

	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015	7 <sup>th</sup> Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
☎ : 079-26305065		टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)23/EA-2/Ahd-I/2017-18  
Stay Appl.No. NA/2017-18

240340  
2467

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-457-2017-18  
दिनांक Date : 27-03-2018 जारी करने की तारीख Date of Issue

17/4/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. AHM-SVTAX-000-ADC-001-2017-18 दिनांक: 5/4/2017 issued  
by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Sarthav Infrastructure Pvt. Ltd.**  
**Ahmedabad**

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 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 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.

(b) 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।

... 2 ...



(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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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।

(c) 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।

(d) 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 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.

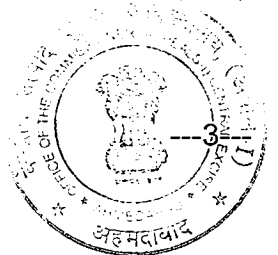
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 पढी 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 Appellate 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 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 है।

Attention is 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), के प्रति अपील 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।

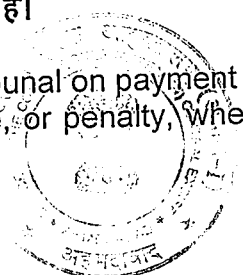
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

The Assistant Commissioner, CGST, Division-VII, Ahmedabad-South (hereinafter referred to as "the appellant") authorized by the Commissioner, CGST, Ahmedabad South vide Review Order No.08/2017-18 dated 10.07.2017 issued from F. No.: IV/4-1/STC/RRA/AC Dem/17-18, has filed an appeal against the Order-In-Original No. AHM-SVTAX-000-ADC-001/2017-18 dated 05.04.2017 (hereinafter referred to as the "impugned order") passed by the Additional Commissioner, Service Tax, Ahmedabad (hereinafter referred to as the 'Adjudicating Authority').

2. Briefly stated facts of the case are that M/s Sarthav Infrastructure Pvt. Ltd., 203, Abhishilp Complex, Vastrapur, Ahmedabad-380015 is providing services under the category of "Commercial or Industrial Construction Service", "Construction of Complex Service", "Goods Transport Agency Service" and for the same, is registered with the Service Tax Department having Service Tax Registration No. AALCS1605DSD001. Audit of the said assessee was conducted for the period from 2008-09 to 2012-13 by CERA and an audit report No. CERA(HQ)/LAR/ST-116/2013 was issued and the following points involving non-payment of service tax were raised:

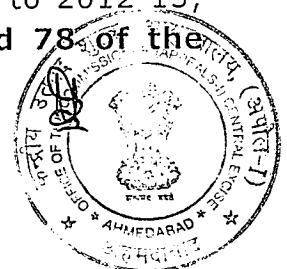
2.1 Non-payment of service tax amounting to Rs. 74,50,023/- + interest on the booking amount of Rs. 21,91,82,800/- received from the members of "Abhishree Corporate Park" during the period 2008-09 and 2009-10.

2.2 Non-payment of service tax amounting to Rs. 29,03,055/- + interest on the unaccounted booking receipt amount of Rs. 9.93 Crore which was voluntarily declared by M/s Sarthav during the course of survey proceedings by the Income Tax department.

2.3 Non-payment of service tax amounting to Rs. 6,07,060/- + interest on the maintenance charges charged by M/s. Sarthav from the prospective buyers at the time of sale property.

3. A show cause notice was issued to the said assessee by Commissioner, Service tax, Ahmedabad demanding the service tax amounting to Rs. 1,11,70,876/- under the proviso of **Section 73(1)** of the Finance Act, 1994 as amended; along with the interest at the appropriate rate on the amount of their service tax liability under Section 75 of the Finance Act, 1994; Imposition of Penalty under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within the time stipulated; Imposition of Penalty under Section 77 of the Finance Act, 1994 for the failure to file prescribed service tax returns (ST-3) for the period 2008-09 to 2012-13; Imposition of **Penalty under Section 78** of the Finance Act, 1994, for suppressing the value of taxable service provided by them before the department with intention to evade payment of service tax.

4. The adjudicating authority vide impugned order, confirmed demand of only service tax of Rs. 35,10,115/- and appropriated the amount already paid by the said assessee against the demand confirmed, ordered to recover interest at the appropriate rate on the service tax amount of Rs. 35,10,115/- under Section 75 of the Finance Act, 1994 and appropriate the interest already paid as per the reconciliation statement submitted by the said assessee and if any short payment of interest is found than the same is required to be recovered; Imposed penalty of Rs. 10,000/- on the said assessee under Section 77 of the Finance Act, 1994 for failure to file prescribed service tax returns (ST-3) for the period 2008-09 to 2012-13; **Refrained from imposing penalty under Section 76 and 78 of the Finance Act, 1994.**



5. Being aggrieved by the impugned order, the appellant duly, authorized by the Commissioner, CGST, Ahmedabad South vide Review Order No.08/2017-18 dated 10.07.2017 issued from F. No.: IV/4-1/STC/RRA/AC Dem/17-18, has filed an appeal against the Order-In-Original No. AHM-SVTAX-000-ADC-001/2017-18 dated 05.04.2017, on the following grounds;

5.1 The portion of the impugned Order-in-Original No. AHM-SVTAX-000-ADC-001/2017-18 dated 05.04.2017 refraining from the imposition of penalty as stipulated by Section 76 and 78 of the Finance Act, 1994, appears not proper and legal.

5.2 The Adjudicating Authority at para 5.4.3 of the impugned Order-in-Original dated 05.04.2017 has found that in the instant case, the said assessee has not correctly assessed their taxable value for the taxable services rendered by them and by not paying the service tax at appropriate time due on their taxable services rendered themselves disregarding to the requirements of law and breach of trust deposed on them.

5.3 On one hand above mentioned findings are held while on the other hand just because the duty was discharged before the Show Cause Notice, the penalty was waived off, even though the amount was found by Income Tax Department on survey which was suppressed by party. Infact had it not been detected by Income Tax Dept., the party would have not disclosed the amount to the Service Tax department. This is suppression of amount received from the service recipient and hence it accounts for Service Tax evasion with malafide intention. Therefore, the said assessee is liable for penalty under Section 76 & 78 both of the Finance Act, 1994 as they failed to assess and also failed to disclose the amount received from service recipient to the Department in the statutory ST-3 returns to be filed for the relevant period as stipulated.

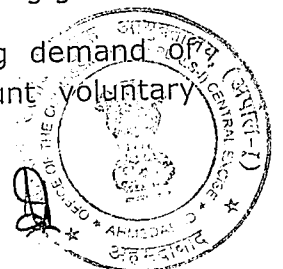
5.4 That the approach of the Adjudicating authority is erroneous which has resulted into incorrect and uncalled for conclusions, reasoning and findings, apart from drawing unwarranted inferences, factually & legally and the Adjudicating Authority has erred by refraining from the imposition of penalty under Section 76 and 78, both of the Finance Act, 1994.

5.5 That the impugned portion of Order-in-Original No. AHM-SVTAX-000-ADC-001/2017-18 dated 05.04.2017 passed by the Additional Commissioner, Service Tax, Ahmedabad is neither legal nor proper as it is based on an erroneous approach and misinterpretation of the relevant statutory provisions of Section 76 & 78 of the Finance Act, 1994 and consequently requires to be quashed and set aside in the interest of justice.

6. Personal hearing in the case was granted on 22.02.2018 wherein Shri Rahul Patel C.A. appeared before me and explained the case and makes written submission, and requested for filing cross objection. Cross objection was filed on 28.02.2018.

The respondent in their cross objection has submitted the following grounds;

1. Ld. Adjudicating Authority was not justified in confirming demand of Service Tax of Rs. 29,03,055/- in respect of the amount voluntarily discloser made by them before the Income Tax department.



2. Ld. Adjudicating Authority grievously erred in law as well as in fact in demanding service tax of Rs. 6,07,060/- in respect of Maintenance Charges and deposit.
3. Ld. Adjudicating Authority is ought to have correctly waived penalty u/s.76 and 78 of the Finance Act,1994 in as much as demand of Svice Tax of Rs.29,03,055/- pertaining to voluntary discloser made before Income Tax Authorities. Penalty was not imposable as the tax was paid prior to detection by the CERA Audit on which impugned notice was issued. They relied upon the following decisions;
  - i. CCE v.Mayfair Resots-2010(22) STR 263 (P & H),
  - ii. CCE. V. Ramesh Studio & Colour Lab-2010 (20) STR 817 (Tri-Del)
  - iii. Kipps Education Centre v. CCE-2009 (13) STR 422(Tri-Del),
  - iv. CCE. v. Delux Enterprises-2011 (22) STR 203 (Tri-Del).
4. Ld. Adjudicating Authority is ought to have correctly waived penalty u/s.76 and 78 of the Finance Act, 1994 in as much as demand of Service Tax of Rs. 6,07,060/-pertaining to voluntary discloser made before Income Tax Authorities. Penalty was not imposable as the tax was paid prior to detection by the CERA Audit on which impugned notice was issued.
5. Ld. Adjudicating Authority is ought to have passed a speaking order in respect of the waiver of penalties u/s. 76 and 78 of the Act.

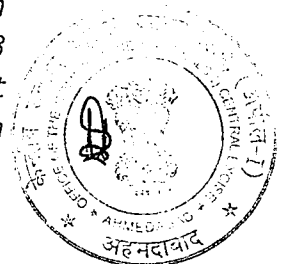
7. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and the Cross-Objection and Written Submission filed by the said respondent. I take up the appeal for the final decision. The question to be decided by me is;

Whether, Service Tax paid on an amount voluntarily disclosed before Income Tax Authority, and the duty was discharged before the Show Cause Notice, the penalty can be waived off, under Section 76 & 78 both of the Finance Act, 1994.

7.1 It is observed that during scrutiny of records of the said assessee by CERA party, it was found that survey proceedings under Section 133 A of the Income Tax Act, 1961 was initiated against the said assessee by the Income Tax department under which the said assessee voluntarily declared a sum of Rupees 12 Crore between 2010-11 and 2011-12 as unaccounted booking receipt out of which a sum of Rs. 9.93 Crores was related to taxable projects. That service tax of Rs. 29,03,055/- has already been paid by them in the month of February, 2013 and March, 2013 i.e. prior to issuance of SCN.

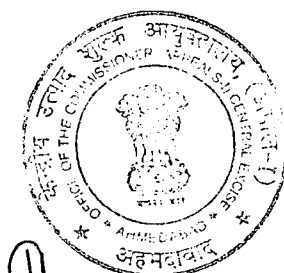
Now it is pertinent to discuss the provisions of penalty under service tax law.

**SECTION 76. Penalty for failure to pay service tax.**— (1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there under with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a



penalty not exceeding ten per cent of the amount of such service tax : Provided that where service tax and interest is paid within a period of thirty days of — (i) the date of service of notice under sub-section (1) of section 73, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to be concluded; (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the penalty imposed in that order, only if such reduced penalty is also paid within such period. (2) Where the amount of penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over the above the amount as determined under sub-section (2) of section 73, the time within which the reduced penalty is payable under clause (ii) of the proviso to sub-section (1) in relation to such increased amount of penalty shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be.

**SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc.** (1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there under with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax : Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined : Provided further that where service tax and interest is paid within a period of thirty days of — the date of service of notice under the proviso to (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded; (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty



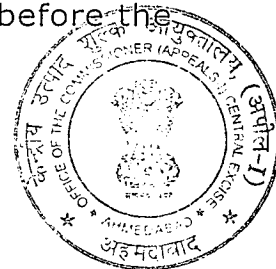
payable shall be twenty-five per cent. of the service tax so determined : Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period : Explanation. — For the purposes of this sub-section, "specified records" means records including computerized data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement; the invoices recorded by the assessee in the books of accounts shall be considered as the specified records. (2) Where the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, modifies the amount of service tax determined under sub-section (2) of section 73, then, the amount of penalty payable under sub-section (1) and the interest payable thereon under section 75 shall stand modified accordingly, and after taking into account the amount of service tax so modified, the person who is liable to pay such amount of service tax, shall also be liable to pay the amount of penalty and interest so modified. (3) Where the amount of service tax or penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over and above the amount as determined under sub-section (2) of section 73, the time within which the interest and the reduced penalty is payable under clause (ii) of the second proviso to sub-section (1) in relation to such increased amount of service tax shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be.

7.2 The respondent in their cross objection filed has submitted<sup>h</sup> that the demand itself is not sustainable. However they have not insisted upon as evident from the defense reply submitted at the time of adjudication, wherein at para 15.5 categorically stated that the amount of Rs. 29,03,055/- shall be required to be appropriated against the challans already paid by them.

7.3 After detailed scrutiny of the SCN, their written submission at the time of adjudication and OIO, and cross objection filed by them before me, the following facts unearthed;

- i. The respondent has voluntarily disclosed before Income Tax Department, and voluntary paid service tax liability along with interest.
- ii. Department has not made any investigation on such liability.
- iii. They had paid the service tax liability by assessing themselves on the basis of disclosure before Income Tax Authority, much before the CERA Audit.

*[Handwritten signature]*





They relied on the following judgments;

*Punjab and Haryana High Court in the case of CCE Vs. Mayfair Resorts (2011) 22 STR 263 wherein it has held that when Rs.35 lakhs is surrendered to income tax authorities, it cannot be attributable to consideration received for mandap keeper services in the absence of any enquiry. There can be no statutory presumption to treat such amount as proceeds of services.*

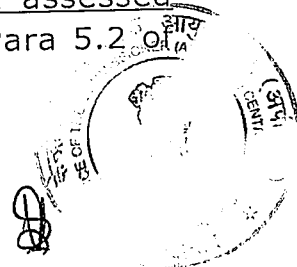
*in the case of CCE, Ludhiana vs. M/s Ramesh Studio & Color Lab (final order No. 581/2010-SM (BR), in identical facts has held that service tax demand against the respondent based on the unaccounted income declared by the respondent to the income tax authorities, in absence of any evidence that the income declared was attributable to taxable service provided by them to their clients, cannot be treated as turnover on account of a taxable service and charged to service tax, and that in view of this, the impugned order is correct and there is no merit in the Revenues appeal*

*in the case of M/s Kipps Education Centre vs. CCE, Ludhiana wherein it was held that income voluntarily disclosed before the income tax authorities which was suppressed by the party could not be added the taxable value for the purpose of service tax unless there is evidence to prove the same.*

*In case of CCE. v. Delux Enterprises-2011 (22) STR 203 (Tri-Del).Survey - Demand - Business auxiliary services - There is also no dispute about the fact that during the visit of the survey team the Income-tax authorities on 17-10-2003, the respondent declared an undeclared income of Rs. 4,00,000 to lie Income-tax authorities which was added to their taxable income for 2003-2004 - it cannot be said that the entire income of Rs. 4,00,000 declared by them to the Income-tax authorities on 17-10-2003 is attributable to the taxable services provided by them to their clients during the period from 1-7-2003 to 17-10-2003 - the evidence gathered by the Department is not sufficient to establish even the preponderance of probability - Decided in the favour of the assessee.*

08. The decision cited by the respondent are identical to their situation, however they have voluntarily paid the service Tax much before Audit detected it. I find from the SCN that CERA Audit was conducted around 7<sup>th</sup> Aug 2013. While the S.Tax was self assessed and paid by them in February 2013. This fact is noted in Para 5.2 of O-I-O

*"I further find that Shri Kaushal Thakkar, authorized signatory of the said assessee during recording of statement on 05.09.2013 has already stated that service*



*tax of Rs. 29,03,055/- has already been paid by them along with service tax discharged by the company for the period commencing on 01.07.2010 till 31.03.2013 and the amount of Rs. 9.93 Crore formed an integrated part of value of taxable service self-assessed by the company at the time of payment of service tax in the month of February, 2013 and March, 2013.*

Therefore, the Service Tax was self assessed and Paid at least 5 months before the Audit was conducted. Therefore, there is no "detection" of any amount as such and the ingredients under Section. 78 is not-satisfied. Moreover they have not contested the duty payment or filed any appeal against the demand confirmed and appropriated by the adjudicating authority. Imposition of penalty under Section 78 is not required. In view of the referred citations the penalty is not imposable.

08. In view of the above discussion, and citation, I do not find any infirmity in the impugned order. The Revenue's appeal is, therefore, dismissed.

09. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

09. The appeals filed by the appellant stand disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

*K.H. Singhal*

(K.H.Singhal)  
SUPERINTENDENT (APPEAL),  
CENTRAL TAX, AHMEDABAD

To,

M/s Sarthav Infrastructure Pvt. Ltd.,  
203, Abhishilp Complex, Vastrapur,  
Ahmedabad-380015.

**Copy to:**

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Pr. Commissioner Central Tax, GST South, Ahmadabad-.
- 3) The Asst. Commissioner, Central Tax., Div-VII, Ahmadabad-South.
- 4) The Asst. Commissioner (System), GST South, Hq, Ahmadabad.
- 5) Guard File.
- 6) P.A. File.

