



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 380015.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136



DIN: 20230964SW000094629B

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1597/2023 /6/67 - 71
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-131/2023-24
दिनांक Date : 18-09-2023 जारी करने की तारीख Date of Issue 20.09.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)
- ग Arising out of OIO No. 71/CGST/Ahmd-South/JC/SR/2022-23 दिनांक: 06.01.2023 passed by
Joint Commissioner, CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Metro Security and Technical services,
503, 5th Floor, akash Avenue,
B/h Muslim Soc.,
Mithakhali Six Roads,
Navrangpura, 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 :

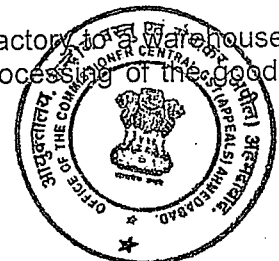
Revision application to Government of India:

(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, 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 हों माल की प्रक्रिया 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 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 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.

17 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:

- (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 of penalty, where penalty alone is in dispute."



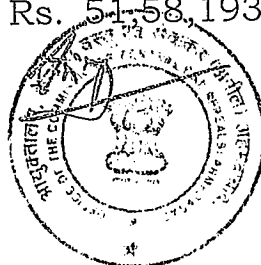
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Metro Security and Technical Services, 503, 5th Floor, Akash Avenue, B/h Muslim Soc., Mithakhali Six Roads, Navrangpura, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. 71/CGST/Ahmd-South/JC/SR/2022-23 dated 06.01.2023 issued on 13.01.2023 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central GST, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ANCPS4720JST001. The Appellant were engaged in providing Security Services and Erection, Commissioning and Installation Services, falling under the broad category of 'Service' as defined under Section 65B(44) of Finance Act, 1994 (hereinafter referred to as 'the Act'), as amended after the introduction of Negative List w.e.f. 01.07.2012. The appellant had made a declaration by submitting SVLDRS-1 for the period October-2014 to June-2017 on 31.12.2019 under the "Voluntary" Category for tax amount of Rs. 51,58,193/-. The SVLDRS-1 application was accepted by the Designated Committee and issued form SVLDRS-3 on 20.04.2020. The appellant was required to pay tax dues as per SVLDRS-3 upto 30.06.2020 in terms of section 127(5) of the Finance (No. 2) Act 2019 as amended by Section 7(iv) of the Taxation and other Laws (relaxation of certain provision) Ordinance, 2020, however they failed to pay the tax dues.

2.1. The appellant were subsequently issued Show Cause Notice bearing F.No. STC/04-45/Metro Security/O&A/20-21 dated 29.12.2020 wherein recovery of demand was proposed which is shown as under:

(i) Demand and recover an amount of Rs. 51,58,193/- under the



proviso to Sub Section (1) of Section 73 of the Act along with interest under Section 75 of the Act.

(ii) Impose penalty under the provisions of Section 77 and 78 of the Act.

(iii) Impose late fees of Rs. 18,600/- in terms of Rule 7C of the Service Tax Rules, 1994 for not filing the ST-3 Returns for the period from October 2014 to March 2016 within the prescribed time.

3. The SCN was adjudicated vide the impugned order wherein the adjudicating authority had passed the order Revenue Para wise as under:

(i) The demand of service tax amounting to Rs. 51,58,193/- was confirmed under the provision of Sub Section (1) of Section 73 of the Act. As the Service tax of Rs. 51,58,193/- was paid by the appellant the same was ordered to be appropriated.

(ii) Demand and recover interest amount was confirmed under section 75 of the Act.

(iii) Penalty amounting to Rs. 51,58,193/- under section 78(1) of the Act.

(iv) Penalty amounting to Rs. 10,000/- was imposed under the provisions of 77(2) of the Act.

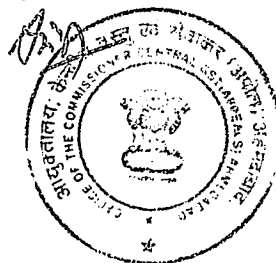
(v) Penalty amounting to Rs. 18,600/- in terms of provision of Rule 7C of the Service Tax Rules, 1994 for not filing their Service Tax Returns (ST-3) for the period from October 2014 to March 2016.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

➤ Order passed based on SCN violating principal of natural justice is unsustainable.



- The SCN has been issued without taking into account the application made under SVLDRS scheme. The appellant had declared in Sabka Vishwas (legacy Dispute Resolution Scheme, 2019 under Voluntary Disclosure Scheme without anybody from department pointing out any short payment on their part. The SVLDRS-3 issued on 20.04.2020 was not intimated to the appellant through any mode i.e. postal, email or through any other mode except making available on the Service Tax portal. The appellant were unable to login the service tax portal due to technical glitches. In Support of the submission the appellant relied upon the case of M/s LG Chaudhary Vs. Union of India [2022 SCA 12366 (Gujarat High Court)]
- The instant case falls under the extension granted by Supreme Court in Suo Moto Order. The appellant submitted that the Hon'ble Supreme Court by order dated 08-03-2021 passed in Suo Motu Writ Petition (Civil) No. 3 of 2020 has directed that while computing the period of limitation for any suit, appeal, application, or proceedings, the period from 15-03-2020 to 14-03-2021 to be excluded. Thereafter vide order in Misc Application 665 of 2021 in SMW(C) No. 3 of 2020 dated 23.09.2020 the Hon'ble Supreme Court extended the date of 14.03.2021 to 02.10.2021 and passed order that while computing the period of limitation for any suit, appeal, application, or proceedings the period from 15-03-2020 to 02-10-2021 will be excluded. Vide order dated 10-01-2022 the Hon'ble Supreme Court once again extended the date for computing the period of limitation for any suit, appeal, application, or proceedings from 02-10-2021 to 28-02-2022 in its Misc. Application No. 29 of 2022 in SMW(C) No. 3 of 2020 and issued further directions that period from 15-03-2020 till 28-02-2022 shall stand excluded for computing period of limitation for any suit, appeal, application or proceeding and balance period, if any shall become available w.e.f 28-02-2022.



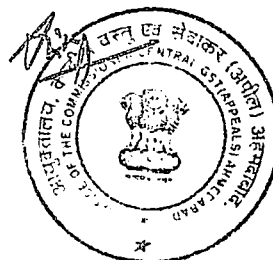
- The appellant submitted that they have made all the payment in respect of tax dues by 28-02-2022. Despite the relief given by the Hon'ble Supreme court for extension of limitation due to National pandemic, the SCN failed to consider in computing period of limitation for any application or proceedings. As the Appellant paid all the dues latest by 09-03-2021 i.e. well before deadline of 28-02-2022, it is requested to render justice by dropping the proceedings.
- Demand is barred by limitation extended period is not invocable. The appellant submitted that there must be suppression of facts or willful mis-statement with intent to evade payment of tax for invoking extended period of limitation. In their support of the submission they rely the case laws of Tata Consultancy Services Limited Vs. Commissioner and CBEC Circular No. 5/92-CX.4 dated 13-10-1992-(1993) 63 E.L.T. T7. In further clarification the appellant submitted that mere non-declaration is not sufficient for invoking larger period, but a positive mis-declaration is necessary as per the decision of the Hon'ble Supreme Court in Padmini Products and Chemphar Drugs. The appellant had reflected transaction in books of Account and Income Tax records, which shows the absence of any fraud or collusion or suppression or willful suppression or mis-statement.
- The Appellant submitted that they have voluntary declared tax dues and no suppression can be alleged when the appellant have voluntary disclosed their liability even without department pointing it out.
- SCN has failed to justify the invocation of extended period under the provision of 73(1) of the Act as no positive action shown by the department relating to intention to evade



payment of taxes. The Appellant places reliance on the following decisions:

- Pahwa Chemicals Private Limited Vs. CCE Delhi [2005 (189) E.L.T. 257 (S.C.)]
 - Alisha Enterprise Vs. CCE dated 14-05-2019
 - General Security & Information Service Vs. CST [2021 (52) GSTL 598 (Tri. – Kol.)]
 - Ace Creative Learning Pvt. Ltd. Vs. [2021 (51) GSTL 393 (Tri-Bang.)]
- The Appellant submitted that as they have voluntarily declared tax under section 124 of the Finance Act, 2019 where only tax dues are required to be paid and relief is available in respect of Interest, Late Fees and Penalty, if any.
- The Appellant submitted that penalty under section 78 of the Act cannot be imposed if they did not commit any positive act for evading of service tax. For imposing penalty there should be suppression or concealment with intent to evade payment of tax. The OIO which neglected submission on limitation issue is bad in law and needs to be set aside.

5. Personal hearing in the case was held on 18.08.2023 Shri Nitesh Jain, CA, appeared on behalf of the appellant for personal hearing reiterated the submission in the appeal. He handed over and executive summary along with the case law relied upon. He submitted that the appellant had filed application under SVLDR Scheme for an amount of Rs. 51,58,193/-. The appellant during the relevant period was rendering security agency services. However, due to Covid pandemic during 2020, office was closed. The appellant did not receive any notice or order regarding status of his application and came to know about an order passed for acceptance of his application only in December 2020. Thereafter, the appellant made deposit of the tax payable under the SVLDR scheme. However,



he was served a show cause notice on the ground that he had failed to pay the amount during the time granted under the order by June 2020. Extended period was also invoked in the notice alleging suppression on part of the appellant. He submitted that the scheme was launched with the objective of ending the litigation and the Hon'ble Supreme Court keeping in view of the pandemic situation had granted extension for compliance of all legal matters by two years. The appellant has paid the tax during within the period extended as per Supreme Court order. Therefore he is eligible for the benefit of the scheme. Moreover, since the department has issued show cause notice, only on the basis of the application made by the applicant, no suppression or motive to evade tax can be alleged against the appellant. Therefore, extended period cannot be invoked against the appellant and the show cause notice is hit by limitation. He requested to set aside the impugned order and allow the benefit of SVLDR scheme.

6. I have carefully gone through the facts of the case I find that the appellant had made a declaration by submitting SVLDRS-1 for the period October- 2014 to June-2017 on 31.12.2019 under the "Voluntary" Category for tax amount of Rs. 51,58,193/-, the details of which are shown as under:

Sr. No.	Period	SVLDRS Application Date	ARN No.	Voluntary Declaration of tax payment
1	Oct. -2014 -Mar.-2015	31-12-2019	LD3112190010506	43,495/-
2.	Oct. -2015 to Mar.- 2016	31-12-2019	LD3112190010973	45978/-
3.	Apr.-2016 to Mar.-2017	31-12-2019	LD3112190009448	35,78,420/-
4.	Apr.-2017 to June -2017	31-12-2019	LD3112190012058	14,90,300/-
	Total			51,58,193/-

The SVLDRS-1 application was accepted by the Designated Committee and issued form SVLDRS-3 on 20.04.2020. The appellant were supposed to pay tax dues as per SVLDRS-3 upto 30.06.2020 in terms of section 127(5) of the Finance (No. 2) Act 2019 as amended by Section 7(iv) of the Taxation and other Laws



(relaxation of certain provision) Ordinance, 2020, however they failed to pay the tax dues by 30.06.2020. In this regard I find the contention of the Appellant is that they were under the impression that SVLDRS-3s which were issued on 20-04-2020, would be delivered or about which department would communicate using any mode viz. postal, email or through any other mode. It also appears from the submission of the appellant that it was the technical glitch because of which, the appellant despite having made attempts to login the service tax portal could not get login and as such they were not aware whether SVLDRS-3s had been issued or otherwise. The appellant relying upon the decision of the Apex Court in case of M/s L.G. Chaudhary Vs. Union of India [2022 SCA 12366 (Gujarat High Court)] would be applicable with the instant case as due to technical issues the appellant were not able to login the Service Tax portal to make aware about whether the SVLDRS-3 had been issued. Neither did the appellant make communicated by the department that SVLDRS-3 had been issued and make payment accordingly. I find the bona fide attempt made by the petitioner to make the payment cannot be doubted even without any intimation/ communication received from the department and therefore I find that there is no need to demand interest U/s 75 of the Act.

7. Coming to the contention of the appellant regarding extension granted by the Hon'ble Supreme Court by order dated 08-03-2021 passed in Suo Motu Writ Petition (Civil) No. 3 of 2020; by order dated 23-09-2021 in Misc. Application No. 665 of 2021 in the said SMW(C); and by order dated 10-01-2022 in Misc. Application No. 29 of 2022 in the said SMW(C) had directed that while computing the period of limitation, the period from 15-03-2020 to 28-02-2022 will be excluded. I find that they had paid all dues by 09-03-2021 well before the extended relief of 28-02-2022 granted by the Hon'ble Supreme Court in their order the appellant made bona fide attempt to make the payment as determined under the Scheme despite the appellant did not have the knowledge that SVLDRS-3 had been



issued as they were not served the same neither did they find on the service tax portal due to technical glitches. Despite the fact the Hon'ble Supreme Court has suo moto cognizance for extension of limitation due to National pandemic the adjudicating authority presumes 30-06-2020 to be last date of making payment. On the basis of submission of the appellant I find that as per the the Hon'ble Supreme Court order any period of limitation for any application or proceedings, the period from 15-03-2020 till 28-02-2022 shall be excluded. The Appellant paid all dues declared in SVLDRS scheme for the period April-2014 to June- 2017 latest by 09-03-2021. As the appellant paid all dues before 28-02-2022 the appellant need not pay interest on the service tax and therefore the adjudicating authority erred in demanding interest on service tax from the Appellant without considering the submission made by the appellant.

8. The appellant contended that the interest under section 75 of the Act cannot be recoverable since they had voluntarily declared tax under section 124 of the Finance Act, 2019 where only tax dues are required to be paid and the relief was available in respect of Interest. I have carefully gone through the submission and find that the basic object of the SVLDRS Scheme is to reduce litigation by allowing the assessee to make the payment of the outstanding dues without the payment of interest and penalty. As the Appellant had already declared and paid tax dues even without considering the extreme Pandemic condition of COVID-19 the appellant need not be demanded interest on tax dues.

9. The Appellant contended that there is no suppression as they have voluntary declared their tax dues and the service tax value and like figures provided by them are reflected in their books of account, audited financial statements and income tax returns, therefore there is no intentions of suppression of facts at the end of the appellant.

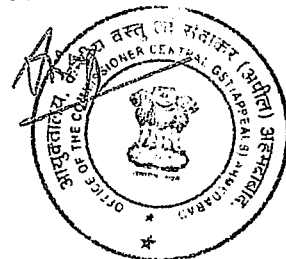


In the support of the submission the appellant relied upon the following

- Pahwa Chemicals Private Limited Vs. CCE Delhi [2005 (189) E.L.T. 257 (S.C.)]
- Alisha Enterprise Vs. CCE dated 14-05-2019
- General Security & Information Service Vs. CST [2021 (52) GSTL 598 (Tri. – Kol.)]
- Ace Creative Learning Pvt. Ltd. Vs. [2021 (51) GSTL 393 (Tri-Bang.)]

Going through the above mentioned judgments I find that mere failure to declare the dues does not amount to misdeclaration or willful suppression. When charge of deliberate non-payment of service tax due to suppression of facts or malafide intention of the appellant has not be proved from the SCN (supra) extended period of limitation cannot be invoked. The Extended period can only be invoked when the appellant liable to pay tax would have intentionally or deliberately involved in evasion of tax. I find that in absence of any proven or established allegations of existence of active intent to defeat the law or to fraud with the department, extended period of limitation cannot be invoked therefore I find that Demand of Penalty under section 78 of the Act cannot be imposed. For imposing penalty there should be suppression or concealment with intent to evade payment of tax. The Adjudicating authority which neglected submission on limitation issue is bad in law and needs to be set aside.

10. In the light of forgoing analysis, the impugned OIO is partly allowed with an order to the appellant to pay the penalty amounting to Rs. 10000/- U/s 77 of the Act for not filing the return as per the provision of Section 69 of the Act for the period from April 2016 to June 2017 and penalty amounting to Rs. 18,600/- demanded and confirmed by the adjudicating authority in terms of Rule 7C of the



Service Tax Rules, 1994 for not filing the ST-3 returns for the period from Oct. 2014 to March 2016 within the prescribed time frame.

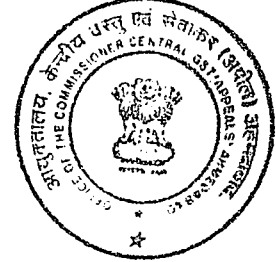
11. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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

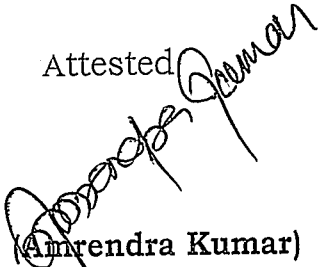

(Shiv Pratap Singh)

Commissioner (Appeals)

Date : 10.09.2023



Attested



(Amrendra Kumar)
Superintendent(Appeals)
CGST Ahmedabad.

By RPAD / SPEED POST

To,
M/s. Metro Security and Technical Services,
503, 5th Floor, Akash Avenue,
B/h Muslim Soc.,
Mithakhali Six Roads,
Navrangpura, Ahmedabad

Appellant

The Additional Commissioner,
CGST, Ahmedabad South

Respondent

Copy to :

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

5. Guard File
6. PA file



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