आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in

सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST

DIN:- 20231164SW00006606CC

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3568/2023-APPEAL / 18237
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-002-APP-123/2023-24 and 31.10.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	17.11.2023
(ङ)	Arising out of Order-In-Original No. 38/DC/D/VM/22-23 dated 06.01.2023 passed by the Deputy Commissioner, CGST, Division-III, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Aakar Developers, 2nd Floor, Aakar Arcade, Sanand-Ahmedabad Highway, Sanand, Ahmedabad - 382110

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 : -

(क) 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।

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.

(ख) 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।

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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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 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.

(3) 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 :-

(2) उक्तलिखित परिच्छेद 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, वहुमाली भवन, असरवा, गिरधरनागर, अहमदावाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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 संषोधित की अनुसूची -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 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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)।

(1) खंड (Section) 11D के तहत निर्धारित राशि;
(2) लिया गलत सेनवैट क्रेडिट की राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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.

(6) (i) 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 तव 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. Aakar Developers, 2nd Floor, Aakar Arcade, Sanand-Ahmedabad Highway, Sanand, Ahmedabad -382110 (hereinafter referred to as "*the appellant*") have filed the present appeal against Order-in-Original No. 38/DC/D/VM/22-23 dated 06.01.2023 (hereinafter referred to as "*the impugned order*") passed by the Deputy Commissioner, CGST, Division-III, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated the facts of the case are that the appellant are engaged in the providing Construction of Residential Complex Services / Commercial units and Renting of Immovable Property Services. They are holding Service Tax Registration No. AAWFA1010GSD001. During the course of audit of the financial records of the appellant, for the period from April-2016 to June-2017, conducted by the officers of the Central GST, Audit Commissionerate, Ahmedabad, following observation was raised vide FAR No.588/2020-21 dated 21.12.2020;

a) **Wrong percentage of abatement availed in respect of construction of residential complex service:**

The appellant had availed abatement @ 75% for the FY 2016-17 and FY 2017-18 (up to June-2017) under Notification No. 26/2012-ST dated 20.06.2012, as amended. It was observed that the abatement rate allowed for residential units was only @ 70% for the F.Y 2016-17 and F.Y 2017-18 (up to June-2017) under Notification No.26/2012-ST as amended vide the Notification No. 8/2016-ST dated 01.03.2016, whereas, the appellant have paid Service Tax after taking availing abatement of 75%. Accordingly, it found that the appellant had availed an excess of 5% abatement for the residential units for payment of Service Tax and in turn short paid Service Tax amounting to **Rs. 3,72,831/-.**

b) **Penalty for late filing of ST-3 Returns:** It was observed that the appellant had delayed the filing of ST-3 Return by 2 days for the period from April-16 to September-2016 and filed ST-3 Return for the period from April-17 to June-2017 after 2 days delay from the prescribed due dates and therefore, they are liable to pay total late fees amounting to **Rs. 1,000/-** under the provisions of Section 70(1) of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

c) **Short payment of Service Tax on Rent Income:**
It was observed that the appellant had short paid Service Tax on the rent income received by them in the F.Y 2016-17. The appellant have provided a reconciliation sheet based upon which they have to pay Service Tax on the value of Rs. 2,90,348/-, whereas they had paid Service Tax on the value of Rs. 2,53,478/- only. Accordingly, the appellant had short paid Service Tax amounting to **Rs. 5,531/-** on the differential value of Rs. 36,870/-.

d) **Short payment of Service Tax on reconciliation:**
On reconciliation of the income shown in their Financial Statements and those shown in their ST-3 Returns for the FY 2016-17, a difference in income of Rs.

4,40,430/- was noticed. Thus, the appellant had short paid Service Tax amounting to **Rs. 66,065/-** on the said difference for the F.Y 2016-17.

2.1 The above audit observations were not accepted by the appellant, therefore, a SCN bearing No. III/SCN/DC-Audit/Aakar/106/21/-22 dated 15.04.2021 was issued to the appellant. The SCN proposed Service Tax demand amounting to Rs.4,44,426/-(Rs. 3,72,830/- + Rs. 5,531/- + Rs. 66,065/-) under the proviso of Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and proposing penalty under Section 78 of the Finance Act, 1994; recovery of late fees/ penalty of Rs. 1,000/- under the provisions of Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

3. The said SCN was adjudicated vide impugned order wherein the Service Tax demand amounting to Rs. 4,44,426/- proposed in SCN was confirmed under the proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994; penalty of Rs. 4,44,426/- under Section 78 and penalty / late fees of Rs. 1,000/- was also confirmed under the provisions of Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

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

- The adjudicating authority erred in determining the value of taxable services by adopting amended rate of abatement of 70% instead of 75%. With effect from 01.03.2016, the government had reduced the rate of abatement from 75% to 70% without attributing any cogent reason and justification. However, the appellant had already entered into agreement with the respective buyers and offered the price considering the fiction of 75%, whereas the government suddenly increased the liability which was having adverse impact on the transactions. The increase in the liability by way of reduction in the rate of abatement was completely unjustified, illogical and unwarranted on part of the government. Therefore, the appellant continued to pay the service tax as per the value already determined and agreed upon with the buyers considering the rate of abatement of 75% and discharge the service tax.

- The adjudicating authority erred while determining the value of taxable services under the Notification which is ultra vires to the provision of Section 67 of the Finance Act, 1994. The value of difference determined by the audit officers comprising the element of goods as well as land on which the levy of Service Tax under the Finance Act, 1994 was unsustainable. This, the adjudicating authority erred while determining the value of taxable services by including the differential value without following the procedure laid down in Service Tax (Determination of Value) Rules, 2006.

- The adjudicating authority erred while demanding service tax of Rs. 5,531/- on renting services.

- The adjudicating authority also erred while demanding service tax of Rs. 66,065/- on the differential value determined in reconciliation statement prepared by the

audit officers and not substantiated / corroborated by the contemporaneous evidences.

- The adjudicating authority failed to appreciate the fact that adopted the rate of abatement of 75% was very well reflected in ST-3 by the appellant and therefore, the extended period of limitation was not available to issue notice.

- The adjudicating authority was not justified in demanding interest under Section 75 of the Finance Act, 1994; demanding late fees under Rule 7C of the Service Tax Rules, 1994 and imposing penalties under Section 78 of the Finance Act, 1994.

5. Personal hearing in the case was held on 29.09.2023. Shri Rahul Patel, Chartered Accountant appeared on behalf of the appellant. He reiterated submissions made in appeal memorandum. He claimed that the appellant had claimed 75% abatement in respect of construction of residential complex service instead of 70% applicable w.e.f. 01.03.2016. The appellant had filed the ST-3 return and disclosed the abatement according to previous rate and paid service tax accordingly. However, the adjudicating authority has treated the same as suppression and has confirmed the demand invoking the extended period. He submitted that since the appellant had filed return disclosing all the facts and the difference in calculation was due to ignorance of change in rate, the same cannot be treated as suppression to invoke extended period. Therefore, he requested to set-aside the impugned order. He also submitted that the rate of abatement is contrary to law declared by Delhi High Court in case of Suresh Kumar Bansal and accordingly additional tax liability confirmed by the adjudicating authority is not sustainable. He requested to drop the entire demand with consequential reliefs.

5.1 Due to change in the appellate authority, fresh personal hearing was granted to the appellant on 12.10.2023. However, nobody appeared for personal hearing. So considering the above submissions, I proceed to decide the case on merits.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the appeal memorandum 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 service tax demand of Rs. 4,44,426/- 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 F.Y 2016-17 to FY 2017-18 (up to June-2017).

6.1 On the first issue regarding service tax demand of **Rs. 3,72,831/-**, due to excess abatement availed in respect of construction of residential complex service, the appellant is contesting the issue on merits as well as on limitation. They claim that abatement was reduced from 75% to 70% with effect from 01.03.2016. And since they have already entered into agreement with the respective buyers and offered the price considering the fiction of 75%, sudden increase in the liability by way of reduction in the rate of abatement would have made adverse impact on the transactions. Therefore, they continued to pay the service tax as per the value already determined and agreed

upon with the buyers considering the rate of abatement of 75% and discharge the service tax, instead of 70%.

6.2 It is observed that vide Notification No. 26/2012-S.T., dated 20-6-2012, an abatement of 75% was available on value of construction of a complex, building, civil structure other than residential unit. Relevant text of the notification is reproduced below:-

Notification No. 26/2012-S.T., dated 20-6-2012

Exemption from Service tax in relation to transport of goods and passengers tour operators, financial leasing, hire purchase, renting of hotels, inns, guest houses, clubs campsites or other places, chit funds, renting of cabs, construction of complex/building for sale — Notification No. 13/2012-S.T. superseded

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), and in supersession of notification number 13/2012-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. 211(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (2) of the Table below, from so much of the service tax leviable thereon under section 66B of the said Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the said Table, of the amount charged by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table, namely :-

Sl.No.	Description of taxable service	Percent-age	Conditions
(1)	(2)	(3)	(4)
12.	*Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority.*	*25*	*(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004.* *(ii)* ***The value of land is included in the amount charged from the service receiver.***

Explanation. –

C. For the purposes of exemption at Serial number 12,

The amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services supplied to the service provider, if any; and

(ii) the value added tax or sales tax, if any, levied thereon :

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

6.3 However, the aforesaid abatement of 75% was reduced to 70% vide Notification No. 2/2013-S.T., dated 1-3-2013 and the conditions prescribed in the earlier notification prevailed. So, after the amendment (with effect from 01.03.2013), the appellant was required to discharge duty on the 30% of the taxable value subject to the conditions that the value of land is included in the amount charged from the service receiver. In both the notifications the value of land was included in the taxable value. The appellant enjoyed the earlier abatement on same condition, therefore contesting the same condition for availing the amended abatement appears to be illogical hence not sustainable.

6.4 They also contended that the valuation adopted by audit is contrary to law declared by Delhi High Court in case of ***Suresh Kumar Bansal as reported in 2016 (43) S.T.R. 3 (Del.).*** It is observed that Hon'ble Delhi High Court in its impugned order had held that the explanation added to Section 65(105)(zzzh) of the Finance Act, 1994 vide the Finance Act, 2010 expanding scope of taxability of Construction of Complex intended for sale by builders, was *ultra vires* as there was no statutory mechanism to ascertain value of service component of subject levy. It was held that the Service Tax could not be levied on the value of undivided share of land acquired by the buyer of dwelling unit or on the value of goods which are incorporated in the project by the developer. However, this decision is appealed and is pending ***Union of India*** v. ***Suresh Kumar Bansal - 2017 (4) G.S.T.L. J128 (S.C.)].***

6.4.1 In the said case, the controversy involved relates to the question whether the consideration paid by flat buyers to a builder/promoter/developer for acquiring a flat in a complex, which under construction/development, could be subjected to levy of service tax. According to the petitioners, the agreements entered into by them with the builder are for purchase of immovable property and the Parliament does not have the legislative competence to levy service tax on such transaction. However, in the instant case the dispute pertains to wrong availment of abatement. Thus, I find that the reliance placed by the appellant on above decision is misplaced.

6.5 Accordingly, I find that the appellant is not eligible for abatement beyond the prescribed rate. Hence, the demand is sustainable on merits.

7. The appellant have also contested the said demand on limitation. The appellant have claimed that they have disclosed the previous rate of abatement in their ST-3

return hence suppression cannot be alleged. Accordingly, the demand invoking the extended period is time barred. It is observed that the appellant has not submitted the ST-3 Returns to substantiate their claim that the rate of abatement was disclosed in the returns. In the ST-3 return, the assessee is required to mention the notification, value and abated value claimed thereunder. Mere mention of above facts in the ST-3 cannot be a considered as full disclosure of information as the rate of abatement claimed is not disclosed. Further the appellant themselves have admitted that the difference in calculation was due to ignorance of change in rate and to the fact that the reduction in abatement shall increase the pricing and affect their liability. Hence, the mensrea was to evade the taxes and this is sufficient to invoke extended period. Not only that, it is also a case of willful mis-statement. When the rate of abatement was in knowledge of public, ignorance cannot be a defence.

8. On the Service Tax demand of **Rs.5,531/-** short paid on the rent income received by them in the F.Y 2016-17, it is observed that the same was arrived based on the reconciliation sheet provided by the appellant. The appellant had not submitted any grounds contending said demand hence, I uphold the said demand alongwith interest.

9. The Service Tax demand of **Rs. 66,065/-** was arrived on reconciliation of the income shown in their Financial Statements and those shown in their ST-3 Returns for the F.Y 2016-17 as a difference in income of Rs. 4,40,430/- was noticed. The appellant in the appeal have claimed that the demand has been raised without any corroborative evidences. Such argument is not sustainable. The appellant could not produce any documentary evidence justifying the above difference. Hence, I find that the said demand is also justifiable.

10. Similarly, on the late fees of **Rs. 1000/-** also, the appellant failed to make any submissions, hence the same is also upheld.

11. Accordingly, I find that the total Service Tax demand amounting to **Rs. 4,44,426/-** confirmed in the impugned order is sustainable on merits as well as on limitation. When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest.

12. 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 therefore uphold the penalty equal to the tax upheld in para-11 supra.

13. In view of the above discussion, I uphold the impugned order confirming the service tax demand of **Rs. 4,44,426/-** alongwith interest and penalties.

14. 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.

31.10.23

(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date: 31.10.2023

Attested

(रेखा नायर)
अधीक्षक(अपील्स)
सी. जी. एस. टी, अहमदाबाद

By RPAD / SPEED POST

To,
M/s. Aakar Developers, - **Appellant**
2nd Floor, Aakar Arcade,
Sanand-Ahmedabad Highway,
Sanand, Ahmedabad - 382110

The Deputy Commissioner, - **Respondent**
CGST, Division-III,
Ahmedabad North

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad North
3) The Deputy Commissioner, CGST, Division-III, Ahmedabad North
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North (for uploading the OIA)
5) Guard File