आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 – टेलेफैक्स07926305136

DIN: 20230864SW0000509977

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1247/2023 / 5036-40

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-91/2023-24**
दिनाँक Date : **25-08-2023** जारी करने की तारीख Date of Issue 28.08.2023

आयुक्तं (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of OIO No. 37/CGST/Ahmd-South/JC/SR/2022-23 दिनाँक: **21.11.2022** passed by Joint Commissioner, CGST, Ahmedabad South.

घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Chitra Publicity Co. Pvt. Ltd,
Ashish Complex, 2nd Floor,
C.G.Road, Swastik Char Rasta,
Navrangpura, Ahmedabad-380009.

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 पूवोक्त 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 मे 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 मामलें 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 डयूटी केडिट 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 नियन 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक 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 रूपये या उससे कम होतो रूपये 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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding 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 रू.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.

1ण 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 penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Chitra Publicity Co. Pvt. Ltd., Ashish Complex, 2nd Floor, C.G. Road, Swastik Char Rasta, Navrangpura, Ahmedabad – 380009 (hereinafter referred to as "the appellant") against Order-in-Original No. 37/CGST/Ahmd-South/JC/SR/2022-23 dated 21.11.2022 issued on 06.12.022 (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 engaged into the business of Outdoor Advertisement such as Hoarding Advertisement, Uni-Poles Advertisement, Kiosk Advertisement, Gantries Advertisement, etc. and were engaged in providing services of Sale of Space of Advertisement other than print media, which was covered under entry (g) of the Negative List of Services as specified under Section 66D of the Finance Act, 1994 up to 30.09.2014 and has been made taxable w.e.f. 01.10.2014 vide Finance Act, 2014 read with Notification No. 18/2014-ST dated 25.08.2014. The appellant were holding Service Tax Registration No. AABCC8079RST001.

2.1 During the inquiry / investigation initiated by the officers of the Directorate General of Goods & Service Tax Intelligence, Zonal Unit, Ahmedabad (hereinafter referred to as "the DGGI"), it is found that during FY 2016-17 and FY 2017-18 (up to June-2017), the appellant had paid Rs. 7,30,22,462/- as "License Fees" to the various government agencies / local authorities for using of space / sites owned by such entity to provide services of Sale of Space of Advertisement to their clients, on which the appellant were required to pay service tax of Rs. 1,06,07,721/- on reverse charge mechanism in terms of Notification No. 30/2012-ST dated 20.06.2012 as amended vide Notification No. 7/2015-ST dated 01.03.2015 and Notification No. 18/2016-ST dated 01.03.2016. However, during investigation it found that the appellant not paid service tax of Rs. 1,06,07,721/- on reverse charge mechanism as enumerated above.

2.2 During the investigation by the DGGI, it is also found that the appellant had wrongly availed and utilized Cenvat Credit amounting to Rs. 20,97,887/- of Service Tax paid to Ahmedabad Municipal Corporation and Surat Municipal Corporation on "License Fees" paid to these local authorities during FY 2016-17 and FY 2017-18 (up to June-2017).

2.3 Subsequently, the appellant were issued Show Cause Notice No. DGGI/AZU/Gr-B/36-18/2021-22 dated 21.06.2021 demanding Service Tax amounting to Rs. 1,06,07,721/-

for the period from April-2016 to June-2017, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of wrongly availed and utilized the Cenvat Credit of Rs. 20,97,887/- for the period from April-2016 to June-2017, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 read with Rule 14 of the Cenvat Credit Rules, 2004. The SCN also proposed recovery of interest on the aforesaid both amount under Section 75 of the Finance Act, 1994; imposition of penalties under Section 77, and Section 78 of the Finance Act, 1994; and imposition of penalty under Rule 15 of the Cenvat Credit Rules, 2004. The SCN also proposed imposition of penalties under Section 78A of the Finance Act, 1994 on Shri Atul K. Mehta and Shri Bakulesh K. Mehta, Directors of the appellant.

2.4 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 59,60,422/- 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 April-2016 to June-2017. The adjudicating authority has dropped the demand of Service Tax amounting to Rs. 46,47,299/- on the amount, in respect of fees paid to local authorities for permission to erect hording and bill boards in private premises. The adjudicating authority has also confirmed the recovery of wrongly availed and utilized Cenvat Credit of Rs. 20,97,887/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 73(2) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994. Further (i) Penalty of Rs. 59,60,422/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 20,97,887/- was imposed on the appellant under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77 of the Finance Act, 1994. The adjudicating authority has also imposed penalties of Rs. 50,000/- under Section 78A of the Finance Act, 1994 on each of Shri Atul K. Mehta and Shri Bakulesh K. Mehta, Directors of the appellant.

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

- In the present case, what has been done by the Government Department / Agency / Local Authority is to allow them to erect the advertisement in the properties owned by them. For instance, they have obtained permission from the Railways to display the advertisements at railway stations. This demonstrates that the arrangement is to get access to an immovable property, i.e., the railway station, use the said facility to erect/ install and subsequently, display the advertisements from the said immovable property

and for the same, pay the license fee to the concerned Government Department / Agency / Local Authority. The only issue that needs is w.r.t. classification of the service, i.e., whether the same can be classified as renting service or not?

- The reason for the same is that renting services provided by Government or local authorities is excluded from the scope of reverse charge mechanism, i.e., the tax thereon is to be paid by the Government / local authority providing the said service. Therefore, if it is ultimately decided that the services provided by the Government Department/ Agency/ Local Authority is indeed classifiable as renting service, the question of reverse charge does not arise.

- As per the definition of renting of service, as applicable w.e.f. 01.07.2012, it is more than evident that the services provided by the concerned Government Department/ Agencies/ Local Authority gets squarely covered within the scope of the same. Infact, the SCN at multiple occasions has referred to the fact that the payment is for licensing of space, i.e., an immovable property owned by such Government Departments/ Agencies/ Local Authorities.

- The appellant therefore submitted that it is more than apparent that the services provided by the concerned Government Departments/ Agencies/ Local Authorities is rightly classifiable as renting services and therefore the same are excluded from the purview of reverse charge mechanism.

- The appellant also submitted that same was the case with the Surat Municipal Corporationand Ahmedabad Municipal Corporation and therefore they had charged tax under forward charge and paid to the exchequer for which the credit of the appellant has been rejected.

- As per the provision of Notification No. 30/2012-ST dated 20.06.2012 in such cases the liability to pay tax on the person receiving the service. However, it is imperative to note that what is meant by the term "recipient of service" has not been defined under the service tax law. However, while understanding the scope of the term "recipient of service", it would be equally important to refer to the said notification in the context of GTA services where the liability to pay the tax has been cast on the person paying the freight, irrespective of who receives the service. This indicates the intention of the legislature to tax the person consuming the service when casting liability to pay tax

under reverse charge, and wherever the intention was different, an exception has been carved out as in the case of GTA.

- In the current case, it would be important to appreciate that they were not the recipient of service, but rather a facilitator of service for their clients who wish to receive the said service in case of property owned by the Government Department/ agencies/ local authorities. Similarly, even in the case of private properties where the only activity undertaken by the local authority is to grant the approval, the recipient of service is the owner of the property, whose responsibility generally is to obtain the necessary approvals or the actual advertiser.

- This reiterates their submission that they were merely the person who pays the fees/ facilitates the provision of service between the recipient of service and the service provider, and they themselves were not receiving the said service. Therefore, they submitted that even otherwise, thereis no liability on them to pay tax under reverse charge as they were not the recipient of the service in the first place itself.

- They submitted that in certain cases, the concerned Government Department/ Agencies/ Local Authorities have collected tax under forward charge mechanism from them and they have claimed credit of the same on the strength of the invoice raised to them.

- They submitted that the same is in compliance of Rule 4 & Rule 9 of the CENVAT Credit Rules, 2004. They submitted that Rule 4 (7), which lays down the conditions for availing credit of tax paid on input service provides as under:

"(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received"

- Similarly, Rule 9 of the said Rules prescribes the documents based on which the credit can be availed. Rule 9 (1) thereof provides as under:

"(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :- ....

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004; or"

- For reference, they are enclosed copies of invoices issued by the concerned Government Departments/ Agencies/ Local Authorities against which they have claimed the credit along with copies of their ledgers to demonstrate that the credit claimed by them is incompliance with the provisions of Rule 4 read with Rule 9 of the CCR, 2004.

- Assuming for a moment (without admitting) that the payments made to are liable to service tax (which they strongly deny) and they are liable to pay service tax under reverse charge mechanism, even then the same would result in revenue neutrality. They submitted that if service tax is held to be payable then the same would have been claimed as CENVAT Credit by them. In the case under consideration, they have neither paid service tax (as they were not liable to pay the same) nor have they claimed any CENVAT Credit of the same and hence the case is revenue neutral. In support of their aforesaid view, the appellant relied upon the following case laws:

  a) Commissioner v. Bhuwalka Pipes Pvt. Ltd. [2014(310) E.L.T. 23 (Kar.)]
  b) Lafarge India Private Limited v. CST,Mumbai [2015 -TIOL - 81 - CESTAT - MUM]
  c) Matrix Telecom P. Ltd. v. CCE, Vadodara-II 2013 (32) STR 423(Tri. Ahmd.)]

- The appellant submitted that in the present case the tax pertaining to Rs. 20,97,887/- has been deposited in the government treasury by the Surat and Ahmedabad Municipal Corporations under forward charge and there is no revenue loss to the department on account for the same.

- The only interpretational issue that arises is that whether the same would be payable under reverse charge or under forward charge. The Surat and Ahmedabad Municipal Corporations have recovered the same under forward charge. In support of their aforesaid view, the appellant relied upon the following case laws:

  a) Kakinada Seaports Ltd. v. CCE Vishakapatnam 2015 (40)S.T.R. 509 (Tri. - Bang.)
  b) EBY Security Services v. Commissioner of GST & Central Excise, Madurai 2019 (3) TMI 1430

- In the present case there could be no recovery of CENVAT credit from the appellant as the tax has already been deposited with the exchequer under forward charge. The appellant therefore submits that the current allegation has no merit and the demand is liable to be set aside on this ground as well.

- The extended period of limitation can be invoked only in a case where service tax has not been paid on account of fraud, collusion, and wilful misstatement, suppression of facts with an intention to evade tax. In other words, to invoke the extended period of limitation, there has to be an allegation to that effect and in case of failure of allegation, the extended period of limitation cannot be invoked.

- The impugned SCN has been issued invoking the extended period of limitation, i.e., under proviso to section 73 (1) of Finance Act, 1994 by alleging wilful suppression of material facts with an intention to evade payment of service tax liability. It is further alleged that had the investigation not been conducted, the fact of non-payment of service tax would have gone totally unnoticed / undetected. However, they submitted that the same is incorrect. They submitted that the extended period of limitation is not invokable for the reasons stated in the subsequent paragraph.

- They submitted that 'Suppression of fact' would mean a deliberate or conscious omission to state a fact with intent of deriving wrongful gain. The expression "suppression" has been accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation, the burden is cast upon it to prove suppression of fact.

- Please note that their audit has been already done by Assistant Commissioner (CGST Audit) for the year 2015-16. Hence one can say that they have not suppressed anything from the department either intentionally or unintentionally.

- Investigation by DGGI had been carried out thereafter for the period April-16 to June-17. Moreover they have paid amount to the Government Authorities they have charged

service tax under forward charge which proves that the said service is if liable to be taxed then forward charge is applicable on the saine.

- On going through the relevant contents of the SCN, it is apparent that it is not the case that any document was not provided to the Investigation Team. The fact is that the investigation started in May 2019 and concluded only after two years, i.e., in June 2021 and at no point in the SCN has there been a mention of the fact that they have not submitted the information called from them. In fact, the statement of directors were recorded three times over a period of two years. This in itself demonstrates their intent and tax behavior which is to co-operate with the tax authorities at each stage of the current investigation. Had there been an intention to suppress facts with an intention to evade payment of tax thereof, they would not have co-operated with the Investigation proceedings. In support of their aforesaid view, the appellant relied upon the following case laws:

  a) M/s. Oriental Insurance Company Limited (2021 (5) TMI 869)
  b) M/s. Gannon Dunkerley & Co. Ltd (2020 (12) TMI 1096)
  c) Rolex Logistic Private Limited v. CST (2013 STR 147 (Tri.Bang)
  d) Om Sai Professional Detectives and Securities Service Pvt. Ltd. v. CCE 2008 12 STR 79 (Tri.Bang)
  e) Continental Foundation Jt. Venture Vs.CCE, Chandigarh-I 2007 (216) E.L.T. 177 (S.C.)

- The non-payment of service tax was on account of bona-fide belief and involved interpretation of law. The reason behind not disclosing the amounts paid towards license fees in ST- 3 returns was that they were under a genuine belief that the said transactions were not liable to service tax in view of detailed submissions made earlier.

- Further, they were registered with the service tax department and were regular in filing the service tax returns. However, if at all there is contravention of the provisions of the law, it is due to bonafide belief of non-applicability of service tax in the instant case.

- As discussed in the preceding paras, as service tax is not required to be paid, no interest under section 75 can be demanded from us. It is a well-settled principle of law that where there is no demand of duty, interest and penalty cannot be imposed.

- Without prejudice to the above, the appellant would also like to state that in the absence of "mens rea", the question of levy of penalty under section 78 does not arise. It is to further submit that the existence of "mens rea" is important for the levy of the penalty and in cases where the mens rea is absent, no penalty can be levied.

- The impugned OIO confirmed penalty under section 77 of the Finance Act, 1994 for contravening the provisions of Finance Act, 1994, i.e., failure to correctly assess and discharge the tax liability. However, the appellant submitted that the impugned order is incorrect. The non-payment of tax on services received is on account of genuine belief of non-levy of tax and involves interpretation issue. If found payable, the same would be liable to penalty u/s 76/ 78. Since the said alleged contravention is liable to penalty u/s 76 or 78 of the Act, the question of levy of penalty u/s 77 does not arise.

4. Personal hearing in the case was held on 14.07.2023. Shri Bisan Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated submissions made in appeal memorandum. He submitted that the amount paid to the Municipal Corporation / government authorities was in the nature of rent on which service tax is not liable on RCM. He also submitted that no personal penalty is impossible on the directors. In view of the submissions made by them in the appeal and the case law relied by them, he requested to set aside the impugned order and allow the appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum; during the course of personal hearing and documents available on record. The issues required to be decided in the present appeal are

(i) Whether the appellant required to pay service tax of Rs. 59,60,422/- on the amount paid by them to the Government Department / Agency / Local Authority to allow the appellant to erect the advertisement in the properties owned by Government Department / Agency / Local Authority, reverse charge mechanism as recipient of services as per the provisions of Notification No. 30/2012-ST or otherwise;

(ii) Whether the Cenvat Credit of Rs. 20,97,887/- correctly availed by the appellant or otherwise; and

(iii) Whether the appellant is liable to pay interest and penalties as demanded or otherwise.

6. It is observed that the main contentions of the appellant are that (i) the services provided by the concerned Government Departments/ Agencies/ Local Authorities is rightly classifiable as renting of immovable services and therefore the same are excluded from the

purview of reverse charge mechanism and service tax is payable by the provider of the service under forward charge mechanism; (ii) even otherwise if they are liable to pay service tax under reverse charge mechanism, then the same would result in revenue neutrality, as the same would have been claimed as CENVAT Credit by them; (iii) in certain cases, the concerned Government Department/ Agencies/ Local Authorities have collected tax under forward charge mechanism from them and they have correctly claimed credit of the same on the strength of the invoice raised by concerned Government Department/ Agencies/ Local Authorities.

6.1 It is observed that the adjudicating authority has confirmed the demand of service tax vide the impugned order observing as under:

> *"31. ....*
> *I find that renting of immovable property is an entirely different thing as it would involve granting access for entry, occupation and beneficial purpose of the facility in an immovable property with or without transfer of the possession or control. Normally a rent agreement is prepared and beneficial enjoyment of facilities available in the premises is what is achieved by renting of immovable property.*
>
> *In the present case however, the authority concerned gave access to a premises merely for the purpose of display of advertisement. For example, if the railway authorities allow space for advertisement in station premises, it can be for a hoarding kept in the station premises & or the walls and public places therein being used for advertisement. There, is no access allowed to the Noticee for exclusive use of the premises of railways involved. In such cases, nothing more than display of advertisement for a specified period is achieved. Therefore, it is actually "Sale of space for advertisement, other than for print media", that has taken place in such cases and Service tax under reverse charge has been correctly demanded. The Noticee had paid a consideration total amounting to Rs 4,17,37,699/- to various government agencies and local authorities towards, sale of space for advertisement on which the Service tax liability amounted to Rs 59,60,422/- as worked in Table E of the Show Cause Notice. I find that Noticee is liable to pay the above service tax as a recipient of service."*

6.2 It is also observed that the adjudicating authority has confirmed the recovery of wrongly availed Cenvat Credit vide the impugned order observing as under:

"39. On the issue of Cenvat credit, it was submitted that the SCN has erred in alleging that the credit availed in cases where the Government Department/ Agencies/ Local Authorities had collected tax under forward charge was in violation of Rule 4 & Rule 9 of CENVAT Credit Rules, 2004 that in certain cases, the concerned Government Department/ Agencies/ Local Authorities have collected tax under forward charge mechanism from them and they have claimed credit of the same on the strength of the invoice raised to them and the same is in compliance of Rule 4 & Rule 9 of the CENVAT Credit Rules, 2004. The sub rule (7) of Rule 4 of the Cenvat Credit Rules was quoted in this regard.

The first proviso to sub rule (7) of Rule 4 of CENVAT Credit Rules, 2004, stipulates that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid. It is not in dispute that tax on the input service, the credit of which is claimed in the present case, was liable to be paid by the Noticee as a service recipient. Therefore, the only way to ensure that the said service tax is actually paid is by ensuring the tax challan as the document for taking credit. Therefore, the sub rule (1) of rule 9 of the Cenvat Credit Rules. 2004 specifies in clause (e) that a challan evidencing payment of service tax, as the proper document for taking Cenvat Credit in this kind of cases. Since the credit of Service tax has been claimed on the basis of tax invoices, it has rightly been proposed to be denied."

7. For ease of reference, I reproduce the relevant provision of Notification No. 30/2012-ST dated 20.06.2012 as amended; relevant provision of Section 66E of the Finance Act, 1994 and definition of "renting" as provided under Section 65B(41) of the Finance Act, 1994, which reads as under:

*"**Notification 30/2012 Service Tax dated 20.6.2012** GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-*

I. The taxable services, -

(A) .....

(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following table, namely: -

Table

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by any person liable for paying service Tax other than the service provider
6.	in respect of services provided or agreed to be provided by Government or local authority [***] [The words " by way of support services" omitted by Notification No. 18/2016-ST, dated 1-3-2016 w.e.f. 1-4-2016.] excluding,- (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994	Nil	100%

"SECTION 66E. Declared services. — The following shall constitute declared services,namely:—

(a) renting of immovable property

(b) ... ..."

"SECTION 65B.Interpretations.—
In this Chapter, unless the context otherwise requires,—

*(41) "**renting**" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;"*

7.1 In view of the above provision, it is ample clear that if the service provided by the government or local authorities classifiable as 'sale of space for advertisement', than in such case the liability of payment of service tax is on the appellant on reverse charge mechanism. Whereas, if the service provided by the government or local authorities classifiable as 'renting of immovable property', than in such case the liability of payment of service tax is on the

government or local authorities i.e. service provider on forward charge basis as the 'renting of immovable property' specifically excluded in entry No. 6 of the Notification No. 30/2012-ST dated 20.06.2012, as amended.

7.2 Now, the main question is whether the services provided by the government or local authorities classifiable as 'sale of space for advertisement' or as 'renting of immovable property'. In this regard, I find that there are always three parties in such cases / transactions, i.e. (i) a Person/ Customers / advertiser who want to put their advertisement on the hoarding; (ii) the advertisement agency; and (iii) the owner of the immovable property who want to give their property on rent and earned money. In the first type of transaction a person / customer / advertiser take the hoardings on rent from advertisement agency for a specific period which can running between few day to a longer period for display their advertisement on the hording. In such transaction, it is definitely advertisement service i.e. 'sale of space for advertisement'. It is also pertinent to note that the space given on rent by the advertisement agency to the customer and the advertisement agency in this case not the owner of the immovable property. However, in second type of transaction, the owner of the immovable property give their property on rent to the advertisement agency gets rent every month/year, irrespective of the facts that there is an advertise display on the hoarding or not. The owner of the immovable property has no relation with the transactions between advertisement agency and it's clients. In fact, the owner of the immovable property is renting space only and does not render any service of advertisement. As per definition of renting as provided under Section 65B(41) of the Finance Act, 1994 *"renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.* In the present case, the government or local authorities allowing the appellant to use the specific portion of the immovable property under licensing and recover license fee from the appellant. In the present case, there is also no link between the advertiser and the government or local authorities, therefore, it cannot be said that the government or local authorities engaged in providing services of 'sale of space for advertisement'. In fact, the government or local authorities engaged in providing services of renting of their immovable properties for a fix monthly rent to the appellant and appellant in turn provided the services of 'sale of space for advertisement' of their client i.e. advertiser. In view of the aforesaid discussion, I am of the considered opinion that since the essense of the transaction is not a contract of advertisement, the service provided in the instant case classifiable as "renting of immovable property service" provided by the government or local authorities.

8. As regard, the second issue of availment of Cenvat Credit of Rs. 20,97,887/- by the appellant on the basis of tax invoices and denial of Cenvat credit by the adjudicating authority on the ground that the credit of which is claimed in the present case, was liable to be paid by the appellant as a service recipient through a challan and the said challan is the proper document for taking Cenvat Credit in this kind of cases, I find that the adjudicating authority erred in giving such vague findings. As per the Rule 9(1)(f) of the Cenvat Credit Rules, 2004, a provider of output service can take the Cenvat credit on the strength of an invoice issued by a provider of input service. The Rule 9(1)(f) of the Cenvat Credit Rules, 2004, reads as under:

> *"9. Documents and accounts.- (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :*
> *(a) an invoice issued by-*
> *(b) ....*
> ***(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004;"***

8.1 I also find that as held in the para supra that the government or local authorities engaged in providing services of renting of their immovable properties and thus service tax required to be paid by government or local authorities on forward charge basis, the appellant correctly availed the Cenvat credit on the strength of tax invoices.

8.2 I also find that there is catena of decision of the Hon'ble Tribunals that the Cenvat Credit cannot be denied on the ground that the tax is not required to be paid by the invoice issuing entity, when the tax is paid by the input service receiver. On verification of the documents viz. Invoices, Payment receipt as well as Certificate dated 18.05.2023 of the Chartered Accountant, certifying that the appellant paid Service Tax amounting to Rs. 20,97,887/- to the Surat Municipal Corporation, Ahmedabad Municipal Corporation and Ahmedabad Municipal Transport Services, I find that the appellant correctly availed the Cenvat credit of Rs. 20,97,887/-.

9. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of service tax and denying the Cenvat credit is not legal and proper and deserve to be set aside. Since the demand of service tax is not sustainable on merits, I am not delving into the aspect of revenue neutrality raised by the appellant. When the demand fails, there does not arise any question of charging interest or imposing penalties on the appellant as well as on the directors of the appellants in the case.

10. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

11. 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)

Date: 25.08.2023

Attested

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

By RPAD / SPEED POST

To,
M/s. Chitra Publicity Co. Pvt. Ltd.,
Ashish Complex, 2nd Floor,
C.G. Road, Swastik Char Rasta,
Navrangpura, Ahmedabad – 380009

Appellant

The Joint Commissioner,
Central GST,
Ahmedabad South

Respondent

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad South
3) The Joint Commissioner, CGST, Ahmedabad South
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South (for uploading the OIA)
5) Guard File
6) PA file