



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136



DIN : 20221264SW000000E520

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/200/2022 / 6561 - 65
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-107/2022-23
दिनांक Date : 23-12-2022 जारी करने की तारीख Date of Issue 29.12.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 20/CGST/Ahmd-South/AC/PMC/2022 दिनांक: 30.03.2022 passed by
Assistant Commissioner, CGST, Division V, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. The Assistant Commissioner
CGST, Division V, Ahmedabad South
1st Floor, CGST Bhavan, Ambawadi,
Ahmedabad

Respondent

1. M/s Girnar Projects Pvt Ltd
Nirmit Square, Girnar Scooter Compound,
Nr. Veperi Maha Mandal, Odhav, Ahmedabad - 382410

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 :

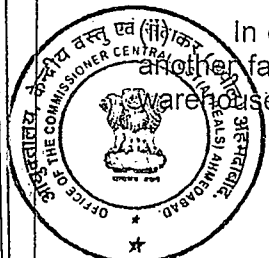
Revision application to Government of India:

(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, 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 हानिकार खाने 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो 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 इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इका 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 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.

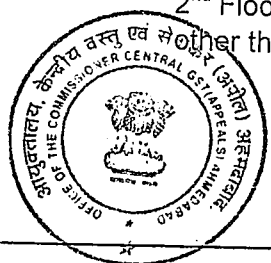
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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. 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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-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 कान्यायालय 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.

- 2^प सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो 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)-

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

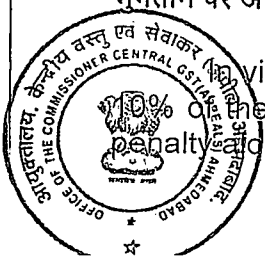
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (ccxlvii) amount determined under Section 11 D;
(ccxlviii) amount of erroneous Cenvat Credit taken;
(ccxlix) 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."

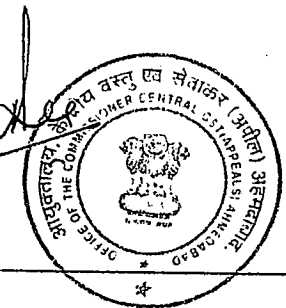


ORDER-IN-APPEAL

The present appeal has been filed by the Assistant Commissioner, CGST, Division-V, Commissionerate- Ahmedabad South (hereinafter referred to as the appellant), on the basis of Review Order No. 20/2022-23 dated 17.06.2022 passed by the Principal Commissioner, Central GST, Ahmedabad South Commissionerate in terms of Section 84 (1) of the Finance Act, 1994, against Order in Original No. 20/CGST/Ahmd-South/AC/PMC/2022 dated 30.03.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-V, Commissionerate- Ahmedabad South [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Girnar Projects Pvt. Ltd., Nimit Square, Girnar Scooter Compound, Near Vepari Maha Mandal, Odhav, Ahmedabad-382 410 [hereinafter referred to as the "respondent"].

2. Briefly stated, the facts of the case is that the respondent was holding Service Tax Registration No. AADCG8901CSD001 and engaged in providing Construction of Residential/Commercial Complex services. During verification of the returns filed by the respondent, it was observed that they had not filed the ST-3 returns for F.Y. 2016-17 and F.Y. 2017-18 (April to June, 2017) and did not pay service tax. Accordingly, inquiry was initiated against the respondent and it was found from the ledger account of advances received from customers that the total service tax liability of the respondent was amounting to Rs.23,81,257/- during April to June, 2017, whereas the respondent had paid service tax amounting to Rs.15,07,727/- (in January-February, 2019) after initiation of inquiry, which was required to be appropriated towards their service tax liability.

2.1 It was further observed from the financial statements of the respondent for F.Y. 2014-15 to F.Y. 2017-18 that the respondent had incurred expenditure on account of Professional and Legal Fees and Transportation Expenses, but had not paid service tax under reverse charge. It appeared that the respondent were liable to pay service tax amounting to Rs.3,67,289/- for the said period.



2.2 It also appeared that the respondent was required to pay service tax amounting to Rs.68,481/- under reverse charge on the expenditure incurred on transportation charges during the period from F.Y. 2014-15 to June, 2017.

3. The respondent was, subsequently, issued Show Cause Notice bearing No. GEXCOM/CN/ST/Girnar/233/2020-CGST-DIV-V-Commrte-Ahmedabad (S) dated 07.09.2020 wherein it was proposed to :

- A. Demand and recover the service tax amounting to Rs.23,81,257/-, for the period from April, 2016 to June, 2017, under the proviso to Section 73 (1) of the Finance Act, 1994 and appropriate the service tax amounting to Rs.15,07,727/- already paid by them.
- B. Demand and recover the service tax amounting to Rs.3,67,289/- in respect of Legal/Professional fees, under reverse charge, under the proviso to Section 73 (1) of the Finance Act, 1994.
- C. Demand and recover the service tax amounting to Rs.68,481/- on GTA services, under reverse charge, under the proviso to Section 73 (1) of the Finance Act, 1994.
- D. Charge and recover interest under Section 75 of the Finance Act, 1994.
- E. Impose penalty under Sections 77 and 78 of the Finance Act, 1994.
- F. Recover late fee in terms of Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

4. The SCN was adjudicated vide the impugned order wherein :

- a. The demand of service tax amounting to Rs.23,81,257/- was confirmed and service tax amounting to Rs.22,89,344/- already paid by the respondent was appropriated.
- b. The demand of service tax amounting to Rs.91,913/- (Rs.23,81,257/- - Rs.22,89,344/-) was confirmed and ordered to be recovered.
- c. The demand of service tax amounting to Rs.3,67,289/- in respect of Legal/Professional Fees was dropped.
- d. The demand of service tax amounting to Rs.68,481/- in respect of GTA services was dropped.

Interest was ordered to be recovered on the service tax not paid and paid late, under Section 75 of the Finance Act, 1994.



- f. Penalty amounting to Rs.20,000/- was imposed under Section 77 of the Finance Act, 1994.
- g. Penalty amounting to Rs.91,913/- was imposed under Section 78 of the Finance Act, 1994.
- h. Late Fee amounting to Rs.60,000/- was imposed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

5. Being aggrieved with the impugned order, the appellant department have filed the present appeal on the following grounds :

- i. The impugned order is not legally tenable and proper inasmuch as the adjudicating authority has reduced the penalty under Section 78 of the Finance Act, 1994.
- ii. From the provisions of Section 78 of the Finance Act, 1994, it is clear that the penalty would be equal to 100% of the amount of service tax.
- iii. It is undisputed that the respondent had clear intention to evade payment of tax and had only made partial payment of service tax after initiation of inquiry. Therefore, penalty amounting to Rs.23,81,257/-, which is equal to the service tax, should have been imposed.
- iv. The adjudicating authority has travelled beyond the law while concluding that penalty of only Rs.91,913/-, the amount of service tax remaining unpaid before issuance of SCN, was imposable.
- v. There is no such provision under Section 78 of the Finance Act, 1994 for imposition of penalty on the service tax remaining unpaid before/after issue of SCN.
- vi. In the SCN, it is mentioned that the respondent had paid service tax amounting to Rs.15,07,727/- however, in the impugned order, it has been mentioned that the respondent had paid service tax amounting to Rs.22,89,344/-. However, nothing has been brought on record to explain the difference.

6. Personal Hearing in the case was held on 16.12.2022. Ms. Priyanka Amin, Chartered Accountant, appeared on behalf of the respondent for the hearing. She submitted a written submission during hearing as cross-objection to appeal. She further stated that he would submit copies of ST-3 returns and corresponding challans as additional written submission.



7. In the written submission filed on 16.12.2022, the respondent, contended, inter alia, that :

- They had paid the outstanding dues and filed service tax returns for the period April, 2016 to June, 2017 prior to issue of SCN on 07.09.2020. The details are enclosed.
- Reliance is placed upon the judgment in the case of Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I – 2007 (8) TMI 11 – Supreme Court.
- In terms of the said judgment, suppression means failure to disclose full information with intent to evade payment of tax. However, they had paid service tax and filed service tax return prior to issue of SCN. Therefore, they had no intention of fraud.
- Reliance is placed upon the judgment in the case of Mahadev Logistics Vs. Customs and Central Excise Settlement Commission (Principal Bench) and Commissioner of Central Excise, Customs and ST, Raipur (C.G.).

8. In the additional written submissions dated 19.12.2022, the respondent submitted copies of the ST-3 returns filed by them for the period from April, 2016 to March, 2017 along with Challans. They also submitted copies of the Challans for the period from April, 2017 to June, 2017 as well as a statement showing working of the differential amount as per the impugned order and as per their calculations.

9. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the written submissions filed by the respondent and the material available on records. The issue before me for decision is whether the impugned order imposing penalty amounting to Rs.91,913/- under Section 78 of the Finance Act, 1994 as against the confirmed demand of service tax amounting to Rs.23,81,257/-, in the facts and circumstances of the case, is legal and proper. The demand pertains to the period from April, 2016 to June, 2017.

10. It is observed that the respondent had not filed their ST-3 returns for the period from April, 2016 to June, 2017 and, therefore, inquiry was initiated which culminated in to issuance of the SCN dated 07.09.2020 demanding

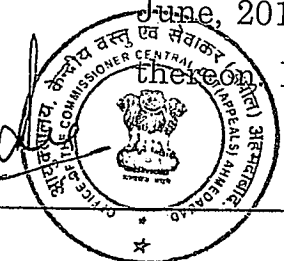


service tax amounting to Rs.23,81,257/- involved in the present appeal. It is stated at Para 2.4 of the SCN that the respondent had paid service tax amounting to Rs.15,07,727/- in January-February, 2019, after initiation of inquiry. The respondent, in their submissions before the adjudicating authority, had contended that they had filed their ST-3 returns for the period from April, 2016 to March, 2017. However, the returns for the period from April, 2017 to June, 2017 could not be filed due to problems in the portal. The respondent had also submitted that they have already paid the service tax amounting to Rs.22,89,344/- and submitted copies of the Challans. These facts have been recorded at Para 9.2 and 9.3 of the impugned order. Accordingly, the adjudicating authority, accepting the fact that the respondent had filed their ST-3 returns and also paid the service tax amounting to Rs.22,89,344/- out of the demanded service tax amounting to Rs.23,81,257/-, held that the respondent are liable to pay the balance service tax amounting to Rs.91,913/-. The adjudicating authority has also imposed penalty, equal to the amount outstanding to be paid by the respondent, under Section 78 of the Finance Act, 1994.

10.1 The appellant department have contended that penalty amounting to Rs.23,81,257/-, which was the service tax short paid/not paid by the respondent, ought to have been imposed under Section 78 of the Finance Act, 1994. In this regard, I find that the demand of service tax was raised against the respondent under Section 73 (1) of the Finance Act, 1994, the text of which is reproduced below :

“Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :”

10.2 It is clear from the provisions of Section 73 (1) of the Finance Act, 1994 that notice is to be issued for recovery of the service tax not levied or paid or short-levied or short-paid. In the instant case, it is observed that the respondent had not filed their ST-3 returns in respect of the taxable services provided by them during the period from F.Y. 2016-17 and F.Y. 2017-18 (upto June, 2017) and neither had they self assessed and paid service tax leviable thereon. It was only after the department had initiated inquiry against the



respondent by issuing Summons dated 20.02.2018 and dated 17.01.2019 that they assessed the service tax payable by them during the said period, and filed their ST-3 returns and paid the service tax amounting to Rs.22,89,344/-. From the copies of Challans submitted by the respondent, it is observed that except for service tax amounting to Rs. 1,12,376/-, which was paid on 04.05.2016, the remaining amount of service tax was paid by them on 21.01.2019, 22.01.2019, 06.02.2019 and 22.02.2019, the details of which are as below :

Sr. No.	Challan Date	Amount of Service Tax paid (in Rs.)
1	21.01.2019	268431
2	21.01.2019	159750
3	21.01.2019	135046
4	21.01.2019	280126
5	21.01.2019	232830
6	22.01.2019	153046
7	22.01.2019	51746
8	06.02.2019	148050
9	06.02.2019	96300
10	06.02.2019	16156
11	22.02.2019	16200
12	22.02.2019	619287
	TOTAL =	2176968

10.3 From the above, it is seen that the respondent had paid the service tax amounting to Rs.21,76,968/-, out of their total liability of service tax amounting to Rs.23,81,257/-, after the same was detected and assessed by the department. Therefore, the amount of service tax not levied and not paid by the respondent in the case is Rs.21,76,968/-. Since the service tax was not levied and not paid by the respondent, before initiation of inquiry and before assessment by the department, the provisions of Section 73 (1) of the Finance Act, 1994 are attracted and accordingly, the respondent was issued SCN under Section 73 (1) of the Finance Act, 1994 demanding service tax amounting to Rs.23,81,257/-

10.4 It is further observed that the adjudicating authority has confirmed the demand of Rs.23,81,257/- under the proviso to Section 73 (1) of the Finance Act, 1994. Consequently, in terms of the provisions of Section 78 (1) of the Finance Act, 1994, the respondent was liable to a penalty equal to 100 per cent of the service tax i.e. Rs.23,81,257/-. However, the adjudicating authority has erred



in imposing penalty of only Rs.91,913/- equal to the service tax remaining to be paid by the respondent. As the demand of service tax confirmed against the respondent was Rs.23,81,257/-, the adjudicating authority was bound to impose penalty equal to this amount under Section 78 of the Finance Act, 1994. As the respondent had paid the service tax amounting to Rs.1,12,376/- on 04.05.2016, i.e. before initiation of inquiry and assessment by the department, only this amount was required to be excluded for the purpose of imposing penalty under Section 78 (1) of the Finance Act, 1994. Accordingly, I find that the respondent are liable to pay penalty amounting to Rs.21,76,968/- under Section 78 (1) of the Finance Act, 1994 which is the amount short levied/short paid after initiation of investigation by the department.

10.5 The above view finds support from the judgment of the Hon'ble Tribunal in the case of Amit Pandey Physics Classes Vs. Commissioner of C.Ex., & S.T, Kanpur – 2016 (41) STR 63 (Tri.-All.). The relevant portion of the judgment of the Hon'ble Tribunal is reproduced below :

“4. Heard both the sides and considered the submissions. The issue to be considered is whether in applying the provisions of Section 78 proviso, the amount of service tax to be considered for calculation of 25% of penalty should exclude the service tax paid before issue of show cause notice.

5. We find that the proviso refers to “Central Excise Officer determining such service tax under sub-section (2) Section 73”. We do not find from the records that the service tax determined did not include the amount already paid before the issue of show cause notice. When tax is not paid on due date, the service tax which is determined by the Central Excise Officer in terms of the legal provisions is the total service tax which is payable. Even if a part of the service tax is paid before the issue of show cause notice, the fact remains that the same has to be determined under the legal provisions and confirmed under the adjudication order. If some amount of tax is paid before the issue of show cause notice it does not mean that it is not to be assessed or determined under an order. However, the same may be appropriated under the order. The adjudication order refers to the tax which needs to be confirmed and the amount of tax (already paid) which is appropriated after the total tax is confirmed. Therefore, the contention of the appellant cannot be accepted. The appellant was aware of the obligations under the Service Tax law because initially he had taken registration from the department but had surrendered the same in April, 2008 on the belief that the gross receipts were less than the registration limit. This plea cannot be a *bona fide* belief because it has come on record that during the year 2007-08 he had realized an amount of ₹ 19,90,000/-. The mistaken belief now expressed by him, therefore, has no basis.”

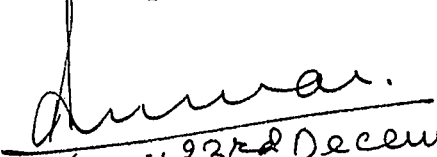
11. In view of the facts discussed hereinabove and considering the judgment of the Hon'ble Tribunal supra, I modify the impugned order insofar as it pertains to imposition of penalty under Section 78 of the Finance Act, 1994 and




instead of penalty amounting to Rs.91,913/-, I hold that the respondent are liable to penalty amounting to Rs.21,76,968/- under Section 78 of the Finance Act, 1994.

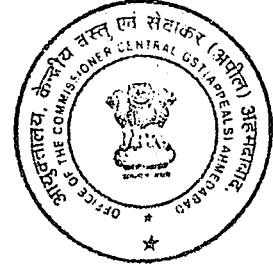
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


23rd December,
(Akhilesh Kumar) 2022.
Commissioner (Appeals)
Date: 23.12.2022.

Attested:


(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.



BY RPAD / SPEED POST

To

The Assistant Commissioner,
CGST, Division V,
Commissionerate : Ahmedabad South.

Appellant

M/s. Girnar Projects Pvt. Ltd.,
Nirmit Square,
Girnar Scooter Compound,
Near Vepari Maha Mandal,
Odhav, Ahmedabad-382 410

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
4. Guard File.
5. P.A. File.

