सत्यमेव जयते

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

रजिस्टर्ड डाक ए.डी. द्वारा

DIN: 20210464SW0000702953

क फाइल संख्या : File No : GAPPL/COM/CEXP/91/2020-21 / 1243 To 1247

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP- 86/2020-21**

दिनाँक Date : **26-03-2021** जारी करने की तारीख Date of Issue 30/04/2021

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No **03/CGST/Ahmd-South/ADC/MA/2020-21 dated 19.06.2020** issued by Additional Commissioner, Central GST, Ahmedabad-South.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Espee Drugs & Finechem Co., 1007, Venus Atlantis, Anandnagar Road, Prahaladnagar, Ahmedabad-380015.

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 issued under the Central Excise Act 1944,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.

(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.

(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।

(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 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।

(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 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 अपील:–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

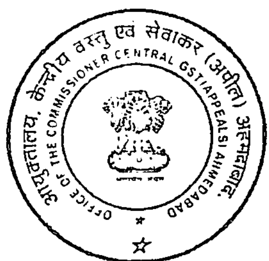
(1) **केंद्रीय जीएसटी** अधिनियम, 2017 की धारा 112 के अंतर्गत:–

Under Section 112 of CGST act 2017 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(32) 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)

(33) 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:

(lv) amount determined under Section 11 D;

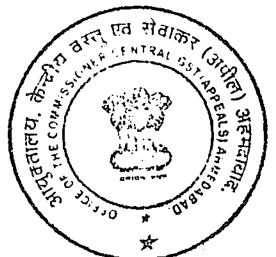
(lvi) amount of erroneous Cenvat Credit taken;

(lvii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

6(I) 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."

II. **Any person aggrieved by an Order-In-Appeal issued under** the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



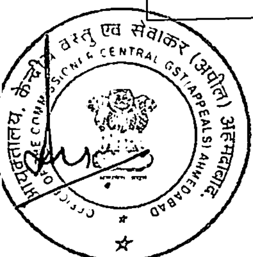
ORDER-IN-APPEAL

1. This order arises out of an appeal filed by M/s. Espee Drugs & Finechem Co., 1007, Venus Atlantis, Anandnagar Road, Prahladnagar, Ahmedabad-380015 (hereinafter referred to as '*appellant*') against Order in Original No. 03/CGST/Ahmd-South/ADC/MA/2020-21 dated 19.06.2020 (hereinafter referred to as '*the impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad-South (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant was holding Service Tax Registration Number ANOPS7244MST001 and engaged in providing services under the category of "Clearing and Forwarding Service" as well as "Business Auxiliary Service" falling under sub clauses (j) and (zzb) respectively of clause (105) of erstwhile Section 65 of the Finance Act, 1994.

2.1 Audit of the records of the appellant was carried out by the departmental audit officers for the period from F.Y. 2010-11 to F.Y. 2013-14, wherein it was noticed that the appellant were making the payment of Service Tax quarterly on receipt basis and showing the same in the ST-3 returns. During reconciliation of income figures recorded in their books of accounts with that declared in ST-3 returns, it was noticed that the appellant had short paid Service Tax during the period from F.Y. 2010-11 to F.Y. 2013-14. Therefore, a Show Cause Notice was issued to the appellant by the Additional Commissioner, Central Excise & Service Tax (Audit-II), Ahmedabad vide F.No. ST/15-04/Circle-05/AP-XV Old/FAR-161/14-15 dated 20.03.2015 demanding the Service Tax amounting to Rs. 17,33,188/- worked out as per the reconciliation statement in the table given below, alongwith interest and penalty.

Period	Taxable Value (inclusive of S.Tax) as per Books of Accounts	Taxable Value (inclusive of S.Tax) as per ST-3 Returns	Difference in Taxable Value (inclusive of S.Tax)	Net Taxable Value (reverse Calculation)	Service Tax (inclusive of E. Cess+H.S. Edu. Cess) liability
1	2	3	4	5	6
2010-11	12003019	11510868	492151	446193	45958
2011-12	27974358	17515449	10458909	9482238	976671
2012-13	23550796	19583241	3967555	3531110	436445
2013-14	30273139	27781270	2491869	2217755	274114
TOTAL					1733188



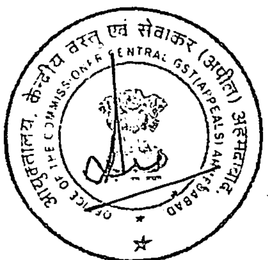
The Show Cause Notice issued to the appellant was initially adjudicated vide OIO No. AHM-SVTAX-000JC-010-16-17 dated 28.7.2016 (hereinafter referred as "original adjudication order") by the Joint Commissioner, erstwhile Service Tax, Ahmedabad (hereinafter referred as "original adjudicating authority") wherein the amount of Rs. 17,33,188/- was confirmed alongwith interest and imposed equal penalty under Section 78 of the Finance Act, 1994 and also imposed penalty amount of Rs. 10,000/- under Section 77 (2) of the Finance Act, 1994.

2.2 Being aggrieved, the appellant had filed an appeal before the Commissioner (Appeals), Ahmedabad against the "original adjudication order" on the grounds, briefly reproduced herebelow:

(i) *The difference between the value of taxable services shown in the books of accounts and the value of taxable services declared in ST-3 returns was due to the fact that the appellant had discharged service tax liability for the entire period of F.Y. 2010-11 to F.Y. 2013-14 on receipt basis i.e. the service tax liability was paid when the value of service was received from the client, whereas value of such service was shown in the books of accounts when the service was rendered and bill/invoice was raised to the client.*

(ii) *The original adjudicating authority observed that there was a difference between the challan value and amount of service tax claimed to have been paid under a particular challan in respect of 17 challans shown at para 20 of the original adjudication order. Though there is no such difference or discrepancy even in respect of such 17 challans; but assuming without admitting that there was any difference for such 17 challans, the service tax amount involved in these 17 challans has been only to the tune of Rs. 3,37,208/-.Therefore the original adjudication order confirming service tax liability of Rs. 17,33,188/- only because some difference and discrepancy were allegedly noticed in regard to 17 challans involving service tax payment of Rs. 3,37,208/- is therefore illegal and unreasonable.*

(iii) *The basis for the order made by the original adjudicating authority that there was mis-match or discrepancy/difference between value of 17 challans tabulated in para 20 of the original adjudication order and service tax claimed to have been paid under such challans is also incorrect and invalid, in as much as there is no such difference or discrepancy and no care was taken in adjudicating proceedings to call for appellant's explanation in case such difference was felt on comparison of*



the challans. A detailed statement with the Chartered Accountant's certification regarding suitable explanation has also been submitted.

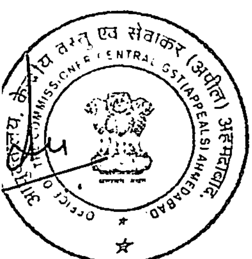
2.3 The Commissioner, Central Tax (Appeals), Ahmedabad (herein after referred to as "original appellate authority") vide OIA No. AHM-EXCUS-001-APP-072-2017-18, issued on date 28.09.2017 remanded the matter back to the original adjudicating authority to decide the case afresh. The relevant portion of the said OIA are re-produced below:

> *"5. ....I find that the adjudicating authority has failed to properly quantify the data shown in the table mentioned in paragraph 20 of the impugned order. He did not calculate the actual service tax liability from the difference between the challan value and service tax amount. I find the impugned order to be vague and non-speaking..............I believe that the adjudicating authority is the best suited person to properly verify the challans in respect of the table shown in paragraph 20 of the impugned order and quantify the actual service tax liability, if any.*
>
> *6. In light of the above discussion, I remand back the matter to the adjudicating authority to decide the case afresh. He should thoroughly verify all the challans with actual payments made by the appellants and issue a proper speaking order by recording and discussing all points pertaining to the tax liability of the appellants and actual tax paid by them. The appellants are also hereby directed to present all sort of assistance to the adjudicating authority by providing all required documents during the proceedings for which the case is remanded back."*

2.4 In pursuance of the directions of the original appellate authority vide OIA dated 28.09.2017 to decide the case afresh, the issue was again taken up for adjudication by the adjudicating authority. Thereafter, the adjudicating authority vide impugned order again confirmed the demand of Service Tax of Rs. 17,33,188/- under proviso to Section 73 (1) of the Finance Act, 1994, alongwith interest leviable thereon under Section 75 of the Finance Act, 1994. Penalty of Rs. 17,33,188/- imposed under Section 78 of the Finance Act, 1994 and also of Rs. 10,000/- imposed under Section 77 (2) of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds reproduced below:

(i) The service provider is indenting agent and pays the service tax on cash basis. However, as per accounting standards applicable to the Companies, the books of accounts are maintained on



accrual system to reconcile with TDS as per Form 26AS. However, there is no lapse in the payment of Service Tax on the income earned by the service provider during the block of period starting from F.Y. 2010-2011 to F.Y. 2013-2014.

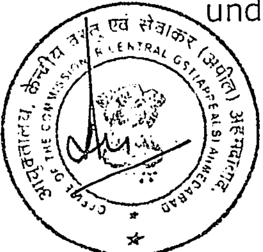
(ii) The total liability of service tax leviable on the gross income as stated in para-2 of the adjudication order dated 28.7.2016 has been discharged by them using the Cenvat and Cash Payment through challans. The deferment of tax payment due to difference in accounting system is also compensated by making interest payment of Rs. 4,06,901/- as per the calculation provided by the service tax department.

(iii) In point no. 20 of the order passed by the adjudicating authority, it is stated that there is a difference in the amount of challans, hence the claim of the service provider regarding complete payment of service tax is rejected in total. The difference as stated is negligible and compensatory in nature. Thus, there is no loss to the revenue and demand raised is not genuine and duplicating.

4. The appellant was granted opportunity for personal hearing on 20.01.2021 through video conferencing platform. Shri. Manan N. Vakil, Chartered Accountant, appeared for personal hearing as authorised representative of the appellant. He re-iterated the submissions made in Appeal Memorandum. They have also made an additional submission on date 25.01.2021 vide which (i) Reconciliation Statement of income with ST-3 for the period from F.Y. 2010-11 to 2014-15 (ii) Copy of ST-3 returns for all the above period and (iii) Copy of challans for the above period have also been submitted.

5. I have carefully gone through the facts of the case available on record, grounds of appeal and submissions made by the appellant at the time of hearing as well as the additional submission made on date 25.01.2021. The issue to be decided in this case is whether the adjudicating authority was correct in confirming the demand against the appellant in impugned order or not.

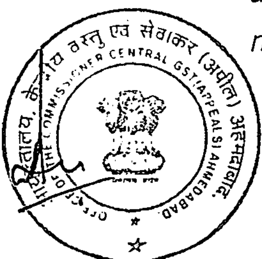
5.1 I find that vide an amendment made in Rule 6 of the Service Tax Rules, 1994, the payment of Service Tax has been made leviable on accrual basis with effect from the month of April, 2011. However, the appellant has paid Service Tax on receipt basis and not on accrual basis during the period under dispute. They have claimed to have paid an amount of Rs. 4,06,901/-



vide Challan No. 50211 dated 27.12.2014 towards interest worked out, on their own, leviable on such delayed payment.

5.2 It is further observed that an exercise of comparision of Challans shown as per GAR-7 report with the amount debited as Service Tax by the appellant was undertaken by the adjudicating authority and as mentioned in the tabulated form at Para-6.6 of the impugned order. Further, the observations noted during the said exercise of compilation by the adjudicating authority in the impugned order are reproduced below:

> *"7. I have noticed that the notice has shown Challan No. 1, in place of Challan No. 84 dated 6.7.2010, Challan No. 6 in place of 60 dated 7.7.2011 and 62 dated 7.10.2011 i.e. Challan No. 6 has been shown against both the above challans. Challan No. 9 in place of 94 dated 6.10.2010. Further, in the year 2011-12 against the entry of Emmennat Bio Tech P. Ltd., noticee has shown that the payment received on 12.06.2012 and payment of tax of Rs. 1149.48/- vide Challan No. 51160 dated 6.6.2014. On going through the GAR-7 statement, the Challan No. 51160 has been generated on 4.7.2014. Moreover, from the above table, it is amply clear that in 18 entries, the amount debited is in excess of the amount deposited against the challan. There is a Challan No. 20 dated 5.1.2014 shown in the details submitted by noticee, for which no copy of challan is found and no entry is reflected in the GAR-7 statement. Thus I find that there are glaring discrepancies in the details submitted by them.*
>
> *7.2 It is further observed that the Challan Nos. at Sr. 17 and 19 of the above table reflecting details of Challan No. 50083 dated 29.11.2014 and 50641 dated 7.10.2014 have been utilized in the ST-3 returns for the subsequent period i.e. 2014-15. Thus the amount shown as unutilized is in fact utilized subsequently and is not compensatory in nature. Thus the defence submitted by the noticee is not acceptable, factual submission being false in nature. I am compelled to conclude that the details and documents supplied by noticee do not support their assertion that entire amount has been discharged. Moreover, as held in the earlier order, when tax payment itself is not clear, interest calculation cannot be accepted, since it would depend on the actual date of payment of service tax.*
>
> *7.3 I find that noticee has not submitted any other details in their submission apart from the Challanwise details and datewise challan details against each customer invoice. In view of factual discrepancies, it cannot be ascertained that amount debited against each entry pertains to it only and not pertaining to any earlier period. Therefore, I am unable to extend the benefit as claimed by noticee and their plea is not acceptable and is accordingly rejected."*



6. In respect of the observations pointed out by the adjudicating authority as per para-7 of the impugned order, it is observed that they are factual in nature in as much as that either challan number or date has been mentioned wrong by the appellant in the details submitted by them. Further, as per the table mentioned at para-6.6 of the impugned order prepared on the basis of the exercise of comparision undertaken by the adjudicating authority [in respect of Challan shown as per GAR-7 report with the amount debited as Service Tax by the appellant], I find it undisputed that an amount of total Rs. 96,74,753/- has been deposited by the appellant to the government account which is more than the amount of Service Tax leviable on the taxable value as per books of accounts [as mentioned in the tabular form at para-2 and para-5 of the impugned order], as pointed out by the audit.

6.1 Further, as regards the observation of the adjudicating authority as mentioned at para-7 of the impugned order that "the amount debited in 18 entries is in excess of the amount deposited against the challan", I find that the adjudicating authority has not taken the remaining challans into consideration according to which the amount is paid in excess and if the said challans are being considered, then the difference remains of Rs. 10,999/- only.

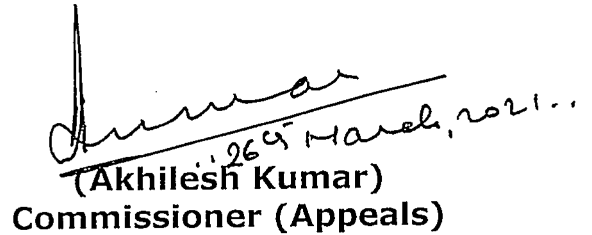
6.2 As regards the observation pointed out by the adjudicating authority at para-7.2 of the impugned order, it is already taken on record that the appellant has paid Service Tax on receipt basis and not on accrual basis during the period under dispute and an amount of Rs. 4,06,901/- has also been paid by them leviable on such delay payment. Accordingly, the contention of the adjudicating authority that "the Challan No. 50083 dated 29.11.2014 and Challan No. 50641 dated 07.10.2014 are utilized subsequently and is not compensatory in nature" can be accepted only after the exercise of reconciliation of the clearance value as per ST-3 Returns vis-a-vis the amount mentioned in the books of account for the F.Y. 2014-15. However, it is observed that no such exercise has been conducted in the instant case by the adjudicating authority. Further, the appellant has claimed to discharge liability through CENVAT account also. No such details are evident from the impugned order.

6.3 Accordingly, I find that the impugned order passed by the adjudicating authority is issued without proper reconciliation and quantification of the Service Tax liability and hence, the same is not proper in the eyes of law.

7. In view of the above facts, I find it appropriate to remand the matter back to the adjudicating authority to pass a fresh order following the principle of natural justice and conducting suitable verification & reconciliation of the statistical details as well as the merits of the contention of the appellant in respect of the Service Tax paid by them alongwith interest leviable thereon. During the said remand proceedings by the adjudicating authority, the payment made through CENVAT credit as per the submission of the appellant also needs to be confirmed with the statutory records and eligibility thereof may be verified. It will be obligatory on the part of the appellant to produce all the documentary evidences to the satisfaction of the adjudicating authority for conducting suitable verification and reconciliation of the details as per the Service Tax returns vis-a-vis the books of accounts for the period upto F.Y. 2014-15.

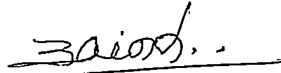
8. In view of the above discussion, I remand back the matter to the adjudicating authority to decide the case afresh. He should thoroughly conduct a reconciliation exercise as well as verification of the relevant documents to properly quantify Service Tax liability of the appellant alongwith interest, if any, and issue a speaking order by reconciling the tax liability and actual tax paid by them. The appellants are also hereby directed to provide all required assistance to the adjudicating authority by producing relevant documents during the proceedings for which the case is remanded back.

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

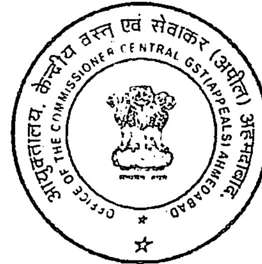


(Akhilesh Kumar)
Commissioner (Appeals)

Attested



(M.P.Sisodiya)
Superintendent (Appeals)
Central Excise, Ahmedabad



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Copy to :

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2. The Principal Commissioner, CGST and Central Excise, Ahmedabad-South.
3. The Additional Commissioner, Central GST, Division-VII, Ahmedabad-South.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
5. Guard file
6. PA File