



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 : 20230564SW0000318275

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2715/2022 /1511-15
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-34/2023-24
दिनांक Date : 12-05-2023 जारी करने की तारीख Date of Issue 17.05.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST-VI/Dem-18/Muljibhai Halai/AC/DAP/2022-23 दिनांक: 23.05.2022
passed by Assistant Commissioner, Division VI, CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Muljibhai Laljibhai Halai
B-20, Sankardeep Apartment,
Opposite Suryavanshi Tower,
Vastrapur, 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 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 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय 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.

27^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:

- (cxc) amount determined under Section 11 D;
- (cxc) amount of erroneous Cenvat Credit taken;
- (cxcii) 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

M/s. Muljibhai Laljibhai Halai, B-20, Sankardeep Apartment, Opposite Suryavanshi Tower, Vastrapur, Ahmedabad (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST-VI/Dem-18/Muljibhai Halai/AC/DAP/2022-23, dated 23.05.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services but were not registered with the Service Tax department. They are having PAN No. ABCPH5010L.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant had earned substantial service income amounting to Rs. 38,38,875/- and Rs. 16,09,693/- during the F.Y. 2014-15 to F.Y. 2016-17 respectively, on which service tax was not paid. Hence, letters were issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2014-15 to F.Y. 2016-17. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts.

2.1 Show Cause Notice (SCN) No. V/WS06/O&A/SCN-98/2020-21 dated 23.09.2020 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs. 7,15,939/- not paid on the income received during the F.Y. 2014-15 to F.Y. 2016-17 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of late fees under Section 70, imposition of penalties under Section 77(1) and under Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated ex-parte vide the impugned order, wherein the service tax demand of Rs. 7,15,939/- was confirmed alongwith interest. Late fees of Rs. 80,000/- was imposed under Section 70. Penalty of Rs. 10,000/- under Section 77(1) and penalty of Rs. 7,15,939/- under Section 78 were also imposed.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below:-

- During the F.Y. 2014-15, the appellant have provided construction service to Shree Satsang Shiksha Prasad, which is registered as Trust during 01.04.2014 to 09.07.2014, under Section 12A(a) of Income Tax Act. Thus, prior to 10.07.2014, the appellant is not liable to pay service tax as the services were provided to the education institute, which is exempted vide Sr. No. 09 of Notification No. 25/2012-ST.
- The construction service provided for construction of individual farm house has been exempted from levy of service tax as residential complex covers buildings having more than twelve units. They placed reliance on following case laws;
 - 2008 (120) STR 603- Macro Marvel Projects Ltd
 - 2018 (15) GSTL 345 – Baba Construction Pvt. Ltd.



- The SCN proposed demand on the basis of the data received from I.T department without conducting any inquiry, which is not sustainable in the eyes of law. They placed reliance on decisions passed in the case of Regional Manager Tobacco Board – 2013 (31) STR 673 (Tri-Bang); Anvil Capital Management- 2010 (20) STR 789-(Tri-Mum), Purni Ads Pvt. Ltd- 2010 (19) STR 242 (Tri-Ahmed).
- Entire demand is time barred. As the appellant has been filing ITR regularly, suppression cannot be alleged, hence notice issued on 23.09.2020, covering period F.Y. 2014-15 to F.Y. 2016-17 is not sustainable.
- In the absence of suppression, penalty under Section 78 is also not imposable. Reliance placed on the decision passed in the case of Steel Cast Ltd. 2011(21) STR 500 (Guj).
- Penalty under Section-77 is also not liable as there is no short payment. Also when there was no intent to evade taxes, the penalty cannot be imposed. Reliance placed on the decision passed in the case of Hindustan Steel Ltd- AIR 1970 (SC) 253, Pushpam Pharmaceuticals Co.- 1995 (78) ELT 401 (SC).
- The issue involved is of interpretation of statutory provisions for that reason also, penalties cannot be imposed. Reliance placed on Goenka Woollen Mills Ltd- 2001(135) ELT 873, Bhilwara Spinners Ltd- 2001(129) ELT 458.

5. Personal hearing in the case was held on 18.04.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He also submitted additional written submission during the hearing wherein he reiterated the contentions made in the appeal memorandum. Further, copy of Certificate issued by Income Tax Department to Shree Satsang Shiksha Parishad registering it as Trust under Section 12A (a) of the I.T. Act, 1961; copy of Ledger Account of the said Trust; and the Bills showing different material used in the construction of farm house were also provided.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum and in the additional submissions as well as the submissions made at the time of personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs. 7,15,939/- alongwith interest and penalties, confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise ?

The demand pertains to the period F.Y. 2014-15 to F.Y. 2016-17.

7. It is observed that the entire demand has been raised based on the income data shared by CBDT, on which no service tax was paid by the appellant. The appellant did not file any reply to the SCN nor did they appear for personal hearing before the adjudicating authority. The adjudicating authority, therefore, decided the case ex-parte based on the income data shared by the Income Tax Department. The adjudicating



authority confirmed the demand without giving any findings on the nature of service rendered by the appellant.

7.1 The appellant, in the appeal memorandum, have claimed that they, during 01.04.2014 to 09.07.2014, have rendered Construction Service to Shree Satsang Shiksha Parishad, which is a Trust registered under Section 12 A(a) of Income Tax Act. As the Construction Services were provided to an educational institute, in terms of Sr. No. 09 of Notification No. 25/2012-ST, the services are exempted. They, therefore, have claimed that prior to 10.07.2014, there was no service tax liability on such services. Further, they have also claimed that the Construction Service rendered by them for construction of individual farm house is not taxable in terms of the definition of 'residential complex' provided in the Act.

7.2 To examine the issue on merits, I will first examine their claim whether Construction Service rendered to an education institution registered as Trust under Section 12AA of Income Tax, is exempted in terms of Sr. No. 09 of Notification No. 25/2012-ST dated 20.06.2012. Relevant text of the notification is re-produced below;

Notification No. 25/2012-ST

9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of, -

- (a) auxiliary educational services; or
- (b) renting of immovable property;

The auxiliary education service is defined in the notification as;

f) "**auxiliary educational services**" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

The said notification was amended vide Notification No. 03/2013-ST dated 01.03.2013 wherein in above entry 9, for the words "**provided to or by**" was substituted by the words "**provided to**" with effect from 01.04.2013. Subsequently, the Entry No. 9 was substituted vide Notification No. 06/2014-ST dated 11.07.2014, as under;

"9. Services provided, -

- (a) by an educational institution to its students, faculty and staff;
- (b) **to an educational institution, by way of, -**
 - (i) transportation of students, faculty and staff;
 - (ii) catering, including any mid-day meals scheme sponsored by the Government;
 - (iii) security or cleaning or house-keeping services performed in such educational institution;
 - (iv) services relating to admission to, or conduct of examination by, such institution;";

On perusal of the text of Sr. No. 09 of Notification No. 25/2012-ST and the amendments thereof, it is clear that the Construction Service is not covered under the auxiliary education service. The services which are ancillary to the main education services provided by educational institutions are exempted, as the burden will indirectly be passed on the students. The Construction Service rendered by the appellant to Satsang Shiksha Parishad no way relates to services which an educational institution



ordinarily carry out themselves nor does it fall under the inclusive definition of auxiliary education service. Even after amendment in above notification, no such inclusion was made vide Notification No. 06/2014-ST (effective from 11.07.2014) for construction service. Thus, I find that the exemption claimed by the appellant under Sr. No. 09 of Notification No. 25/2012-ST is not admissible to them.

7.3 Further, the appellant have submitted ledger account of Shree Narnarayan Corporation wherein income of Rs. 38,38,875/- is shown as construction income. I find that this income is tallying with the taxable income considered in the SCN for the F.Y. 2014-15. However, from the ledger account, it is noticed that the construction income received from said Trust is in the ledger account of Shree Narnarayan Corporation and not in the name of the appellant. It has already been held above that though Shree Satsang Shiksha Parishad is an educational trust registered under Section 12 A (a) of Income Tax Act, 1961, the exemption claimed by the appellant under Sr. No. 09 of Notification No. 25/2012-ST, is even not admissible to them as the construction service is not covered in Sr.No.09 of both the notifications.

7.4 In view of above findings, I find that the service tax demand of Rs. 4,74,485/- for the F.Y. 2014-15 is sustainable on merits. When the demand sustains, there is no escape from interest. Hence, the same is, therefore, also recoverable under Section 75 of the F.A., 1994. Appellant, by failing to pay service tax on the taxable service, are liable to pay the tax alongwith applicable rate of interest.

8. As regards the service tax demand of Rs. 2,41,454/- pertaining to F.Y. 2016-17, the appellant have contended that some of service rendered was for construction of individual farm house, which is not a taxable service in terms of the definition of 'residential complex' provided in the Act. It is observed that in terms of Sr. No. 14 of Notification No. 25/2012-ST, construction of single residential unit, if not a part of residential complex, is exempted. Relevant text of the exemption notification is reproduced below:-

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

- (a) an airport, port or railways, including monorail or metro;
- (b) **a single residential unit otherwise than as a part of a residential complex;**
- (c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- (d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
- (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

The appellant have claimed that the construction service rendered by them was in respect of the construction of a farm house which is not a residential complex, hence, covered under said notification. It is observed that both the terms 'residential complex' and 'single residential unit' have been defined in the notification as;

"residential complex" means any complex comprising of a building or buildings, having more than one single residential unit;



ze) *"single residential unit"* means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

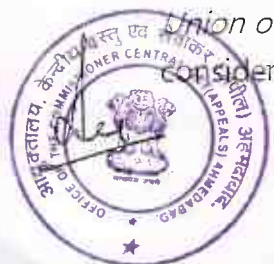
On going through the Bills produced by the appellant, it is observed that the bills for construction material were issued in the name of Nandini Bain Parikh (Green Field Bungalow). From the bills, it is not forthcoming whether the construction carried out was in respect of a single residential unit which is not a part of residential complex. Further, these bills were raised by LaL Bhanu Construction, having address at B-20, Sankardeep Apartment Opposite Suryavanshi Tower, Vastrapur, Ahmedabad, which is similar to the address of the appellant. But, whether LaL Bhanu Construction and the appellant are same entity is not forthcoming from the records submitted by the appellant. The appellant have also not produced any Contract entered with their client or relevant document to prove that the construction service provided by them was in respect of construction of a farm house, which is a single residential unit designed for one family.

8.1 Board, vide Instruction dated 26.10.2021, has directed that where the show cause notice were issued based on the third party data, the adjudicating authority should pass judicious order after proper appreciation of facts and submission of the noticee. The appellant are contending that the construction service rendered was also for construction of individual farm house which is not taxable in terms of the definition of 'residential complex' provided in the Act. It is observed that this argument was not raised before the adjudicating authority nor were any relevant documents, corroborating the above claim submitted before the adjudicating authority. Hence, the demand was confirmed ex-parte. I, therefore, in the interest of justice, remand back the case to the adjudicating authority for limited issue to decide the taxability of services claimed to have been provided for construction of farm house and pass a speaking order in view of submission made by the appellant and keeping in mind the CBIC Instruction dated 26.10.2021 as well as the observations made above.

8.2 The appellant is also directed to submit all the relevant documents like reconciliation statement showing the income received from various construction activities separately during the disputed period, copy of invoices, Contracts, ITR, corroborating their above contention and the justification of observations made at Para 8 above, within 15 days to the adjudicating authority. The adjudicating authority shall decide the case afresh on merits on the admissibility of exemption, discussed at Para 8 above, and accordingly pass a reasoned order, following the principles of natural justice. The appellant is also directed to avail the opportunity of personal hearing granted in the matter and make necessary submission before the adjudicating authority.

8.3 In light of above discussion, I find that the demand of Rs. 2,41,454/-, needs to be re-examined in light of the findings given in Para-8 to 8.2 above. I, therefore, remand the matter back to the adjudicating authority who shall pass the order after examination of the documents and verification of the claim of the appellant.

9. I find that the penalty imposed under Section 78, is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], considered such provision and came to the conclusion that the section provides for a



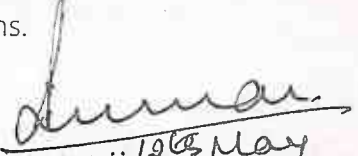
mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the demand was raised based on the income data provided by the Income Tax department. The appellant were aware of their tax liability but chose not to discharge it correctly, which undoubtedly bring out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined. I, therefore, uphold the penalty equal to the service tax demand of Rs. 4,74,485/- imposed under Section 78 as demand has been held sustainable at Para 7.3 above.

10. Further, I find that late fee of Rs. 80,000/- was imposed for non-filing of ST-3 Returns by the appellant. The appellant have not put forth any argument contending the imposition of late fees. The appellant was rendering taxable service during F.Y. 2014-15, hence they were duty bound to file ST-3 returns for the period (April, 2014 to September, 2014) and for (October, 2014 to March, 2015) on due date which was not done, therefore, I find that the appellant is liable for late fee of Rs.40,000/- for not filing of ST-3 returns for the F.Y. 2014-15, in terms of Section 70 read with Rule 7C of Service Tax Rules, 1994. As the demand for the F.Y. 2016-17 has been remanded, I set-side the remaining penalty of Rs. 40,000/-, which would be decided by the adjudicating authority in remand proceedings.

11. As regards the penalty under Section 77, the appellant has contended that the same is not imposable when there is no short payment with intent to evade payment of tax. I find that this penalty was imposed for failure to obtain registration in terms of Section 70 of the F.A., 1994. The appellant were rendering the taxable service and were liable to pay service tax, however, they never considered to obtain the registration in accordance with the provisions of Section 69 and nor did they file the statutory returns for the period F.Y. 2014-15 to F.Y. 2016-17. The failure to file the return has certainly caused prejudice to the interest of Revenue depriving the Revenue from the scope of scrutiny of the affairs of the appellants. I, therefore, uphold the penalty of Rs.10,000/- imposed under Section 77 of the Finance Act, 1994.

12. In light of above discussion, I uphold the demand of Rs. 4,74,485/- alongwith interest and penalties. Further, I set-aside the demand of Rs. 2,41,454/- and allow the appeal filed by the appellant by way of remand.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.


(अखिलेश कुमार)
आयुक्त(अपील्स) 12th May, 2023.

Date: 12.05.2023

Attested



(Rekha A. Nair)

Superintendent (Appeals)



CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Muljibhai Laljibjai Halai,
B-20, Sankardeep Apartment,
Opposite Suryavanshi Tower,
Vastrapur, Ahmedabad

Appellant

The Assistant Commissioner
CGST, Division-VI,
Ahmedabad South

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad South.
(For uploading the OIA)
4. Guard File.

