आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
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सत्यमेव जयते

By SPEED POST

DIN:- 20240464SW0000888A44

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/5244/2023 / 1192-96
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-EXCUS-002-APP-311/23-24 dated 26.03.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	08.04.2024
(ङ)	Arising out of Order-In-Original No. GST-06/D-VI/O&A/717/Prafull/AM/2022-23 dated 11.3.2023 passed by The Assistant Commissioner, CGST Division-VI, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Leaf and Landscape A-4, Kendriyavihar, Bh. Sun City Bopal Ahmedabad-380058

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 : -

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, यॉ किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार मे हो माल की प्रकिया 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.

(ख) 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।

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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 :-

(2) उक्तलिखित परिच्छेद 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।

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

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 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 संषोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।
Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

(1) खंड (Section) 11D के तहत निर्धारित राशि;
(2) लिया गलत सेनवैट क्रेडिट की राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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.

(6) (i) 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. Praful Parsuram Patil, A-4, Kendriyavihar, Behind Sun City, Bopal, Ahmedabad-380058 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. GST-06/D-VI/O&A/717/Praful/ AM/2022-23 dated 11.03.2023 (referred in short as '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant is having Service Tax Registration No. BOTPP4615LSD001.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2016-17, it was noticed that the appellant has declared less taxable value in their ST-3 Return compared to the Sales / Gross Receipts from services shown in their ITR. Letters were issued seeking clarification and to produce evidences for the same. However, the appellant did not respond, therefore, the service tax liability of Rs.7,22,410/- wasquantified considering the differential income of Rs.48,16,072/- as taxable income.

Table-A

F.Y.	Value Difference in ITR & STR	S.Tax	Service tax payable
2016-17	48,16,072/-	15%	7,22,410/-

2.1 A Show Cause Notice (SCN) No. GST-06/04-1310/Praful/2021-22 dated 12.10.2021 was issued to the appellant proposing recovery of service tax amount of Rs.7,22,410/-not paid on the differential income received during the F.Y. 2016-17 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Penalties under Section 77 and Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 7,22,410/-was confirmed alongwith interest. Penalty of Rs. 10,000/-was imposed under Section 77 and penalty of Rs.7,22,410/-was also imposed under Section 78.

4. 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 is a Proprietor of M/s. Leaf Land Landscape and is engaged inmaintenance of road side tree plantation. The appellant was raising monthly invoices for the maintenance of road side tree plantation at various locations. The scope of work involved weeding, watering, cutting, prawning application of fertiliser and pesticide as per the requirement of the tree and the invoice was the raised based on the number of trees maintained during the month. The appellant submits that the said invoice included the cost of procurement of water tanker, purchase of fertiliser and pesticides and replacement of the weeded plants. A copy of the one such invoice is submitted as proof.

- The impugned order having been passed in violation of the principles of the natural justice is thus legally not sustainable as no efforts were made to know whether the said letters of the personal hearing were received by the appellant or not and had presumed that the aid letters of personal hearing were received by the appellant and it was not attended by it.

- The adjudicating authority have failed to arrive at the differential taxable value and provide any tangible evidence in support of the allegation of differential taxable value, the confirmation of demand of service tax based on data received from third party is without any basis and the same is legally not sustainable.

- The adjudicating authority has failed to put on record as to which the details, which were required to be provided was not provided by it. The appellant had this stage, craves to refer to the impugned show cause notice where in no such information or details was asked to be submitted and not submitted by the appellant. The observations made by the adjudicating authority are thus beyond the scope of allegations in the show cause notice and is thus not tenable.

- The subject notice came to be issued on 12.10.2021, which was received by the appellant on 24.10.2021, involving period 2016-17. Thus, the. subject show cause notice was issued invoking the extended period of limitation as provided under proviso to section 73 (1) of the Act. The normal period of limitation under the Finance Act, 1994 was one year which was enhanced to 18 months with effect from 2012. Thereafter, with effect from 14.05.2016 the said period was further enhanced to 30 months. Therefore, in the instant case for the period for 2016-17, the normal period was not available for demanding any tax. The appellant submits that the period prior to 18.10.2016 is even beyond five years and in absence of the details of services provided, the demand beyond 18.10.2016 cannot be confirmed in any case. Thus, the impugned order confirming the demand of service tax by invoking the extended period of limitation is legally not sustainable. In support of above contention, the appellant places reliance on the decision of the Hon'ble Tribunal in the case of CCE Vs KPTCL reported at 2010 (250) ELT 572 (Tri.-Bang.).

- The appellant also craves to refer and to rely on the judgment of the Hon'ble Supreme Court in the case of Continental Foundation Joint Venture Vs Commissioner reported at 2007 (216) E.L.T. 177 (SC), wherein, it was held by the Hon'ble Court that the expression "suppression" has to be construed strictly. It was further by the Hon'ble Court that mere omission to give correct information is not suppression of facts, unless it was deliberate to stop of the payment of tax.

- The details of value of service provided have been taken from the Profit & Loss account. The figures reflected in P&L are for a different purpose and the said figures cannot be taken in totality as being the value of service provided. The entire. proceedings is thus based on mere assumption and presumption, without any verification and is thus vitiated by an error of law. The value having been considered on assumption and the service tax liability being considered thereon, is legally not sustainable.

- The adjudicating authority has imposed a penalty of 7,22,410/- under section 78(1) of the said Act. The Courts and Tribunals have consistently held that the penalty should not be imposed in an ordinary course, unless it can be shown that the appellant had acted deliberately in defiance of Law.. The Hon'ble Supreme Court in case of Hindustan Steel Ltd. Vs. State of Orissa reported in AIR 1970 SC (253) (1979 ELT (J402) has held that for imposition of penalty it is to be brought on record that the party had acted deliberately in defiance of the law. In the present case, no evidence has been brought on record to show that the difference in the accounts maintained for income tax purpose and returns submitted thereon and the value as shown in the ST3 Returns, was on account of the services provided by the appellant, and therefore it cannot be said from the records that the appellant had acted in any way in defiance of Law. As such, the imposition of penalty on the appellant is legally not sustainable.

- There being no liability to pay the service tax, the question of payment of interest under section 75 of the said Act does not arise. The impugned order directing to pay interest under section 75 is thus not sustainable.

- No reasons for imposing penalty of Rs. 10,000/- under section 77 has been given. The imposition of penalty under the said section merely on the allegation that the appellant had failed to assess the service tax liability correctly, the penalty under section 77 could not be imposed.

5. Personal Hearing in the case was granted on 06.03.2024, 13.03.2024, 18.03.2024, 21.03.2014. However, nobody appeared for personal hearing on behalf of the appellant and nor any adjournment was sought.

5.1 In terms of sub-section (1A) of Section 35 of the CEA, 1994, the Commissioner (Appeals) may grant hearing adjournment if sufficient cause is shown. However, no such adjournment shall be granted more than three times to a party during hearing of the appeal. In the instant case no adjournment was sought.

Section 35. Appeals to 1 [Commissioner (Appeals)]. -

(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a 2 [Principal Commissioner of Central Excise or Commissioner of Central Excise], may appeal to the 3 [Commissioner of Central Excise (Appeals)] [hereafter in this Chapter referred to as the 4 [Commissioner (Appeals)]] 5 [within sixty days] from the date of the communication to him of such decision or order :

6 [Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

7 [(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]

5.2 In terms of Section 85(5) of the Finance Act, 1994, the Commissioner of Central Excise (Appeals) will exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944. While in Central Excise Act, 1944, the Section 35A specifically deals with the Procedure in Appeals, no such separate section exists in Service Tax. The Section 35 A of the Central Excise Act, 1944 has been made applicable to Service tax matters by virtue of Section 85(5) of the Finance Act, 1994 subject to modification as mentioned in Section 84 and 85 of the Finance Act, 1994. As no sufficient cause was shown in terms of the proviso to Section 35(1A), I proceed to decide the case ex-parte based on the documents available on record.

6. 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 **Rs.7,22,410/-** 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 2016-17.**

6.1 The adjudicating authority confirmed the demand on the differential income of Rs. 48,16,072/- declared in ITR on which no service tax was paid. The appellant however claim that they were engaged in maintenance of road side tree plantation for which they were raising monthly invoices. The scope of work involved weeding, watering, cutting, prawning application of fertiliser and pesticide as per the requirement of the tree and the invoice was the raised based on the number of trees maintained during the month. The gross amount charged, included the cost of procurement of water tanker, purchase of fertiliser and pesticides and replacement of the weeded plants. A copy of the one such invoice was submitted.

6.2 The appellant claim that details of value of service provided have been taken from the Profit & Loss account. The figures reflected in P&L are for a different purpose and the said figures cannot be taken in totality as being the value of service provided.It is observed that the appellant has not submitted the Balance Sheet, P&L Account to justify their above claim. They howeverhave submitted a sample invoice. In the invoice they have charged for maintenance of road side tree plantation on monthly basis. But the invoice does not bifurcate or mentions the cost of procurement of water tanker, purchase of fertiliser and pesticides and replacement of the weeded plants as claimed by the appellant. Further, it is also observed that the appellant has charged service tax on the gross amount.

6.3 In terms of clause (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.
4) of Section 65B, the term 'service' is defined as;

In the instant case, the appellant has rendered service of maintenance of road side tree plantation which is not covered under negative list hence shall be taxable. Further, I find that the said activity is also not exempted vide Notification No.25/2012-ST dated 20.06.2012, therefore, in terms of Section 67 of the F.A., 1994, service tax shall be charged on taxable service rendered by service provider against a consideration.

7. The appellant also claimed that the impugned order was passed without following the principles of natural justice. I find that the appellant was granted four personal hearing dates by the adjudicating authority. Similarly four personal hearing opportunities were also provided at the appellate stage however, the appellant neither filed any defence reply before the adjudicating authority nor appeared for personal hearings which clearly bring out their deliberate act of absenteeism. The principles of natural justice are not violated when the opportunity to make written and oral submissions on an issue was granted but not availed by the party/appellant. No party has the absolute right to insist on his convenience in every respect. Further, I find that they also failed to provide any documentary evidence like P&L account, Balance Sheet to claim that the service tax demand was made merely on the presumption of differential income. Though sufficient P.H. dates were granted and even after receiving the SCN they did not bother to file the written submission instead repeatedly sought time to do the same shows that the appellant has approached the whole matter in a casual way and no further time is required to be granted. Repeated failure to avail the opportunity forfeits their entire claim to plead violation of natural justice. Natural justice is a maxim meant to facilitate the smooth conduct of justice. The flexibility inbuilt in the doctrine is not meant to be twisted and subverted to sabotage the judicial process itself. I find that the above circumstances do not warrant to be qualified as a denial of natural justice. On the contrary, the appellants have successfully derailed the judicial process by their tacit non-cooperation and would like to use the cloak of denial of natural justice to cover up their wilful defaults. Hence, I hold that there has been absolutely no violation of natural justice. I am supported by the judgment of the Hon'ble Tribunal in *R.K. Mill Board (P) Ltd.* v. *Commissioner* - 2001 (135) E.L.T. 1296 (Tri –Del).

8. Further, I find that extended period is also invokable as I find that the appellant deliberately mis-declared the taxable value in the ST-3 return and has failed to produce any documentary evidence justifying the non-declaration.

9. In view of the above discussion and findings, I find that the service tax demand of Rs.7,22,410/- confirmed on the differential income of Rs.48,16,072/- is legally sustainable as the same was earned as a consideration for providing a taxable service. I, therefore, uphold the total service tax demand of **Rs.7,22,410/-**.

10. When the demand sustains there is no escape from the interest liability and the same is also recoverable.

11. Regarding the imposition of penalty under Section 78, the appellant has claimed that the differential income was reflected in the P&L and ITR hence suppression cannot

be alleged. I find that no evidence was produced to establish that the differential income reflected in ITR was not taxable. The evasion of Service Tax by the appellant detected by the department does not automatically construe to be arising out of bonafide element. All this clearly points out the intention of the appellant not to discharge their service tax liability. Hence, the appellant had contravened the said provisions with the intention not to pay Service Tax at the appropriate time. I, therefore, 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.)], 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. Therefore, the appellant is also liable for equivalent penalty of **Rs.7,22,410/-**imposed under Section 78.

12. In view of the above discussion and findings, the impugned order is upheld.

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

(ज्ञानचंदजैन)
आयुक्त(अपील्स)

Date: 28.3.2024

Attested

अधीक्षक (अपील्स)
केंद्रीय जी. एस. टी, अहमदाबाद

By RPAD/SPEED POST

To,
M/s. Praful Parsuram Patil, - **Appellant**
A-4, Kendriyavihar,
Behind Sun City, Bopal,
Ahmedabad-380058

The Assistant Commissioner - **Respondent**
CGST & Central Excise,
Division-VI, Ahmedabad North

Copy to:

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