आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
. ☎ 07926305065- टेलेफैक्स07926305136

DIN: 20231064SW0000129356

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/3467/2022-APPEAL/6885

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-99 /2023-24
दिनाँक Date : **28-08-2023** जारी करने की तारीख Date of Issue 03.10.2023

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

ग Arising out of Order-in-Original No. **86/ADC/GB/2021-22** दिनाँक:**21.03.2022** , issued by The Additional Commissioner, CGST, Ahmedabad North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
M/s. Dhruvisha HVAC System Pvt. Ltd., Shop No. 208& 213, Shopper Plaza, Adani Shantigram, S.G Highway, Ahmedabad
2. Respondent
The Additional Commissioner, CGST, Ahmedabad North, Ist Floor, Custom House,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 गामलों 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 हानि कारखाने 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 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 सगय 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 दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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 हो तो रूपये 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 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 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 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 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) 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

M/s. Dhruvisha HVAC System Pvt. Ltd., Shop No. 208 & 213, Shopper's Plaza, Adani Shantigram, Near Vaishnodevi Circle, S.G. Highway, Ahmedabad-382421 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 86/ADC/GB/2021-22 dated 21.03.2022, (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were holding Service Tax Registration No. AADCD7011QSD001.

2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 and F.Y. 2016-17, it was noticed that the appellant had earned substantial income by providing taxable services. The income reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total Amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" of the Income Tax Act, 1961 was less than the income declared in the ST-3 Returns, on which no tax was paid. 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 & F.Y. 2016-17. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability was, therefore, quantified considering the highest differential income of Rs.6,15,56,273/- as taxable income, based on the data provided by the Income Tax Department and the service tax liability of Rs.86,26,771/- for the said period was accordingly worked out.

Table-A

F.Y.	*Value as per ITR*	*Value of total amount paid /credited under 194C, 194H, 194I, 194J*	*Value as per ST-3 Return*	*Highest Difference*	*Service Tax rate*	*Service Tax Payable*
2014-2015	3,27,85,847	90,812	98,05,912	2,29,79,935	12.36%	28,40,320
2016-2017	71,81,486	3,85,76,338	0	3,85,76,338	14.5%	57,86,451
				6,15,56,273	**Total**	**86,26,771/-**

2.1 A Show Cause Notices (SCN) bearing No. STC/15-90/OA/2020 dated 29.09.2020 was issued to the appellant proposing recovery of service tax of Rs.86,26,771/- along with interest, on the differential value of income received during the F.Y. 2014-15 & F.Y. 2016-17 under Section 73(1) and Section 75 of the Finance Act, 1994. Imposition of penalties under Section 77 (1) & 77(2) and under Section 78 of the Finance Act, 1994 were proposed. Late fee was also proposed under Section 70 of the F.A. 1994.

3. The SCN was adjudicated vide the impugned order wherein the total service tax demand of Rs.86,26,771/- was confirmed alongwith interest. Penalty of 10,000/- each

was imposed under Section 77(1) and 77(2). Penalty of Rs.86,26,771/- was also imposed under Section 78 of the Finance Act. Penalty for late filing of return under Section 70 was also imposed.

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

- The appellants are in the business of supply of air-conditioning equipment and parts thereof. They provide maintenance or repair service and also receive commission from various persons. Their main activity is supply of air-conditioning equipment and parts thereof which is a trading activity on which VAT is payable. The ancillary activity of maintenance or repair service as well as receipt of commission is taxable under the Service Tax Act for which they are registered with Service Tax Department. They have also filed ST-3 Returns for the disputed period. Copies of the same are submitted.

- They submitted that they have not been heard in the matter. No hearing intimations were received by them hence the order passed is in gross violation of principles of natural justice. During COVID-19 pandemic, the department was instructed to conduct hearing online and also hearing intimations are issued by email. However, no such hearing intimation was received by the appellants by email. Even intimation in physical form was also not received.

- The show cause notice is issued on the basis of difference between Income Tax Returns/26AS Form and Service Tax Returns. The appellants are in the business of trading and majority of the turnover is from trading business. Hence, there would be difference in such figure shown in ITR vis-a-vis Service Tax returns. The appellants have paid service tax on their service turnover. On the remaining turnover, they have paid VAT. Copies of VAT Returns for the relevant Financial Years are submitted hence the demand is wrongly confirmed on turnover pertaining to trading business.

- The demand is also barred by limitation. The appellants have filed service tax returns and also Income Tax Returns therefore extended period of limitation is not invokable. Thus, the demand is wrongly confirmed and required to be quashed and set aside.

- The demand is issued on the basis of returns filed by the appellants. Once the reliance is placed on records and documents prepared by the assessee and returns submitted with the authority, 100% penalty u/s. 78 is clearly not impossible. Hence, the order is bad in law and is required to be quashed and set aside.

4.1 On going through the appeal memorandum, it is noticed that the impugned order was issued on 21.03.2022 and the same was received by the appellant on 08.06.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994,

was filed on 10.08.2022 i.e. after a delay of 2 days from the last date of filing appeal. Therefore, the appellant have filed a Miscellaneous Application seeking condonation of delay citing the reasons of some misunderstanding between the Advocate and the office clerk, hence, they could not file the appeal in time. They therefore requested to condone the delay which was within the condonable period.

5. Personal hearing in the matter was held on 14.07.2023. Shri Nirav P. Shah, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in the Miscellaneous Application seeking condonation of delay and the submissions made in the Appeal Memorandum. He submitted that there was delay in receipt of the impugned order and the date of actual receipt, as per acknowledgment given by them is enclosed. Further they made pre-deposit as per proper method. A copy of which is submitted. He also submitted that the appellant apart from providing service, received income from sale of AC systems during the F.Y. 2014-15. During the financial year 2016-17 the appellant did not provide any service and the entire income received was from sale of such goods. Sample invoices and other financial records have been submitted. He undertook to provide a copy of VAT Return, ITR and Form 26 AS within few days.

5.1 The appellant vide letter dated 25.07.2023, submitted the documents like VAT Return, ITR, Form-26AS, Balance Sheet for the F.Y. 2014-15 and F.Y. 2016-17. They vide letter 11.08.2023, gave further clarification that the discount received from supplier of the Air Conditioner has been transferred to respective buyers of Air Conditioners by reducing the sale price. Hence, the same is not booked in income of the appellant. Regarding the TDS under payment to contractor head it is submitted that the appellant have sold Air Conditioning System which includes installation. Some of the customers have treated aforesaid supply under "payment to contractor" and have deducted TDS on the same. However they have considered the same as supply of goods and have paid VAT on entire sales price. It is settled law that once VAT is paid, Service Tax demand is not sustainable on such sales.

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 to 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 2 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 submissions as well as those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs. 86,26,771/- alongwith interest and penalties, confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise.

The demand pertains to the period F.Y. 2014-2015 & F.Y.2016-17.

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

7.2 The appellant claim that they are in the business of supply of air-conditioning equipment and parts thereof. They have provided maintenance or repair service and have received commission income. Their main activity is trading of air-conditioning equipment and parts thereof on which they have paid VAT. On the Maintenance and Repair services and on commission income received, they claim to have paid Service Tax. They also submitted a sample invoice showing the payment of VAT made for sale of 'CFM Exhaust Fan' and a sample invoice to prove that they have collected Service tax on installation charges of split A.C.

7.3 I find that the demand has been raised based on the differential income on which no service tax was paid by the appellant. The appellant have submitted ST-3 Returns filed for the F.Y. 2014-15. However, the ST-3 Returns for F.Y 2016-17 (April to Sept) was not submitted. On going through the VAT returns, I find that the appellant have shown the sales turnover of Rs.3,50,18,406/- on which VAT of Rs.23,55,932/- was paid during the F.Y. 2014-15. Similarly, for the F.Y. 2016-17, Sales Turnover of Rs. 9,98,08,918/- is shown on which VAT of Rs.92,30,158/- has been discharged. Also, in the Balance Sheet, the appellant have shown following income:-

F.Y.	Differential Income as per SCN	Income from Sales	Other Income	Income from Brokerage	Income from sub-contractor	Total Income as per B/S
2014-15	2,29,79,935/-	3,27,85,847/-	3,85,555/-	3,08,856/-	1,19,853/-	3,36,00,111/-
2016-17	3,85,76,338/-	9,78,37,545/-	44,74,471/-	72,486/-	7,42,534/-	10,31,27,036/-

7.4 It is observed that in the SCN differential income has been arrived by considering the highest value of ITR/Form-26AS vis-a-vis STR-3 Value. The appellant have claimed that they are mainly in the business of trading of air-conditioning equipment and parts thereof. They also provide maintenance or repair service and receive commission from various persons. On the trading activity they claim they have paid VAT and for the ancillary activity of maintenance or repair service as well as receipt of commission they are registered with Service Tax Department and have been paying service tax. They claim that difference in the taxable income reflected in the ITR /Form-26AS vis-a-vis STR-3 is due to the fact that they receive discount from supplier of the Air Conditioner. This discount is subsequently transferred to respective buyers of Air Conditioners by reducing the sale price. As the discount is not retained by them, the same is not booked as income of the appellant in the books of accounts. Regarding the TDS deducted under payment to contractor head; they claim that they have sold Air Conditioning System which includes installation. Some of their customers have treated aforesaid supply under "payment to contractor" and have deducted TDS on the same. Since a single invoice is

raised for both supply of goods and installation charges the appellant have considered the same as supply of goods and have paid VAT on entire sales price. They claim that since VAT is paid on the gross amount demanding Service Tax again on commission separately shall lead to double taxation.

7.5 From the facts of the case, it is observed that the appellant had been paying VAT on the entire sales price which includes installation charges also. It is observed that the appellant have paid service tax on the Commission Income as well as on the sub-contractors income received during the F.Y. 2014-15. They have discharged the service tax of Rs.99,868/- under Maintenance & Repair service for the F.Y. 2014-15 (April to September) and they also discharged the service tax of Rs.33,393/- under Maintenance & Repair service and Rs.268375/- under works Contract Service and Rs.3,67,927/- under Business Auxiliary Service for the period (October,2014 to March, 2015). However, these payments were not taken into consideration by the adjudicating authority while arriving at the tax liability.

7.6 As per the Balance Sheet, for the F.Y. 2016-17, it is observed that the appellant have earned commission income of **Rs.8,15,020/-** earned (i.e. Rs.72,486/- income from commission plus Rs.7,42,534/- income from contractors & sub-contractors) on which they have not discharged any service tax liability. As the appellant could not produce any documents like challans or ST-3 returns to this effect, I therefore find that the appellant is liable to discharge the service tax on the commission income as well as the commission earned as sub-contractor.

7.7 Further, on the remaining income the appellant has already discharged VAT, reflecting the value as sale of goods in their books of accounts. Regarding the income from sale of goods, the appellant have passed on the discounts received from supplier to their clients by reducing the price and have also discharged appropriate VAT on such value, hence, I find that the demand of service tax earned on such income is not sustainable as there is no service element involved in such transaction. They also produced sample invoices to this effect and also provided the VAT returns to substantiate their above claim. These invoices clearly show the payment of VAT paid on the gross value.

8. Thus, in view of the above discussion I find that the appellant is liable to pay service tax of the income of Rs.8,15,020/- on which the tax liability comes to **Rs.1,18,178/-.** When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest.

9. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. I find that the appellant was rendering a taxable service but they suppressed the value of taxable service and hence such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. They also failed to submit the documents to prove that the non-payment of tax was related to non-taxable services. Thus they contravene the provisions of Section 67, 68 & 70 of the F.A. 1994. 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. In light of 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.)], I uphold the penalty equal to the tax upheld in para-8 supra.

10. As regards the imposition of penalty under Section 77 (1) is concerned; I find that the same is also imposable. The appellant were rendering the taxable service, however, they failed to properly access the tax liability and also failed to submit the information/documents as called for, all such acts make them liable to a penalty. However considering the reduction of the tax, I reduce the penalty to Rs.5,000/- imposed under Section 77(1) of the Finance Act, 1994. Further, I find that penalty under Section 77(2) read with Section 70 of Finance Act, 1994 being civil in nature, the same is liable to be imposed when the appellant has failed to furnish the correct information in ST-3 return. I, however, reduce the penalty from Rs.5,000/- under Section 77(2) considering the reduction in tax. Further, I also uphold the late fees imposed under Section 70 for non-filing of ST-3 Returns during the disputed period but reduce the same to Rs.5,000/- considering the fact that the appellant has already filed the ST-3 for the F.Y. 2014-15.

11. In view of the above discussion, I partially uphold the impugned order confirming the service tax demand of **Rs.1,18,178/-** alongwith interest and penalties to the extent modified above.

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

(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 14.8.2023

Attested

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

By RPAD/SPEED POST

To,
M/s. Dhruvisha HVAC System Pvt. Ltd.,
Shop No. 208 & 213, Shopper's Plaza,
Adani Shantigram, Near Vaishnodevi Circle,
S.G. Highway,
Ahmedabad-382421

Appellant

The Additional Commissioner.
CGST, Ahmedabad North

Respondent

Copy to:

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