



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 : 20230764SW000000B76D

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3110-3085-3114/2023 / 2110-26
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-53 to 55/2023-24
दिनांक Date : 30-06-2023 जारी करने की तारीख Date of Issue 10.07.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 25/CGST/A'bad-South/AC/PMC/2022-23 दिनांक: 29.07.2022 passed by
Assistant Commissioner, CGST, Division V, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. M/s Canny Security Service
65 to 71, Bhagwati Nagar,
Odhav Road, Opp. Kathwada GIDC,
Ahmedabad
2. Shri Shrikant R. Yadav
Partner of M/s Canny Security Service
65 to 71, Bhagwati Nagar,
Odhav Road, Opp. Kathwada GIDC,
Ahmedabad
3. Shri Brijesh Khushwah
Partner of M/s Canny Security Service
65 to 71, Bhagwati Nagar,
Odhav Road, Opp. Kathwada GIDC,
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 हो 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 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.

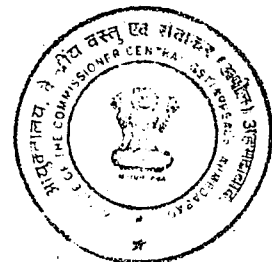
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 शुल्क अधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश 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.

57^u 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.

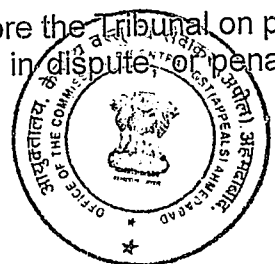
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xxxvii) amount determined under Section 11 D;
- (xxxviii) amount of erroneous Cenvat Credit taken;
- (xxxix) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeals have been filed by M/s. Canny Security Service, 65 to 71, Bhagwati Nagar, Odhav Road, Opp. Kathwada GIDC, Ahmedabad (hereinafter referred to as "the appellant"); Shri Shrikant R. Yadav, Partner of the appellant (hereinafter referred to as "the appellant No. 2"); and Shri Brijesh Khushwah, Partner of the appellant (hereinafter referred to as "the appellant No. 3") against Order-in-Original No. 25/CGST/A'bad-South/AC/PMC/2022-23 dated 29.07.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division-V, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are engaged in the providing taxable services of Security / Detective Agency Services and are holding Service Tax Registration No. AAJFC3802BSD001. On intelligence that the appellant were not discharging their service tax liabilities regularly and have failed to file ST-3 Returns, various summons and letters were issued to the appellant requesting them to submit the relevant documents and tender statement. The appellant vide letter dated 04.06.2018 and 03.07.2018 submitted their reply and inter alia submitted that they have started the firm on 29.05.2015 and closed the same on 31.03.2016; that they have filed all the returns NIL from FY 2014-15 to FY 2016-17 after starting of inquiry; that they have submitted list of their clients to whom they have provided the services. They also submitted that since the FY 2015-16 the liability of payment of service tax is on the recipient of the service.

2.1 The appellant were time and again requested to submit the details of their service provided, invoice copies, sales ledger etc. but the appellant have not provided any documents to the department. The appellant were issued summons dated 19.12.2018 and 28.12.2018 and individual summons to both the partners i.e. Shri Shrikant R. Yadav (appellant No. 2) and Shri Brijesh Khushwah (appellant No. 3) dated 10.01.2019, however, all the summons were refused / returned / not replied.

2.2 Since, the appellant have not submitted the documents and have not complied with the summons issued by the department, the service tax calculation has been done on the basis of income tax return / balance sheet. Subsequently, a Show Cause Notice No. IV/04-16/Prev/Gr-VII/Canny/17-18 dated 15.10.2019 were issued to the appellant demanding Service Tax amounting to Rs. 42,60,8430/- for the period FY 2014-15 to FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recoveries of late fees of Rs. 1,02,700/- under Section 70(1) of the Finance Act, 1994 read with Rule 7(c) of the Service Tax Rules, 1994 and imposition of penalties under Section 77(2) and Section 78 of the Finance Act,

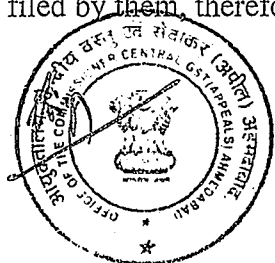


1994. The Show Cause Notice also proposed imposition of penalty under Section 78A of the Finance Act, 1994 on appellant No. 2 & appellant No. 3 i.e. both the partners of the appellant.

2.3 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 10,89,602/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15 to FY 2016-17. Further (i) Penalty of Rs. 10,89,602/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994; (iii) Recovery of late fee of Rs. 1,02,700/- from the appellant was also confirmed under Section 77(2) of the Finance Act, 1994. Further, penalty of Rs. 10,000/- on the appellant No. 2 and penalty of Rs. 10,000/- on the appellant No. 3, was also imposed under Section 78A of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellants have preferred the present appeal along with an application for condonation of delay in filing of appeal on the following grounds:

- The appellant are engaged in the business of providing security services. They had started their business in FY 2014-15. However, the appellant ran into financial difficulties due to non-payment / timely payment by their clients in the first year of operation. The appellant had to make payment to the security personnel employed by them and they were not receiving fees regularly. In such circumstances they could not deposit the service tax in time.
- As the appellant are partnership firm and providing security services, in such case, if the recipient of service is the business entity registered as body corporate, then the entire liability of service tax payable is on the recipient of service on RCM basis as per Notification No. 30/2012-ST dated 20.06.2012 with effect from 01.04.2015.
- The appellant further submitted that if the aforesaid benefit is provided, then the annual turnover of the appellant is much less than Rs. 10 lakhs exemption limit. Therefore, the entire demand for FY 2015-16 and FY 2016-17 is required to be dropped.
- The demand is barred by limitation, they have filed income tax return in time, service tax is payable by recipient of service. In such case, no service tax return was required to be filed by them, therefore, extended period of limitation is not invocable.



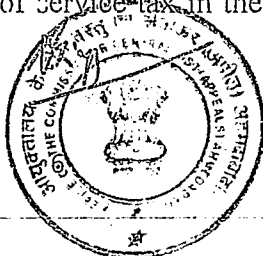
- The demand is issued on the basis of the returns filed by the appellant, once the reliance is place on records and documents prepared and returns submitted by the appellant, 100% penalty under Section 78 is clearly not imposable.
- The late fees is wrongly confirmed for non-filing of returns. When the appellants had turnover below exemption limit and no liability towards the services could be confirmed, the returns are not required to be filed; hence, penalty for non-filing of return is also bad in law.

4. On going through the appeal memorandums, it is noticed that the impugned order was issued on 29.07.2022 and received by the appellants on 17.08.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 15.11.2022, i.e. after a delay of 29 days from the last date of filing of appeal. The appellant in their Application seeking condonation of delay stated that they had given instruction to prepare and file appeal to their advocate, however, father of the advocate was not well and was hospitalized in the 2nd fortnight of October and undergone surgery during Diwali vacation. Due to which, the advocate was not attending his office regularly and the appeal could not be filed in time. They requested to condone the delay filing the appeal.

4.1 Personal Hearing in the matter of condonation of dealy application was granted on 17.05.2023. Shri Nirav P. Shah, Advocate, appeared for the hearing on behalf of the appellant. He re-iterated submissions made in application for condonation of delay in filling appeal in respect of all three appellants. He submitted that they would file a written submission in the case.

4.2 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 to sub-section (3A) of Section 85 of the Finance Act, 1994, 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 the then Commissioner (Appeals) condoned the delay of 29 days and ordered for taken up the appeal for decision on merits.

5. The appellant have vide their letter dated 22.05.2023 submitted additional written submission, wherein they inter alia submitted that the adjudicating authority has in Para 24.3 of the impugned order while granting benefit of exemption to the services provided to Body Corporate, the adjudicating authority has not granted exemption benefit in respect of M/s. CIMS Hospital Pvt. Ltd. and M/s. Motherhood Women and Child Care Hospital Pvt. Ltd. (Body corporate) and confirmed demand of service tax in the table for FY 2015-16 and FY



2016-17. They have submitted that the aforesaid two recipients of services are body corporate and hence the service tax is payable by them as RCM in the present case and the benefit of exemption to appellant wrongly denied by the adjudicating authority. As regard separate penalty imposed on partners of the firm apart from partnership firm, they submitted that it is settled law that once penalty is imposable, partners are not separate legal entity. Hence, the penalty on both the partners of the firm is required to be quashed. In this regard, they have place reliance on the judgment of the Hon'ble Gujarat High Court in the case of CCE Vs. Jai Prakash Motwani reported at 2010 (258) ELT 204 (Guj.) and Pravin N. Shah Vs CESTAT reported at 2014 (305) ELT 480 (Guj.).

6. Personal hearing in the case was held on 23.06.2023. Shri Nirav P. Shah, Advocate, appeared on behalf of all the three appellants for personal hearing. He reiterated submissions made in appeal memorandum and in the additional written submission. He submitted that the security services rendered by the appellant were subject to RCM @ 25% initially for which applicable Service Tax was paid by the appellant but he did not file ST-3 Returns. Later the RCM became fully payable by the recipient. Therefore, he requested to set aside the impugned order.

7. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, in the additional written submission, during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2014-15 to FY 2016-17.

8. It is observed that the main contentions of the appellant are that (i) they have paid service tax for the FY 2014-15, however, they did not file ST-3 Returns; (ii) for the FY 2015-16, they have submitted that the adjudicating authority has not granted exemption benefit in respect of M/s. CIMS Hospital Pvt. Ltd. and M/s. Motherhood Women and Child Care Hospital Pvt. Ltd. (Body corporate) and confirmed demand of service tax; (iii) as regard separate penalty imposed on partners of the firm apart from partnership firm, they submitted that partners are not separate legal entity and penalty on them not imposable.

8.1 It is observed that while confirming the demand of service tax, (i) the adjudicating authority held that the appellant eligible for threshold exemption of Rs. 10 lakh for the FY 2014-15 and he recalculate the service tax payable by the appellant which comes to Rs. 1,99,046/- for the FY 2014-15. However, the appellant have paid Rs. 2,25,177/- towards Service tax. Therefore, he has appropriated the said amount towards their liability of service



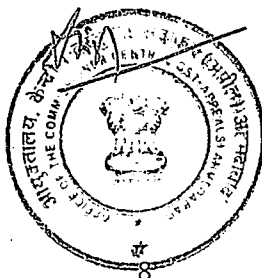
tax of Rs. 1,99,046/-; (ii) the adjudicating authority granted benefit of Notification No. 30/2012-ST dated 20.06.2012 to the service provided by the appellant to the business entity registered as Body Corporate for the FY 2015-16 and FY 2016-17, as in the said case the entire liability to pay service tax is on the service recipients on RCM basis; and (iii) the adjudicating authority also granted benefit of exemption from payment of service tax available as per Sr. No.9(b)(iii) of the Notification No. 25/2012-ST dated 20.06.2012 on the income received from the services provided to an educational institute i.e. M/s. DAV International School during the FY 2015-16 and FY 2016-17.

9. I find that the adjudicating authority has in the impugned order, while confirming the demand of service tax of Rs. 7,85,590/- for the FY 2015-16 and Rs. 1,04,966/- for the FY 2016-17, inter alia observed that the appellant has provided services to the assessee, as listed below, which are not registered as Body Corporate, therefore, in respect of the said assessee the appellant are required to discharge service tax. The relevant para of the impugned order is as under:

"24.3 In view of the above it is proved that they have provided services to a business entity registered as Body Corporate hence they are not liable to pay Service Tax for the F.Y. 2015-16 and 2016-17 being ST is payable under RCM vide Notification No. 30/2012-ST dated 20.06.2012. However, as per form 26AS statement it appears that they have also provided services to the assessee which are not registered as Body Corporate hence in respect of following parties they are required to discharge service tax as under for the F.Y. 2015-16 and 2016-17.

2015-16

Sr. No.	Name of Company	Value of Service provided as per 26AS	ST Payable @ 15% inclusive of Cess
1	CIMS Hospital Pvt. Ltd.	45,36,735/-	6,80,510/-
2	Govindlal Bansilal Shah (Proprietor – Jay Minerals)	1,91,893/-	28,783/-
3	Motherhood Women & Child Care Hospital Pvt. Ltd.	2,81,600/-	42,240/-
4	Venket Natesan Ramani (Proprietor – Plasma & Vacuum Technologies)	2,27,040/-	34,056/-
	Total	52,37,268/-	7,85,590/-



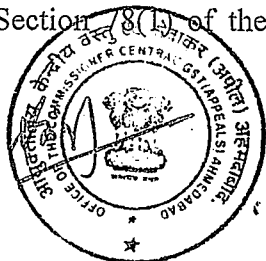
2016-17

Sr. No.	Name of Company	Value of Service provided as per 26AS	ST Payable @ 15% inclusive of Cess
1	Govindlal Bansilal Shah (Proprietor – Jay Minerals)	1,91,134/-	28,670/-
2	Motherhood Women & Child Care Hospital Pvt. Ltd.	2,81,600/-	42,240/-
3	Venket Natesan Ramani (Proprietor – Plasma & Vacuum Technologies)	2,27,040/-	34,056/-
	Total	6,99,774/-	1,04,966/-

10. On verification of the name of the assessee as reflected in aforesaid tables, it is crystal clear that M/s. CIMS Hospital Pvt. Ltd. and M/s. Motherhood Women and Child Care Hospital Pvt. Ltd. are Body Corporate, however, the adjudicating authority has not considered the same as Body Corporate and confirmed the demand of service tax in respect of the service provided to the said parties during the FY 2015-16 and FY 2016-17. Thus, the impugned order passed by the adjudicating authority is not correct and legal to that extent.

11. As regard, the plea of the appellant that extended period of limitation not invocable in their case, I find that in the present case, it clearly transpires that the appellant has intentionally suppressed the correct taxable value by deliberately withholding of essential information from the department though they were registered under the Service Tax. The appellant also filed NIL ST-3 Returns, even after initiation of inquiry against them for non-payment of service tax. They also suppressed the value of taxable services provided by them in ST-3 returns, with an intent to evade taxes. Also, the appellant has never informed the department about the non payment of Service Tax and the said fact could be unearthed only at the time of initiation of the inquiry by the department. Therefore, I find that all these acts of willful mis-statement and suppression of facts on the part of the appellant, with an intent to evade payment of Service Tax, are the essential ingredients which exist in the present case which makes them liable to pay the demand raised against them invoking the extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994. When the demand sustains, there is no escape from the liability of interest, hence, the same is, therefore, recoverable under Section 75 of the Finance Act, 1994.

12. Further, I find that the imposition of penalty under Section 78 is also sustainable, as the demands were raised based on detection noticed during the initiation of inquiry by the department. Section 78(1) of the Finance Act, 1994, provides penalty for suppressing the



value of taxable services by reason of fraud or collusion' or 'willful misstatement' or 'suppression of facts' with 'the intent to evade payment of service tax'. Since the issues covered in the present appeal are on settled issues, the appellant cannot bring into play the interpretation plea to avoid penalty. After introduction of measures like self assessment etc., a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules and private records maintained by them for normal business purposes are accepted, for all the purpose of service tax. All these operates on the basis of the trust placed on the service provider and therefore, the governing provisions create an absolute liability when any provision is contravened as there is a breach of the trust placed on them. It is the responsibility of the appellant to correctly assess their tax liability and pay the taxes. The deliberate efforts by not paying correct amount of Service Tax is utter dis-regard to the requirement of law and breach of trust deposited on them. Hence, I find that the act of willful mis-statement and suppression of facts with an intent to evade payment of tax, as discussed in Para supra, made the appellant liable to impose penalty on them under the provisions of Section 78 (1) of the Finance Act, 1994

13. As regards the Late Fees of Rs. 1,02,700/- confirmed on the appellant under provisions of Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994, I find that as per the provisions of Rule 7C of the Service Tax Rules, 1994, if any person liable to file ST-3 return under Rule 7 of the Service Tax Rules, 1994, and furnished the ST-3 return after the date prescribed for submission of such return, they were liable to pay late fees as stipulate therein. Rule 7C of the Service Tax Rules, 1994 clearly stipulates about the calculation of late fee for delay in filing ST-3 returns. In the present case, it is observed that the appellant no where argued against the calculation or the imposition of late fees and also agreed that due to financial crunches they have not filed required return initially. Therefore, the appellant has failed to comply with the provisions of Rule 7 for filing of ST-3 return within prescribed time limit and accordingly, they are liable to pay the late fees as prescribed under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994. Hence, I find that the impugned order to the extent of confirmation of Late Fees of Rs. 1,02,700/- imposed on the appellant under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 is legally correct.

14. As regard, the penalty under Section 78A of the Finance Act, 1994 imposed on both the partners of the firm i.e. appellant No. 2 and appellant No. 3, I find that in the impugned order of the adjudicating authority does not reveal that the partners of the firms play any specific role into evasion of service tax. I also find that the Hon'ble High Court of Gujarat in the case of CCE Vs. Jai Prakash Motwani reported at 2010 (258) ELT 204 (Guj.) inter alia categorically held that once the firm has already been penalized, separate penalty cannot be imposed upon the partner being not a separate legal entity. Therefore, I relying on the




aforesaid judgment of the Hon'ble High Court of Gujarat ordered, I am of the considered view that the penalty under Section 78A of the Finance Act, 1994 imposed on both the partners of the firm i.e. appellant No. 2 and appellant No. 3 is not correct and legally not sustainable.


15. In view of the above discussion, I set aside the impugned order to the extent of (i) for demanding Service Tax of Rs. 7,64,990/- (Rs. 7,22,750/- + Rs. 42,240/- + Rs. 42,240/-) along with interest in respect of services provided to M/s. CIMS Hospital Pvt. Ltd. and M/s. Motherhood Women and Child Care Hospital Pvt. Ltd. during the FY 2015-16 and FY 2016-17; and (ii) for imposition of penalties under Section 78A of the Finance Act, 1994 on both the partners of the appellant, i.e. appellant No. 2 and appellant No. 3. I uphold the remaining portion of the impugned order passed by the adjudicating authority for demanding Service Tax along with interest for the period from FY 2014-15 to FY 2016-17. Further, the penalty under Section 78 of the Finance Act, 1994 is required to be re-quantified to the extent of Service Tax demanded and upheld in this order.

16. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

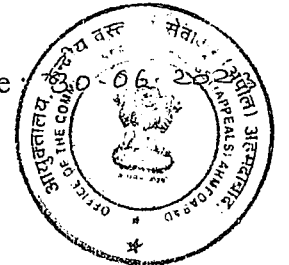
The appeal filed by the appellant stands disposed of in above terms.


 (Shiv Pratap Singh)
 Commissioner (Appeals)

Attested


 (R. C. Maniyar)
 Superintendent(Appeals),
 CGST, Ahmedabad

Date



By RPAD / SPEED POST

To,
 M/s. Canny Security Service,
 65 to 71, Bhagwati Nagar,
 Odhav Road, Opp. Kathwada GIDC,
 Ahmedabad

Appellant

Shri Shrikant R. Yadav,
 Partner of M/s. Canny Security Service,
 65 to 71, Bhagwati Nagar,
 Odhav Road, Opp. Kathwada GIDC,
 Ahmedabad

Appellant No. 2

Shri Brijesh Khushwah,
 Partner of M/s. Canny Security Service,
 65 to 71, Bhagwati Nagar,

Appellant No. 3

Odhav Road, Opp. Kathwada GIDC,
Ahmedabad

The Assistant Commissioner,
CGST, Division-V,
Ahmedabad South

Respondent

Copy to :

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

- 5) Guard File
- 6) PA file

