



सत्यमेव जयते

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

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



DIN : 20230664SW000000F962

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3116/2022 / 1937 - NL
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-43/2023-24  
दिनांक Date : 29-05-2023 जारी करने की तारीख Date of Issue 01.06.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 27/AC/Shilpa Patwari/Div-II/A'bad-South/JDM/2022-23 दिनांक:  
10.08.2022 passed by Assistant Commissioner(H.Q.), CGST, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s Shilpa Kamlesh Patwari  
202, Deep Mangal Apartment,  
Ganesh Gali, Maninagar Char Rasta,  
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 :

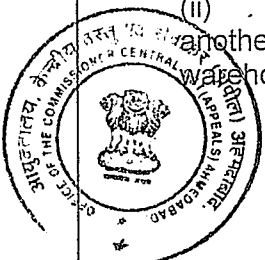
**Revision application to Government of India:**

(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, 4<sup>th</sup> 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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.

52ए 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:

- (xxii) amount determined under Section 11 D;
- (xxiii) amount of erroneous Cenvat Credit taken;
- (xxiv) 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. Shilpa Kamlesh Patwari, 202, Deep Mangal Apartment, Ganesh Gali, Maningar Char Rasta, Ahmedabad (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 27/AC/Shilpa Patwari/Div-1/A'bad-South/JDM/2022-23 dated 10.08.2022, (in short '*impugned order*') passed by the Assistant Commissioner (H.Q.), Central GST, Ahmedabad South Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and were holding PAN No. AFNPS9432G.

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) for the F.Y. 2014-15 to 2016-17, it was noticed that the appellant during the F.Y. 2014-15, had reflected income of Rs. 10,41,551/- from sale of service which was declared in Income Tax Return/TDS filed with the Income Tax Department. As they were not registered with the department, no service tax was paid on such income. Letters were, therefore, 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. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability of Rs. 1,28,736/- was, therefore, quantified considering the income of Rs. 10,41,551/- as taxable income.

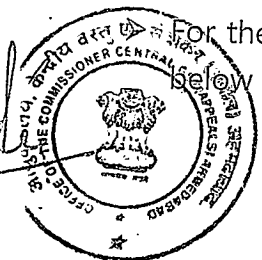
2.1 Show Cause Notice (SCN) No. V/15-686/Div-I/Shilpa Kamlesh Patwari/2020-21 dated 29.12.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 1,28,736/- not paid on the income received during the F.Y. 2014-15 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77 and under Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 1,28,736/- was confirmed alongwith interest. Penalty of Rs. 10,000/- under Section 77(1) and penalty of Rs. 1,28,736/- 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, alongwith the application seeking condonation of delay in filing appeal, on the grounds elaborated below:-

- The income earned through LIC Commission, Mutual Fund Commission and UTI Commission are exempted from levy of service tax. Similarly, the commission income from RBI Bonds unlike other banks is also not taxable. Lending & borrowing of money by RBI is sovereign function and such functions cannot be considered taxable.
- The income earned from mutual funds is exempted vide Entry No. 29 ( c ) of the Notification No.25/2012-ST dated 20.06.2012. Thus, the appellant is not liable to pay service tax on value of Rs.43,153/- earned towards commission from Mutual Fund.

For the F.Y. 2013-14, the taxable value of services provided by the appellant was Rs.10 lakhs therefore for the F.Y. 2014-15 they are eligible for small scale



exemption. In support of the same, P&L Account, ITR for the F.Y. 2013-14 were submitted but same were not examined by the adjudicating authority. Instead, it was held that the appellant had not furnished any documents, which is not true.

- Extended period can be invoked only when there is suppression of facts. Mere failure to pay service tax on account of interpretation of law would not be a case where the revenue can invoke extended period of limitation. Reliance placed on decision passed in the case of Continental Foundation – 2007 (216) ELT 177. As the demand is based on the ITR data suppression cannot be alleged.
- The demand has been confirmed treating the gross value received by the appellant hence benefit of cum tax benefit should have been given. Reliance placed on Vaishali Developers & Builders- 2017 (47) STR 300; Avtar Sodhi – 2016 (46) STR 547.
- Imposition of penalties would be justifiable only when the appellant knowing the liability deliberately avoids the payment of tax. Mere failure to pay service tax on account of interpretation of law would not attract penalty.

**4.1** On going through the appeal memorandum, it is noticed that the impugned order was issued on 10.08.2022 and the same was received by the appellant on 12.08.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 09.11.2022, i.e., after a delay of 28 days from the last date of filing appeal. The appellant have filed a Miscellaneous Application seeking condonation of delay, stating that the matter being 7 years old, it took some time to collect the relevant documents. Due to shortage of staff during COVID pandemic and the Diwali festivities, there was delay of 28 days in filing the appeal. As the delay is within the condonable period, they requested to condone the delay in terms of the proviso to Section 85 of the F.A., 1994.

**5.** Personal hearing in the matter relating to Condonation of Delay was held on 03.03.2023. Shri Gunjan Shah, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the Miscellaneous Application seeking condonation of delay in filing the appeal. He also stated that the formality of making the pre-deposit had also resulted in delay in filing the appeal and requested to condone such delay.

**5.1** Subsequently, personal hearing was granted on 19.04.2023. Shri Gunjan Shah, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He also stated that he would be submitting the income tax data for the F.Y. 2014-15, as additional submissions.

**5.2** The appellant, vide letter dated 05.05.2023, submitted the P&L Account, ITR and 26 AS pertaining to the F.Y. 2014-15 as additional submissions.

**6.** Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one



month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay as genuine, I condone the delay of 28 days and take up the appeal for decision on merits.

7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum, additional submission as well as the submissions made during personal hearing. The issue to be decided in the present appeal is whether the service tax demand of Rs. 1,28,736/- confirmed alongwith interest and penalties vide 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.

7.1 It is observed that the appellant were not registered with the department. The entire demand has been raised based on ITR data provided by Income Tax Department. The SCN alleges non-payment of service tax on the income of Rs. 10,41,551/- reflected in the ITR filed by them and no other details regarding the nature of service rendered is mentioned in the SCN.

7.2 The appellant have before the adjudicating authority submitted following reconciliation:

Sr.No.	Income Particulars	Amount in Rs.	Remarks
01	Gruh Finance Commission	123166	
02	HDFC Ltd. F.D. Commission	763581	
03	J.M.Financial Commission	22146	
04	Mutual Fund & RBI Commission	43153	Exempt
05	Post Commission	19504	
06	PNB Housing Commission	70000	
	<b>Total Value as per SCN</b>	<b>10,41,551</b>	

7.3 The adjudicating authority has held that the income earned from above services does not fall under the exclusion clause of definition of 'service' defined under Section 65B (44) of the Finance Act, 1994, hence, shall be considered as a service rendered in the nature of Business Auxiliary Service. The threshold exemption claimed by the appellant under Notification No. 33/2012-ST dated 20.06.2012 was also denied to the appellant on the grounds that the appellant had not submitted any evidence in respect of the previous F.Y. 2013-14 turnover to prove that the taxable income was below Rs. 10,00,000/-. He, therefore, confirmed the demand of Rs. 1,28,736/-.

7.4 The appellant have in the appeal memorandum claimed that the commission income of Rs. 43,153/- earned from Mutual Fund/RBI, as listed at Sr. No 04 of the table above, are exempted vide Entry No. 29 (c) of Notification No. 25/2012-ST dated 20.06.2012.



**7.5** Firstly, I will examine the claim of threshold limit exemption. It is observed that the demand pertains to the F.Y. 2014-15 and the appellant have claimed threshold exemption under Notification No. 33/2012-ST dated 20.06.2012. The exemption was denied by the adjudicating authority on the grounds that the appellant had not submitted any evidence in respect of the previous F.Y. 2013-14. It is observed that Notification No. 33/2012-ST provides exemption to small scale service providers when value of taxable services in the preceding financial year had not exceeded ten lakh rupees, subject to the conditions laid down therein. The appellant, during the F.Y. 2014-15, have earned taxable income of Rs. 10,41,551/- which is evident from the ITR filed for the F.Y. 2014-15. For the F.Y. 2013-14, the appellant have submitted ITR, wherein income of Rs. 4,65,891/- is reflected from sale of service. I find that this income is below the threshold limit exemption and, therefore, the value based exemption claimed by the appellant for the F.Y. 2014-15 shall be eligible to them. Consequently, the appellant shall be liable to pay service tax only on the income of **Rs. 41,551/-**, which is in excess of the threshold exemption limit of Rupees Ten Lakh.

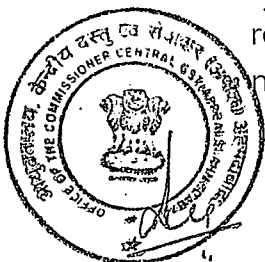
**8.** Now, to examine the claim of exemption, the relevant text of Notification No. 25/2012-ST is re-produced below;

**29. Services by the following persons in respective capacities –**

- (a) sub-broker or an authorised person to a stock broker;
- (b) authorised person to a member of a commodity exchange;
- (c) **mutual fund agent to a mutual fund or asset management company;**
- (d) distributor to a mutual fund or asset management company;
- (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;
- (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
- (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
- (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

In terms of clause (c) above, the services rendered by mutual fund agent to a mutual fund or asset management company are exempted. Hence, the exemption claimed by the appellant is admissible. However, in the P&L Account statement, the appellant have shown the income of Rs. 3,153/- as commission earned from Mutual Funds instead of the amount of Rs. 43,153/- as claimed by them. I, therefore, grant the exemption claimed under Entry No. 29 (c) for an amount of Rs. 3,153/- only.

**8.1** Regarding the commission of Rs. 40,000/- received as RBI Bond, the appellant have claimed that the commission income received from RBI Bonds, unlike other banks, is also not taxable as lending & borrowing of money by RBI is sovereign function and such functions cannot be considered taxable. I find that in terms of Notification No. 22/2006-ST dated 31.05.2006, the services provided or to be provided by any person, to the Reserve Bank of India when the service tax for such services is liable to be paid by the Reserve Bank of India under sub-section (2) of section 68 of the said Finance Act read with Rule 2 of the Service Tax Rules, 1994 were exempted. However, this notification was rescinded vide Notification No. 34/2012 dated 30.06.2012 and the



exemption granted therein was withdrawn with effect from 01.07.2012. I, therefore, reject the exemption claimed by the appellant on this ground.

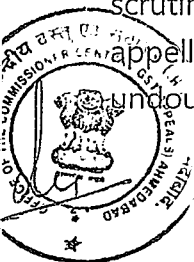
**8.2** Further, the appellant have also claimed that the income earned as commission from LIC is also not taxable as has been notified under reverse charge mechanism, vide Notification No. 30/2012-ST dated 20.08.2012. However, from the table above, it is observed that the commission from LIC is not listed therein and was already excluded by the adjudicating authority while computing the taxable income. I, therefore, do not find any merit in the above argument of the appellant and hence is rejected.

**8.3** For the remaining commission income reflected in table above, I find that the appellant have not put forth any argument or produced any documents. I, therefore, find that after granting exemption on the income of Rs. 3,153/-, the total taxable income shall get reduced from Rs. 41,551/- to Rs. 38,398/-.

**9.** Further, the appellant have also claimed cum-tax benefit on the demand confirmed. It is observed that Hon'ble Tribunal in the case of *Commissioner v. Advantage Media Consultant [2008 (10) S.T.R. 449 (Tri.-Kol.)]* held that Service tax being an indirect tax, was borne by consumer of goods/services and the same was collected by assessee and remitted to government and total receipts for rendering services should be treated as inclusive of Service tax due to be paid by ultimate customer unless Service tax was paid separately by customer. This decision has been maintained by the Apex Court as reported in **2009 (14) S.T.R. J49 (S.C.)**. I, therefore, remand the matter to the adjudicating authority for limited purpose of calculation of service tax leviable after considering the income inclusive of taxes and granting cum tax benefit to the appellant.

**10.** Appellant's contention that extended period cannot be invoked, as there is no suppression of facts, is not sustainable. It is observed that the appellant has not obtained service tax registration though they were receiving taxable income. Therefore, the demand was raised on the basis of the income reflected in the I.T. Returns on which no service tax was paid. The appellant, by not obtaining the registration, not assessing and discharging the tax liability and by not filing the statutory returns, have not only contravened the provision of the Act with intent to evade payment of tax but willfully and fraudulently suppressed the facts from the department. Hence, I find that the extended period of limitation has also been rightly invoked to demand service tax not paid.

**11.** In view of the above, I find that the penalty imposed under Section 78 of the Finance act, 1994, is also justifiable as it provides for 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 and only after proper scrutiny of records submitted by the appellant, the demand was confirmed. 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. However, the quantum of penalty shall be imposed after determining the tax liability as discussed at **Para-7.5, Para-8.3 and Para-9** above.

12. As regards the penalty under Section 77, the appellant have not made out any case to counter the imposition of said penalty. This penalty was imposed for failure to obtain registration in terms of Section 70 of the F.A., 1994. I, therefore, find that the penalty of Rs. 10,000/- imposed under Section 77 of the Act is sustainable.

13. In view of above discussions and findings, I remand the matter back to the adjudicating authority for limited purpose of re-determining the tax liability considering the observations made **Para-7.5, Para-8.3 & Para-9** above and to pass a speaking order determining the tax liability and penalty thereon.

14. Accordingly, the impugned order is set-aside and appeal filed by the appellant is partly allowed by way of remand to the adjudicating authority for decision of the case in terms of above paras.

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

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

*Suman*  
(अखिलेश कुमार)  
आयुक्त (अपील्स)  
29 May 2023

Date: 29.05.2023

Attested

*Rekha Nair*  
(Rekha A. Nair)  
Superintendent (Appeals)  
CGST, Ahmedabad



**By RPAD/SPEED POST**

To,  
M/s. Shilpa Kamlesh Patwari,  
202, Deep Mangal Apartment,  
Ganesh Gali, Maningar Char Rasta,  
Ahmedabad

**Appellant**

The Assistant Commissioner (H.Q.),  
CGST, Ahmedabad South  
Ahmedabad

**Respondent**

**Copy to:**

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

