appellant have only made bald statement that their services were not taxable. However, I find that during the reply to the SCN, the appellant submitted that they were engaged in providing services of installation of underground cable laying works and their services were exempted from payment of service tax by virtue of Sr. No. 12 and 12A of Notification No. 25/2012-ST dated 20.06.2012.



8. For ease of reference, I reproduce the relevant provision of Sr. No. 12 and 12A of Notification No. 25/2012-ST dated 20.06.2012 as amended, which reads as under:

*"Notification No. 25/2012-Service Tax dated 20th June, 2012*

*G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-*

*1...*

*2... ..*

*12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –*

*(a) [a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession]; \*\*\*\**

*omitted by Notification No. 6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015*

*(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity*

*specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);*

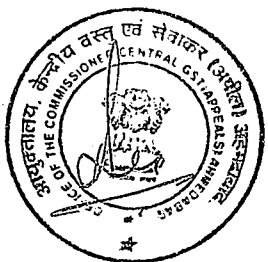
*(c) [a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;] \*\*\*\* omitted by Notification No. 6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015*

*(d) canal, dam or other irrigation works;*

*(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or*

*(f) .....*

*[12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –*





(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

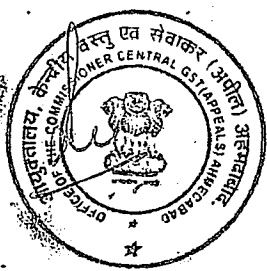
(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date;

Provided that nothing contained in this entry shall apply on or after the 1<sup>st</sup> April, 2020] Inserted vide Notification No. 9/2016-ST dated 01.03.2016 w.e.f. 01.03.2016"

9. On plain reading of the aforesaid provision of Sr. No. 12(a) and 12A(a) of the Notification No. 25/2012-ST as amended, it is crystal clear that the exemption from service tax was extended to services provided to Government, a local authority or a governmental authority and for the services specified therein. The service recipient in the present case i.e. Madhya Gujarat Vij Company Limited (MGVCL), does not falls under the definition of 'Government' and 'Local authority'. also the MGVCL not carried out any function entrusted to a municipality under article 243W of the Constitution. Therefore, the MGVCL does not falls under the definition of 'governmental authority' as provided under Para 2(s) of the Notification No. 25/2012-ST dated 20.06.2012.

10. It is observed that the appellant have, before the adjudicating authority as well as in their appeal memorandum, relied on the decision dated 14.01.2021 of the CESTAT, New Delhi in the case of M/s. Madhya Pradesh Poorva Kshetra Vidhut Vitran Co. Ltd. Vs. Principal Commissioner (Service Tax Appeal No. 51649 of 2019) in support of their case. However, I find that the said decision in respect to the party, who is a wholly owned undertaking of the Government of Madhya Pradesh and is engaged in the distribution of electricity in the eastern area of the State, and in respect of question of "whether service tax is payable on the amount of late payment surcharge, meter rent and supervision charges received by the appellant from the electricity consumers". Whereas in the present case, the appellant were merely a service provider to a electricity distribution company. Thus, the said decision is not applicable in the present case.



11. Hence, I find that the appellant is required to pay the applicable service tax on the services provided to M/s. MGVCL and no exemption is available to them under Notification No. 25/2012-ST dated 20.06.2012. Under such circumstances, I find that the appellant has merely made a bold contention that *"the services were not taxable as any services related to Transmission and Distribution of electricity is under exemption list issued by the Ministry of Finance time to time"* without submitting any valid grounds in appeal memorandum. Therefore, I find that without any supporting documents / details countering the findings of the adjudicating authority, simple contention of the appellant that their services were exempted, is not legally tenable.

12. Further, in the present case, it clearly transpires that the appellant has intentionally suppressed the taxable value by deliberately withholding of essential information from the department with an intent to evade taxes. Also, the appellant has never informed the department about the non payment of Service Tax, though they were already registered with the service tax department and said fact could be unearthed only upon initiation of the inquiry by the department after receipt of the data from the Income Tax department. Therefore, I find that all these acts of willful mis-statement and suppression of facts on the part of the appellant, with an intent to evade payment of Service Tax, are the essential ingredients which exist in the present case which makes them liable to pay the demand raised against them invoking the extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994. When the demand sustains, there is no escape from the liability of interest, hence, the same is, therefore, recoverable under Section 75 of the Finance Act, 1994.

13. Further, I find that the imposition of penalty under Section 78 is also sustainable, as the demands were raised based on detection noticed during the initiation of inquiry by the department. Section 78(1) of the Finance Act, 1994, provides penalty for suppressing the value of taxable services by reason of fraud or collusion' or 'willful misstatement' or 'suppression of facts' with 'the intent to evade payment of service tax'. Since the issues covered in the present appeal are on settled issues, the appellant cannot bring into play the interpretation plea to avoid penalty. After introduction of measures like self assessment etc., a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules and private records maintained by them for normal business purposes are accepted, for all the purpose of service tax. All these operates on the basis of the trust placed on the service provider and therefore, the governing provisions create an absolute liability when any provision is contravened as there is a breach of the trust placed on them. It is the responsibility of the appellant to correctly assess their tax liability and pay the taxes. The deliberate efforts by not paying correct amount of Service Tax is utter dis-regard to the requirement of law and breach of trust deposited on them. Hence, I find that the act of willful mis-statement and suppression of facts with an intent to evade payment of tax, as discussed in Para supra, made the appellant liable to penalty on them under the provisions of Section 78 (1) of the Finance Act, 1994.



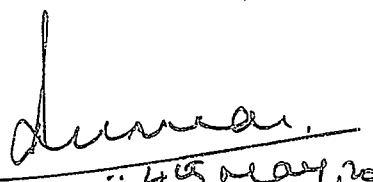
13.1 As I have already upheld invocation of extended period of limitation on the grounds of suppression of facts as per discussion in para *supra*. Hence, penalty under Section 78 of the Act is mandatory, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, hold that the Appellant was liable to penalty under Section 78 of the Finance Act, 1994.

14. As regards the Penalty of Rs. 10,000/- confirmed on the appellant under Section 77 of the Finance Act, 1994, I find that the appellant have not assessed correct service tax liability. not filed correct ST-3 Returns. not furnished information & documents in respect to their income for the said period when called for by the jurisdictional range officer. These acts of the appellant render them liable for penalty under Section 77 of the Finance Act, 1994. Accordingly, I hold that the appellant is liable for penalty under Section 77 of the Finance Act, 1994.


15. In view of the above, I uphold the order passed by the adjudicating authority and reject the appeal filed by the appellant.

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

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

  
(Akhilesh Kumar)  
Commissioner (Appeals)

Attested

  
(R. C. Maniyar)  
Superintendent(Appeals).  
CGST, Ahmedabad

Date : 04.05.2023



By RPAD / SPEED POST

To.

M/s. Devang Jayeshbhai Upadhyay.  
A-58, Abhishek Society, Bopal.  
Ahmedabad – 380015

Appellant

The Joint Commissioner,  
CGST & Central Excise,  
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Joint Commissioner, CGST & Central Excise, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

✓ 5) ~~Guard File~~

6) PA file

