



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 : 20230264SW00007757D6

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2517/2022 *126511-58*
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-160/2022-23
दिनांक Date : 14-02-2023 जारी करने की तारीख Date of Issue 20.02.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. MP/21/AC/Div-IV/22-23 दिनांक: 01.06.2022 passed by Assistant
Commissioner, CGST, Division IV, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Akshar Corporation
A-1/15, Sunil Society,
Chandola Canal, Isanpur Road,
Maninagar, Ahmedabad - 380008

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 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.



- (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 मामलों 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 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.

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

- 3^ण 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.

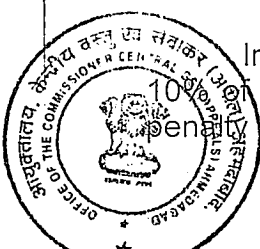
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (x) amount determined under Section 11 D;
(xi) amount of erroneous Cenvat Credit taken;
(xii) 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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where alone is in dispute."

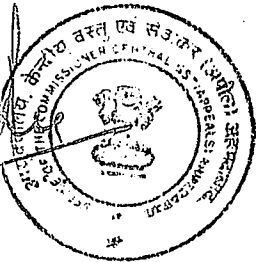


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Akshar Corporation, A-1/15, Sunil Society, Chandola Canal, Isanpur Road, Maninagar, Ahmedabad – 380 008 (hereinafter referred to as the “appellant”) against Order in Original No. MP/21/AC/Div-IV/22-23 dated 01.06.2022 [hereinafter referred to as the “*impugned order*”] passed by the Assistant Commissioner, CGST, Division- IV, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AGTPP7028AST001 under the category of Erection, Commissioning and Installation Services and engaged in Laying/Installation, Completion and Commissioning of PE/MDPE pipeline network, Domestic and Industrial Piped Natural Gas Connection services to M/s.GSPC Gas Co Ltd. and M/s.Adani Gas Ltd. and were also undertaking work of Electrical Wiring. A case was booked against the appellant by the officers of the Directorate General of Central Excise Intelligence, Ahmedabad (DGCEI) for wrong availment of exemption under Notification No.1/2006-ST dated 01.03.2006. It appeared that the appellant was not eligible for exemption under the said Notification as the materials used in execution of the Erection Commissioning and Installation work were supplied as free issue materials by the service recipient and the value of such free issue materials was not included in the taxable value. It, therefore, appeared that the appellant had short paid service tax amounting to Rs.18,12,033/- during the period from F.Y. 2009-10 to F.Y. 2012-13 (up to June, 2012).

2.1 It further appeared that from 01.07.2012, the appellant was liable to pay 50% of the service tax in terms of Notification No.30/2012-ST dated 20.06.2012. It was found that the appellant had charged 50% service tax in the bills issued by them. However, in respect of the Works Contract Services provided by them in connection with PE pipeline laying work and PNG work, the appellant had provided services valued at Rs.35,14,795/- but had not paid service tax amounting to Rs.2,17,214/-, during the period from January, 2013 to F.Y.2013-



14. On being pointed out, the appellant had paid service tax amounting to Rs.99,630/- vide two GAR Challans dated 16.08.2013.

2.2 It further appeared that the appellant had, in respect of the Management, Maintenance or Repair service valued at Rs.72,61,507/-, not paid service tax amounting to Rs.8,68,408/- during the period from January, 2013 to F.Y. 2013-14.

3. Therefore, the appellant was issued Show Cause Notice bearing No. DGCEI/AZU/36-182/2014-15 dated 17.10.2014 wherein it was proposed to :

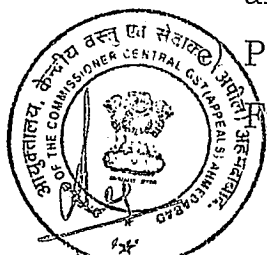
- A. Demand and recover the service tax amounting to Rs.18,12,033/- under the proviso to Section 73 (1) of the Finance Act, 1994.
- B. Demand and recover the service tax amounting to Rs.2,17,214/- under the proviso to Section 73 (1) of the Finance Act, 1994.
- C. Demand and recover the service tax amounting to Rs.8,68,408/- under the proviso to Section 73 (1) of the Finance Act, 1994
- D. Demand and recover interest under Section 75 of the Finance Act, 1994.
- E. Impose penalty under Sections 77 and 78 of the Finance Act, 1994.

3.1 Shri Mehul Patel, Proprietor of M/s.Akshar Corporation, Ahmedabad was also called upon to show cause as to why penalty should not be imposed upon him under Section 78A of the Finance Act, 1994.

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

- a) The demand of service tax amounting to Rs.2,17,214/- was confirmed and was ordered to be appropriated from the amount of Rs.99,630/- and Rs.4,41,250/- paid by the appellant in the course of the investigation.
- b) Interest was ordered to be recovered. The Interest amounting to Rs.1,70,093/- paid by the appellant after issue of SCN was appropriated.
- c) Penalty amounting to Rs.2,17,214/- was imposed under Section 78 of the Finance Act, 1994. The Penalty amounting to of Rs.90,618/- paid by the appellant after issue of SCN was appropriated.
- d) The demand of service tax amounting to Rs.8,68,408/- was confirmed along with interest.

Penalty amounting to Rs.8,68,408/- was imposed under Section 78 of the Finance Act, 1994.

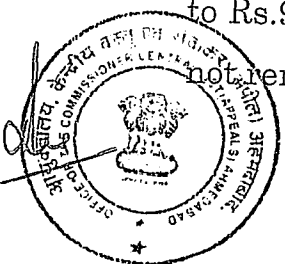


- f) Penalty amounting to Rs.1,000/- was imposed under Section 77 of the Finance Act, 1994.
- g) The demand of service tax amounting to Rs.18,12,033/- was dropped.

4.1 The penal proceedings against Shri Mehul Patel, Proprietor of M/s.Akshar Corporation, Ahmedabad was also dropped.

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

- i. Service Tax of Rs.2,17,214/- in respect of Works Contract Service for the period from January, 2013 to March, 2014 and service tax of Rs.8,68,408/- in respect of Management, Maintenance or Repair Service for the period from January, 2013 to March, 2014 was demanded on the basis of investigation by DGCEI. However, for the period from January, 2013 to March, 2015 an inquiry was also initiated by Preventive, Service Tax, Ahmedabad.
- ii. After completing inquiry, the Superintendent (Group-III) under Letter F.No. STC/04-51/Prev/Gr.III/Akshar/15-16 dated 07.12.2015 intimated that for closure of the inquiry, they needed to pay Rs.11,000/- as differential penalty. In the letter it was stated that the accepted service tax liability amounting to Rs.8.19 lakhs was paid along with interest amounting to Rs.2.01 lakhs and penalty amounting to Rs.1.12 lakhs. For closure of inquiry, they were required to pay differential penalty amounting to Rs.11,000/-. Copy of the said letter is submitted.
- iii. In light of the closure of inquiry for the period from January, 2013 to March, 2015, the confirmation of demand of service tax of Rs.2,17,214/- and Rs.8,68,408/- is ex-facie illegal.
- iv. They had in their reply to the adjudicating authority submitted that the service tax has been demanded in respect of Works Contract Service. However, the demand has been raised under Works Contract Service and Management, Maintenance or Repair Service. It was further submitted they had accepted and paid the service tax liability of Rs.8,19,000/- lakhs along with Interest of Rs.2,01,274/- and Penalty of Rs.1,11,867/- pointed out by the Preventive Section. They had also paid service tax amounting to Rs.99,630/- which is mentioned in the SCN itself. As such there does not remain any unpaid service tax liability.



- v. The adjudicating authority had, on the basis of their ST-3 returns, held that they had paid total amount of Rs.4,41,250/- during January, 2013 to March, 2014 on Works Contract Services and also paid Rs.99,630/- during investigation by DGCEI. Accordingly, he has confirmed the demand of Rs.2,17,214/- and appropriated the amounts paid by them. It is not understood as to why they would pay Rs.5,40,880/- towards liability of Rs.2,17,214/-.
- vi. The department has bifurcated the service tax liability under Works Contract Service and Management, Maintenance of Repair services and accordingly, service tax of Rs.2,17,214/- was demanded under Works Contract Service and service tax of Rs.8,68,408/- was demanded under Management, Maintenance or Repair Service. However, they did not consider rendering two different services and had paid tax under Works Contract Service only.
- vii. Management, Maintenance or Repair service was also covered under Works Contract Service. Therefore, since they had accepted service tax liability of Rs.8,19,104/- and paid the same along with interest and penalty, there could not be any liability pending against them.
- viii. Presumption cannot be made that Service Tax, Preventive Section did not make inquiry in respect of Maintenance, Management or Repair service or they ignored the said liability during inquiry.
- ix. The adjudicating authority has construed Maintenance or Repair services as different from Works Contract service and accordingly confirmed the demand without taking into consideration the letter of Preventive Section.
- x. On perusal of the findings of the adjudicating authority at Para 25.6 of the impugned order, it can be seen that the adjudicating authority has appropriated Rs.2,17,214/- from Rs.5,40,880/- paid by them.
- xi. The demand of Rs.8,68,408/- has been confirmed without taking into consideration the payment of service tax amounting to Rs.5,40,880/-. The balance amount after appropriating Rs.2,17,214/- ought to have been appropriated towards service tax liability of Rs.8,68,408/-.
- xii. As against the total confirmed service tax liability amounting to Rs.10,85,622/-, they have already paid service tax amounting to Rs.5,40,880/-. Therefore, the final service tax liability amounts to



Rs.5,44,742/-. However, service tax amounting to Rs.8,68,408/- has been held recoverable from them.

- xiii. The adjudicating authority has at Para 26 of the impugned order held that they should pay service tax under Management, Maintenance or Repair service. Since they had paid service tax of Rs.5,40,880/- out of which Rs.2,17,214/- has been held to be appropriated against the demand, the remaining amount of Rs.3,23,666/- ought to have been appropriated against the demand of Rs.8,68,408/-.
- xiv. However, it appears that the amount was not appropriated as the demand was raised under the category of Management, Maintenance or Repair Service. It is submitted that this service is also covered under Works Contract Service. Further, there are a catena of judgments holding that payment made under wrong accounting head cannot be treated as non payment of tax.
- xv. Reliance is placed upon the judgment in the case of Devang Paper Mills Pvt. Ltd. Vs. UOI – 2016 (41) STR 418 (Guj.) and CST, New Delhi Vs. Air Charter Services P. Ltd. – 2017 (5) GSTL 107 (Tri.-Del.).
- xvi. Reliance is also placed upon CBIC Circular No. 58/7/2003-ST dated 20.05.2003. In light of the above decisions and clarification issued by Board, confirmation of demand of Rs.8,68,408/- against payment of service tax of Rs.3,23,666/- is not proper and just.
- xvii. Penalty amounting to Rs.2,17,214/- has been imposed in respect of service tax not paid on Works Contract service and penalty of Rs.8,68,408/- has been imposed under Maintenance or Repair service. In this regard it is submitted that the adjudicating authority has at Para 29 held that they had paid interest and penalty during the course of investigation. Therefore, imposition of penalty of Rs.2,17,214/- is not proper and just.
- xviii. As regards imposition of penalty of Rs.8,68,408/-, it is submitted that the essential ingredients of Section 78 of the Finance Act, 1994 has not been established. They had discharged their total liability along with interest and penalty as per their letter dated 19.01.2016. They had paid penalty of Rs.1,11,867/- and Rs.11,000/- as pointed out by Superintendent (Preventive), Service Tax. As such, imposition of penalty of Rs.8,68,408/- is unjust.



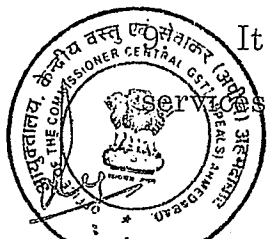
- xix. It is not the case that they had not paid service tax by suppressing facts with intent to evade tax. They did not pay service tax due to financial hardship. However, all the details pertaining to the service rendered by them were available on record and furnished by them to DGCEI and the department. The SCN has been issued on the basis of the bills and details furnished by them. Therefore, merely not filing returns and not paying service tax cannot be construed as suppression of facts with intent to evade payment of tax.
- xx. Reliance is placed upon the judgment in the case of Compark E Services Pvt. Ltd. Vs. CCE&ST, Ghaziabad – 2019 (24) GSTL 634 (Tri.- All).
- xxi. Their case is not covered by the provisions of Section 77(1) and Section 78 of the Finance Act, 1994.
- xxii. As the demand has been confirmed against the own findings of the adjudicating authority, the imposition of penalty is erroneous inasmuch as the liability has been wrongly computed.

6. Personal Hearing in the case was held on 20.01.2023. Shri P.G. Mehta, Advocate, appeared on behalf of appellant for the hearing. He reiterated the submissions made in the appeal memorandum.

7. The appellant have also filed additional written submissions dated 20.01.2023 wherein the submissions made in their appeal memorandum have been reiterated.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing, the additional written submissions and the materials available on records. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming the demand of service tax amounting to Rs.2,17,214/- in respect of Works Contract Services and Rs.8,68,408/- in respect of Management, Maintenance or Repair Services, in the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period January, 2013 to March, 2014.

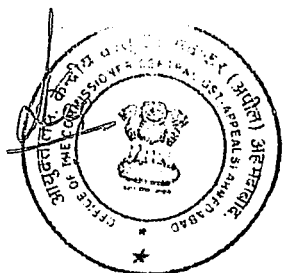
It is observed that the appellant are not contesting the taxability of the services provided by them. They have basically contended that the service tax



already paid by them in the course of the DGCEI investigation as well as in the course of the inquiry by Preventive Section, Service Tax, Ahmedabad has not been properly considered while confirming the demand of service tax. I find that in respect of the demand of Rs.2,17,214/-, the adjudicating authority has at Para 25.1 to 25.4 of the impugned order recorded that the appellant had, subsequent to the issuance of SCN, filed their ST-3 returns for the disputed period and also paid the service tax amounting to Rs.4,41,250/-, under Works Contract Services, along with Interest amounting to Rs. 1,70,093/- and penalty amounting to Rs.90,618/-. The appellant had also paid service tax amounting to Rs.99,630/- during the course of DGCEI investigation. The adjudicating authority has after confirming the demand of service tax, appropriated the amount of confirmed demand out of the service tax already paid by the appellant after issuance of the SCN. The adjudicating authority has also appropriated the amount of interest and penalty paid by the appellant towards the interest ordered to be recovered vide the impugned order and penalty imposed under Section 78 of the Finance Act, 1994. Considering these facts, I find no infirmity in the impugned order passed by the adjudicating authority inasmuch as the payment of service tax along with interest and penalty was made by the appellant subsequent to the issuance of SCN.

10. Regarding confirmation of the demand of service tax amounting to Rs.8,68,408/- under Management, Maintenance or Repair Services, it is observed that the appellant have contended that they are providing services under the category of Works Contract Services, while the demand has been bifurcated and raised under two different categories viz. Works Contract Service and Management, Maintenance or Repair Services. The appellant have also contended that Management, Maintenance or Repair Services are also covered under Works Contract Services. The definition of Works Contract is as per Section 65B(54) of the Finance Act, 1994, which during the relevant period reads as :

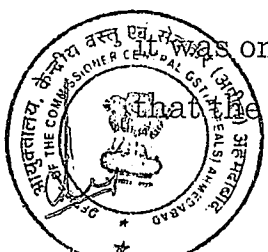
“works contract” means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property”.



10.1 From a plain reading of the definition, it is evident that Maintenance and Repair services are covered by the definition of Works Contract Services. Therefore, the finding of the adjudicating authority at Para 26.2 of the impugned order that the service tax liability of the appellant under Management, Maintenance or Repair Services is not covered by the inquiry of Service Tax, Preventive Section, Ahmedabad which was only in respect of Works Contract Services, is not tenable in view of the legal provisions above.

10.2 The appellant have contended that out of the total service tax confirmed against them amounting to Rs.10,85,622/-, they have paid service tax amounting to Rs.5,40,880/- and that the remaining service tax liability is only Rs.5,44,742/-. In this regard it is observed that the payment of service tax amounting to Rs.5,40,880/- (Rs.99,630/- during DGCEI investigation and Rs. 4,41,250/- post issuance of SCN) is not disputed by the department. Out of the amounts paid by the appellant, an amount of Rs.2,17,214/- was appropriated by the adjudicating authority towards the demand of service tax amounting to Rs.2,17,214/- confirmed vide the impugned order. Therefore, as contended by the appellant, the balance amount of Rs.3,23,666/- ought to have been appropriated towards the confirmed demand of service tax amounting to Rs.8,68,408/- and the remaining amount of service tax payable by the appellant would be Rs.5,44,742/-. However, this is an exercise only to determine the remaining amount of service tax payable by the appellant consequent to the confirmation of the demand of service tax. At the same time, since the taxability of the services provided by them or their liability to pay service tax confirmed vide the impugned order is not contested by the appellant, the impugned order confirming the demand of service tax does not call for any interference.

11. The appellant have contested the imposition of penalty under Section 77 and 78 of the Finance Act, 1994 on the grounds that there was no suppression of facts with intent to evade payment of tax and that mere non filing of returns cannot be considered to be suppression of facts with intent to evade payment of tax. In this regard, it is observed that the non payment/short payment of service tax was unearthed in the course of an investigation by DGCEI. Further, it was only after the investigation carried out by DGCEI and issuance of SCN, that the appellant had filed their ST-3 returns and paid the applicable service



tax. The facts regarding the appellant providing taxable services and not declaring the same in the prescribed returns as well as not paying the applicable service tax were suppressed from the service tax department and these facts emerged only consequent to the investigation of DGCEI. In view thereof, the penal provisions of Section 78 of the Finance Act, 1994 are applicable to the facts and circumstances of the present case and the adjudicating authority has rightly imposed penalties under Section 78 of the Finance Act, 1994. It is not disputed by the appellant that they had failed to correctly assess the service tax payable by them and that they had failed to file their ST-3 returns. Accordingly, I do not find any infirmity in the imposition of penalty under Section 77 of the Finance Act, 1994.

12. In view of the above, I uphold the impugned order and reject the appeal filed by the appellant.

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

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

Akhilesh Kumar
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 14.02.2023.

Attested:

(N.Suryanarayanan. Iyer)
 Assistant Commissioner (In situ),
 CGST Appeals, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Akshar Corporation,
 A-1/15, Sunil Society,
 Chandola Canal,
 Isanpur Road,
 Maninagar, Ahmedabad – 380 008

Appellant

The Assistant Commissioner,
 CGST, Division- IV,
 Commissionerate : Ahmedabad South.

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.



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