

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT No.II
(E-Hearing)

Service Tax Appeal No.70208 of 2021

(Arising out of Order-in-Original No.09/PC/2020-2021 dated 29/01/2021
passed by Commissioner of Central Excise & CGST, Lucknow)

M/s Embellishment,

.....Appellant

(4/15, Vivek Khand,
Gomti Nagar, Lucknow-226010)

VERSUS

Commissioner of Central Excise &

Service Tax, Lucknow

....Respondent

(7-A, Ashok Marg, Lucknow-226001)

WITH

Service Tax Appeal No.70193 of 2021

(Arising out of Order-in-Original No.09/PC/2020-2021 dated 29/01/2021
passed by Commissioner of Central Excise & CGST, Lucknow)

Commissioner of Central Excise &

Service Tax, Lucknow

.....Appellant

(7-A, Ashok Marg, Lucknow-226001)

VERSUS

M/s Embellishment Anita V Mishra,

....Respondent

(4/15, Vivek Khand,
Gomti Nagar, Lucknow-226010)

APPEARANCE:

Shri Dharmendra Kumar, Chartered Accountant for the Assessee
Smt Chitra Srivastava, Authorised Representative for the Revenue

**CORAM: HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70886-70887/2025

DATE OF HEARING : 16 October, 2025
DATE OF PRONOUNCEMENT : 18 December, 2025

SANJIV SRIVASTAVA:

These appeals one filed by the assessee (appellant) and other filed by the revenue are directed against Order-in-Original No.09/PC/2020-21 dated 29.01.2021 of the Principal Commissioner, CGST & Central Excise Lucknow. Vide the impugned order following has been held:

"ORDER

1. *I demand and confirm the Service Tax amounting to Rs. 1,92,36,661/- (Rupees One Crore Ninety Two Lakh Thirty Six Thousand Six Hundred and Sixty One Only) (including Ed.Cess, H.Ed.Cess. SBC & KKC as applicable) for the period from April' 2013 to March'2017 upon M/s Embellishment (Anita V. Mishra), 4/15, Vivek Khand, Gomti Nagar, Lucknow Uttar Pradesh under proviso to Section 73(1) of the Act read with Section 173, 174 & 142 of Central Goods & Services Tax Act, 2017 (hereinafter referred as "CGST Act"). I also appropriate the Service Tax amounting to Rs. 55,00,000/- deposited during course of investigation for which challans are available on record, against the tax liability being confirmed. If any other amount as claimed by the Noticee has been deposited the same shall also be appropriated subject to production of evidence to the satisfaction of proper officer in this regard.*
2. *I also demand and confirm interest due on the Service Tax being confirmed at the applicable rate on the Noticee under Section 75 of the Act read with Section 173, 174 & 142 of CGST Act.*
3. *I also impose a penalty of Rs. 96,18,331/- (Rupees Ninety Six Lakh Eighteen Thousand Three Hundred and Thirty One only), upon M/s Embellishment (Anita V. Mishra), 4/15. Vivek Khand, Gomti Nagar, Lucknow under Section 78 of the Act for non-payment of due Service Tax by suppressing the value of taxable services with intent to evade the payment of Service Tax from the department, read with Section 173 & 174 of CGST Act The penalty imposed herein*

shall be further reduced to 25% of the demand of Service Tax confirmed herein subject to the condition that the benefit of reduced penalty shall be applicable only if the amount of such reduced penalty is also paid along with the Service Tax confirmed and the interest payable thereon within a period of 30 days of receipt of this order.

4. *I also impose a penalty of Rs. 10,000/- upon M/s Embellishment (Anita V. Mishra), 4/15 Vivek Khand, Gomti Nagar, Lucknow under Section 77(2) of the Act read with Section 173 & 174 of CGST Act for the contravention of the provisions of the Act and Rules made there under as discussed foregoing Paras.*

2.1 Appellant is a proprietorship firm is registered with the department vide Service Tax Registration No. AIPPM9730JST001 for providing services under the category of "Beauty Parlour /Beauty Treatment Service, as defined in the Finance Act, 1994.

2.2 Acting on intelligence that the appellant was engaged in providing taxable services i.e. Beauty Parlour /Beauty Treatment Service under franchise of M/s Lakme but was not paying Service Tax. Acting on the aforesaid a team of the officers of visited the registered premises of the Appellant to , scrutinize & verify the facts. On scrutiny it was found that;-

- firm was engaged in providing taxable services from five different places i.e. Vivek Khand, Gomti Nagar, Lucknow, Vibhuti Khand, Gomti Nagar, Lucknow, Aliganj, Lucknow, Ashiyana, Lucknow and Mahmoor Ganj, Varanasi but accounting and taxation of all branches were being done from 4/15 Vivek Khand, Gomti Nagar, Lucknow (registered premises of the appellant).
- that they were charging service tax on services provided but the same was not being deposited in Government Exchequer.
- service tax liability was admitted by the Proprietor of the firm. All the proceedings were conducted under the cover of panchanama dated 24.01.2017 drawn on spot.

- Statement of Mrs. Anita V Mishra, Proprietor of Appellant dated was recorded under Section 14 of Central Excise Act, 1944 made applicable to Service Tax matters as per provisions of Section 83 of the Finance Act, 1994.

2.3 Appellant was vide letter dated 08.01.2018 was requested to clear off their complete Service Tax liability alongwith due interest but they did not pay any heed. Therefore, the summon dated 26.09.2018 was issued to provide information/documents regarding their Service Tax compliance but the appellant neither appeared nor submitted the desired documents.

2.4 On scrutiny of the documents i.e. Balance Sheet and From 3CD of Income Tax for the Financial Year 2013-14 to 2016-17 it was observed that the appellant had received a huge amount against Beauty Parlour service during this period. They had also received Rental Income. These receipts against the activity undertaken qualify as taxable service as per Section 65 B (44), 65B(22), 66 (B) & 66(E) of the Finance Act, 1994.

2.5 From the Balance Sheet and other Financial Records of the appellant following was observed:

BEAUTY PARLOUR RECEIPT				
(amount in Rs.)				
Financial Year	2013-14	2014-15	2015-16	2016-17
Value as per Balance Sheet	20434509	44513346	48114244	44474511
Value as per 3CD	20434509	44513346	48114244	Not available
Taxable Value	20434509	44513346	48114244	44474511
INCOME FROM RENT RECEIPT				
Value as per Balance Sheet	364000	473000	0	0
Value as per 3CD	364000	0	837029	Not available
Taxable Value	364000	473000	837029	0

2.6 Service Tax (inclusive of all cesses) due in respect of the above receipts against the taxable services provided by the appellant was calculated as in table below:

BEAUTY PARLOUR RECEIPT					
(amount in Rs.)					
Financial Year	2013-14	2014-15	2015-16	2016-17	Total due
Taxable Value	20434509	44513346	48114244	44474511	
Rate of Service Tax (%)	12.36	12.36	14.50	15.0	
Service Tax due	2525705	5501850	6976565	6671177	21675297
INCOME FROM RENT RECEIPT					
Taxable Value	364000	473000	837029	0	
Rate of Service Tax (%)	12.36	12.36	14.50	15.0	
Service Tax due	44990	58463	121369	0	224822
Grand Total of Tax Due					21900119

Thus appellant has short paid the service tax as indicated in the table above. As month wise details about the receipts were not provided by the appellant the calculation was made by applying the highest rate of tax applicable in particular financial year.

2.7. Appellant being registered with the department for providing taxable services was well aware of their service tax liability but they had deliberately suppressed the fact with regard service tax liabilities as they had neither filed ST-3 Returns nor paid Service Tax. Moreover, during the course of investigation it was found that the Appellant had charged as well as collected the service tax from their client (service recipients) and retained the same with themselves instead of paying the same to the department. This was an act of willful suppression of facts and also contravention of the provisions of Section 73 A of the Act with intent to evade service tax. Therefore, extended period for recovery of service tax was invocable as per proviso to Section 73 (1) of the Act. Thus appellant was also found to be liable to imposition of penalty under Section 78 of the Finance Act 1994.

2.8 Appellant had failed to file periodical Returns assessing the due tax on services provided by the date prescribed, as per

provisions of Section 70 of the Act. Therefore they were liable for penalty under Section 77(2) of the Act of Service Tax Rules, 1994

2.9 A Show Cause Notice dated 12.10.2018 was issued to the appellant asking them to show cause, as to why :-

- a. *Service Tax amounting to Rs. 2,19,00,1 19/- (Rupees Two Crore Nineteen Lakh One Hundred Nineteen Only) (including Ed. Cess, H.Ed.Cess, SBC & KKC as applicable) due upon them for the period from April '2013 to March'2017 should not be demanded and recovered under proviso of Section 73(1) & 73(A) of the Act read with Section 173 174 & 142 of Central Goods & Services Tax Act, 2017 (hereinafter referred as "CGST Act").*
- b. *Interest due thereon at the applicable rate should not be demanded and recovered from them under Section 75 & 73B of the Act read with Section 173, 174 & 142 of CGST Act on the amount of Service Tax short paid.*
- c. *Penalty should not be imposed upon them under Section 78 of the Act for non-payment of due Service Tax by suppressing the value of taxable services with intent to evade the payment of Service Tax from the department read with Section 173 & 174 of CGST Act.*
- d. *Penalty should not be imposed upon them under Section 77(1)(c) of the Act read with Section 173 & 174 of CGST Act for failure to furnish the full information & records as desired by the department.*
- e. *Penalty should not be imposed upon them under Section 77(1)(d) of the Act read with Section 173 & 174 of CGST Act for failure to pay service tax electronically to the department.*
- f. *Penalty should not be imposed upon them under Section 77(2) of the Act read with Section 173 & 174 of CGST Act for the contravention of the provisions of the Act and Rules made there under as discussed foregoing paras.*

2.10 The show cause notice has been adjudicated as per the impugned order.

2.11 Aggrieved by the fact that impugned order imposes penalty of 50% of the Tax evaded for the entire period of demand and not 100% for period prior to insertion of proviso providing for 50% penalty in specified case with effect from 14.05.2015 in Section 78 of the Finance Act, 1994 revenue has filed the appeal.

2.12 Aggrieved by the order in original appellant has also filed the appeal.

3.1 We have heard Shri Dharmendra Srivastava Chartered Accountant for the Assessee and Ms Chitra Srivastava for the Revenue.

3.2 Arguing for the appellant learned Chartered Accountant submits;-

- The taxable value of the services provided by the appellant, should be reduced by the amount received by the appellant towards the sale of goods in retail from their beauty parlour. Appellant being franchisee of M/s Lakme Lever was also selling the goods in retail to the customers, from their beauty parlour. The amount received by them towards the sale of goods cannot be made the part of taxable value of services provided by them from their premises.
- The appellant is entitled to claim cenvat credit in respect of the input services received by them and the amount of CENVAT Credit should be reduced from the demand confirmed. Reliance is placed on following decisions:
 - Antares Seervices Pvt Ltd. [2024 (160) Taxmann.com 23 (CESTAT Chandigarh)];
 - Kaybee Developers Private Ltd. [Order dated 30.09.2025 in Service Tax Appeal No 87531 of 2023]
 - mPortal India Wireless Solutions P Ltd. [2012 (27) STR 134 (Kar)]
 - Indus Valley Partners (India) (P) Ltd. [Final Order No 70026/2024 dated 17.01.2024]

- Appellant has not suppressed any facts with the intent to evade payment of tax, hence invocation of extended period of limitation for making this demand is bad in law, and for the same reason penalty imposed under Section 78 needs to be set aside.

3.3 Authorized representative reiterated the findings recorded in the impugned order and the grounds taken in the appeal.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

"8. On the basis of above allegations and defense submissions I observe that following are the issues pending before me for determination & adjudication.

- a. Whether the taxable value determined in the Show Cause Notice includes the value of goods actually sold as claimed by the Noticee and whether such sale value needs to be deducted from the taxable value determined in the Show Cause Notice;*
- b. Whether the taxable value is inclusive of Service Tax as claimed by the Noticee or whether the taxable value determined in the impugned Show Cause Notice is exclusive of Service Tax in the light of allegation that Service Tax was charged by the Noticee from their client;*
- c. Whether the benefit of CENVAT Credit of the levied tax paid by the Noticee on input services is liable to be allowed to the Noticee and to be adjusted from the Net tax liability;*
- d. Whether interest on Service Tax payable is liable to be demanded and confirmed.*
- e. Whether penalty is liable to be imposed upon the Noticee.*

9. Coming to the point enumerated at (a) above, I find that the Noticee, in order to buttress her argument that

value of goods sold is included in the taxable value determined in the Show Cause Notice, has submitted copies of balance sheet and profit & loss a/c for the relevant period. She has also submitted, as she claims the month wise sale of goods ledger and also a chart showing year wise receipt from the beauty parlour, sale of goods, then net parlour services, rent and total value of taxable services. In the said chart she has also claimed the value of input services said to have been involved and the net Service Tax payable as calculated by her.

10. I have examined all these documents carefully in order to find if the taxable value determined in Show Cause Notice includes the value of goods sold. I observe from the perusal of profit & loss a/c that the receipts from beauty salon during 2013-14 is Rs. 2,04,34,508.94; during 2014-15 is Rs. 4,45,13,346.00; during 2015-16 is Rs. 4,81,05,244.00 and during 2016-17 is Rs. 4,44,74,51 1.00 to the credit side of P & L A/c besides rental income of Rs. 4,73,000/- during 2014-15, and Rs. 9,000/- as Incentive and Commission during 2015-16. Against this, the amount of consumable goods during 2013-14 is Rs. 20.96,816/- and during 2014-15 is Rs. 1,75,79, 1 83/-. During 2015-16 and 2016-17, instead of the value of goods consumed, the purchase value of Rs. 1,68.32,473/- during 2015-16 and Rs. 1,67.72,948/- during 2016-17 has been shown in respective Profit & loss A/c.

As against this, the Noticee has claimed that they have sold the goods amounting to Rs.10,86.900/- during 2013-14; Rs. 1,98,02,669/- during 2014-15; Rs. 1,96,22,849/- during 2015-16 and Rs. 1,88,94,902/- during 2016-17. In order to further buttress her argument, the Noticee has also submitted copies of certain invoices which she claims are invoices for goods sold. I have gone through these invoices and to my utter surprise I find that, all the so called invoices submitted by the Noticee have been issued

for cash and also in none of the invoice is there any mention of State VAT. To my considered opinion all the beauty products claimed to have been sold by the Noticee are chargeable to State VAT if sold to the customer. I also take note of the fact that during 2013-14 and 2014-15, the value of goods has been accounted for as consumable goods meaning thereby that the goods were consumed during the course of provision of service. During 2015-16 and 2016-17, however, the purchase of goods has been accounted for but the value of goods consumed during the course of provision of service to clients has not been accounted for separately and therefore the only logical conclusion that can be drawn is that the amount accounted for as purchases is nothing but the value of goods consumed during the course of provision of service. This analysis is further supported by the fact that neither in the invoices said to be the invoices covering the sale of goods nor in the Profit & loss A/c, has any VAT been shown to have been paid by Noticee.

The Noticee has also not submitted any proof of payment of VAT on sale of goods claimed by her. I have also considered the fact that during 2013-14 the value of goods consumed is Rs. 20,96,816/- as against the claimed sale of Rs. 10,86,900/-, meaning thereby that the Assessee herself is not taking the rebate of entire goods consumed. On the contrary the value of goods sold is more than the value of goods consumed or the value of goods purchased in the Financial Years 2014-15, 2015-16 and 2016-17, which is evident from the table below:-

<i>Financial Year</i>	<i>Value of Goods Consumed / Purchased as per P& L Ac</i>	<i>Sale of goods as per ledger</i>
<i>2013-14</i>	<i>20,96,816</i>	<i>10,86,900</i>
<i>2014-15</i>	<i>1,75,79,183</i>	<i>1,98,02,669</i>
<i>2015-16</i>	<i>1,68,32,473</i>	<i>1,96,22,849</i>
<i>2016-17</i>	<i>1,67,72,948</i>	<i>1,88,94,902</i>

11. I therefore take note that except for a mere claim, the Noticee has not submitted any evidence to prove that the value of taxable services as mentioned in Show Cause Notice (which has been admittedly arrived at from the audited accounts and Balance Sheet and P & L A/c maintained by the Noticee) includes the value of goods sold. It is a fundamental principle of interpretation that the onus of proof lies on the claimant. I take support in this regard from the decision of Hon'ble Supreme Court in the case of Mysore Metal Industries v/s Collector of Customs, Bombay 1988 (36) ELT 369 (SC) and also on the decision of Hon'ble Tribunal in the case of Inox Wind Ltd. v/s Commissioner of Service Tax. Noida 2020 (35) GSTL 0123 (Tri.-All.). In absence of any evidence of sale of goods, I have no hesitation in holding that the Noticee has failed substantiate her argument that the value of goods sold was included in the value of taxable services determined in the impugned Show Cause Notice.

12. I now take up the point enumerated at (b) above relating to whether the taxable value determined in the Show Cause Notice is inclusive of Service Tax or not. I find that it has been alleged in the Show Cause Notice that the Noticee has charged and collected the Service Tax from her customers and has not deposited the same with the department and accordingly the value in the Profit & Loss A/c has been treated as exclusive of Service Tax. On the contrary the Noticee has claimed in her written reply that Service Tax was not collected from her clients and that at the time of rendering her statement it was written in haste and due to panic.

13. I find from a perusal of records of the Show Cause Notice and the relied upon documents that none of the bill/invoice issued to the customers by the Noticee has been made a relied upon document. The allegation is based only on oral statement of the Noticee. It is well settled that the

statement has to be corroborated by some other evidence. I also take note that the investigating officers should have taken pains to properly substantiate the allegation of collection of Service Tax by the Noticee from its customers. I find that except for the oral statement no evidence documentary or otherwise is on record to support the allegation

14. *Even otherwise I find from the Profit & Loss A/c which are duly audited, that except for the receipts from beauty salon no other amount has been credited by the Noticee in the P & L A/c. According to the standard accounting principles, the amount indicated in the P & L A/c is the gross amount received. There is no entry of Service Tax either in credit side or the debit side of the P & L A/c. On the basis of these facts, I am of the considered opinion that the amount in the P & L A/c of the Noticee should be treated as the gross amount even if the Service Tax is charged from the customers, the gross amount will reflect in the credit side of the P & L A/c. I therefore hold that as per provisions of Section 67 of Finance Act, 1994, the gross value should be treated as cum tax value. I take support in this regard from the decision of Hon'ble Tribunal in following cases:-*

BSNL Vs. Comm. of Central Excise, Jaipur-I 2011 (24) S.T.R. 435 (Tri- Del)

Demand-Valuation of Service - Service tax not collected from customer though service was taxable - Demand to be worked out on the basis of cum-tax value i.e. the amount received by service provider less tax payable - Sections 67 and 73 of the Finance Act, 1994 read with Service Tax (Determination of Value) Rules, 2006. [Para 6]

(2) Koprán Ltd. Vs. Comm. of Central Excise; Raigad; 2011 (23) S.T.R. 627 (Tri. Mumbai).

Valuation (Service tax) - Service tax deductible from the gross amount charged, for arriving at the taxable value of the service inasmuch as it is not the Revenue's case that appellant collected Service tax separately from Cadila- Sect on 67(2) of Finance Act,1994. [Para 11]

(3) Municipal Corporation of Delhi Vs. Comm. of Service tax Delhi; 2009 (16) S.T.R. 654 (Tri. - Del.).

Demand - Non-payment of Service tax - Facilities let out for marriage and NGOs at nominal price and Service tax stated as not recovered separately- Service tax liability present- Value received to be considered as cum tax as Service tax not separately recovered from customers - Matter remanded to original authority for re-calculation of demand - Interest and penalty to be re-determined Sections 73, 75 and 76 of Finance Act, 1994. [Paras 2,4]

Accordingly I hold that in light of the above legal pronouncements and legal position the Noticee is entitled to cum tax benefit while calculating the service tax liability.

15. In view of my discussions and findings, herein above, the demand of Service Tax is re-quantified as under:-

Financial Year	Gross Value of taxable services			Rate of Service Tax	Taxable value	Service Tax Payable
	Beauty Parlour	Renting of immovable property	Total			
2013-14	20434509	364000	20798509	12.36%	18510599	2287910
2014-15	44513346	473000	44986346	12.36%	40037688	4948658
2015-16	48114244	837029	48951273	14.50%	42752203	6199070
2016-17	44474511	0	44474511	15%	38673488	5801023
	157536610	1674029	159210639		139973978	19236661

16. Now I take up the issue mentioned at (c) i.e. of allowing CENVAT Credit of Service Tax paid by the Noticee on input services used in providing output services. The Noticee has claimed that various input services have been used for providing output services, mainly Royalty for franchise service, among other services. I have gone through all the documents submitted by the Noticee in her defense. I do not find any document wherein Service Tax has been charged from the Noticee. CENVAT Credit admissible under CENVAT Credit Rules, 2004 are subject to observance of conditions provided therein and also Rule 9 of the said rules provides the list of documents which alone are admissible for availing the credit. The Noticee has not submitted an, such document. As I have already observed herein above, the burden to prove the admissibility of any benefit under the Act or Rules is on the person claiming such benefits. I hold that the Noticee has failed to substantiate her claim for CENVAT Credit of Service Tax said to have been paid on input services used for providing output services. I am therefore unable to allow any CENVAT Credit in absence-of any evidence-on-record-in this-regard. Even-otherwise the credit cannot be allowed at this stage in absence of any records having been maintained by the Noticee for this purpose.

17. As regards the demand of interest on the Service Tax not paid by the Noticee [point (d)], I find that the Noticee has not disputed the levy of interest on non- payment/ delayed payment of Service Tax. However, I feel in the interest of justice to examine legality of payment of interest by the Noticee on non- payment of Service Tax. The provisions of payment of interest on Service Tax are contained under Section 75 of Finance Act, 1994 which provides that every person, liable to pay tax, who fails to credit the tax to the account of Central government within the period prescribed shall pay simple interest as is being fixed from time to time by the Central Government. I

therefore hold that the Noticee is also liable to pay the interest on the Service Tax herein confirmed. I take support in this regard on the decision of Hon'ble High Court, Gujarat in the case of M Ibrahim Ansari v/s Additional Commissioner 2020 (9) TMI 356 Gujarat High Court wherein Hon'ble Court observed as under:-

So far as interest is contented, it is a settled issue that Ms automatic and every person, liable to pay service tax, shall in addition to the service tax, be liable to pay interest in accordance with the provisions of Section 75 of the Finance Act,1994.

Accordingly, I hold that interest at the appropriate rate on the amount of service tax not paid/short paid is required to be recovered from them under Section 75 of the Finance Act, 1994.

I also take support in this regard from the decision of Hon'ble Supreme Court in the case of Pratibha Processers v/s Union of India 1996 (88) ELT 12 (SC) wherein Hon'ble Court held that-

Meaning of - Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable - Levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date, thus essentially it is compensatory and different from penalty, which is penal in character.

18. A regards the imposition of penalty [point (e)], I observe that it is on record that the Noticee was providing taxable services under the franchise of M/s. Lakme which is a known brand. It is also on record that the value of taxable services was running in Crores. Leviability of Service Tax on ' Beauty Parlor Services' is well known and well accepted in the trade. The Noticee has submitted that she was under the impression that Service Tax shall be

dealt with by the franchiser i.e. M/s. Lakme. She has also argued that mensrea is essential for imposing the penalty.

19. I have carefully examined the submissions made by the Noticee in this regard. The Noticee has no reason for harbouring presumption that franchiser shall be dealing with the matters of payment of Service Tax. It is also not on record if she has made any efforts to find out the facts in this regard. As regards the mensrea, the Noticee was providing taxable services for years together under Service Tax Registration but she has neither filed any return nor paid Service Tax nor did she take pains to know her liability of Service Tax. It has been alleged in the Show Cause Notice that she was collecting the Service Tax from her clients (Service recipients). Although as I observed herein above, the investigating officers did not take pains to collect any documentary evidence in this regard, but it is also true that the proprietor has admitted before the investigating officers that she has collected the Service Tax from her clients. The Noticee also has not taken pains to submit bills/ invoices issued to her customers to substantiate her claim in this regard.

20. In totality, it is on record that the Noticee is admittedly liable to pay the Service Tax. It is also on record that even during the course of adjudication, the Noticee tried to mislead the proceedings under the garb of sale of goods which could not be substantiated, as discussed herein above. The Noticee has not claimed sale of goods when the investigation was being carried out. I am therefore convinced that the Noticee was aware of her Service Tax liability but deliberately refrained from paying the tax. It was only during the course of search conducted by the officers of department on a specific intelligence that the evasion of Service Tax came into light. The Noticee suppressed the facts of providing taxable services from the department. I therefore hold that the Noticee is liable to

imposition of penalty under Section 78 of Finance Act, 1994. I also take support in this regard from the decision of Hon'ble Supreme Court in the case of Motibhai Fulabhai Patel & Co. v/s R. Prasad, Collector of Central Excise 1978 (2) ELT J370 (SC) wherein Hon'ble Supreme Court held as under:-

*Interpretation of statute - Confiscation a penal measure - Provision to be construed strictly.
Interpretation of statute - Penal provision - No person to be allowed to benefit by his wrongful act.*

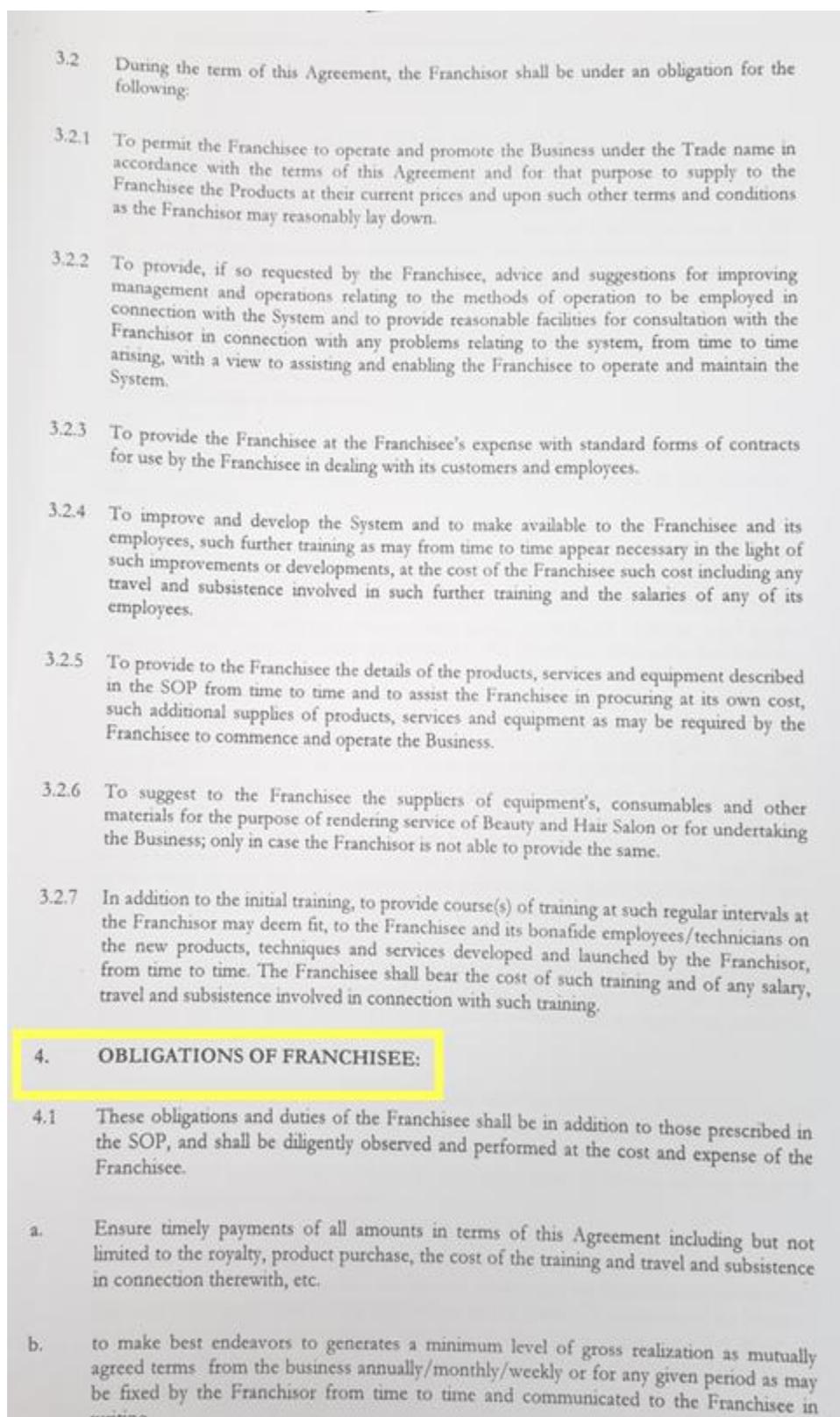
21. However, I take note in this regard of the fact that the entire transactions have been recorded in statutory records maintained by the Noticee and the figures in the impugned Show Cause Notice have been taken from such audited records and Balance Sheet and Profit & Loss Account. Therefore, the penalty imposed is reduced to 50% of the Service Tax confirmed as per provisions of proviso to Sub-section (1) of Section 78 of the Finance Act, 1994

22. The Noticee has failed to file periodical ST3 returns thereby violating the provisions of Section 70 of the Act read with Rule 7 of Service Tax Rules, 1994. The Noticee is therefore liable to imposition of penalty under Section 77 (2) of the Finance Act, 1994.

4.3 Appellant have challenged the impugned order claiming that the during the course of operation of "beauty parlour" she also was selling certain products of the franchisor. The value of the goods sold should have been deducted from the arrive at the taxable value, from the gross receipts in respect "beauty parlour" taken from her profit and loss account. The said claim made has been examined in the impugned order and it was found that the appellant has failed to establish the claim made in respect of the sale of goods. We find that appellant claim for from the gross receipt remains unsubstantiated even before us. To claim the sale of the goods appellant should have produced

documents in respect of the sale so affected. Appellant has not produced any sale document – invoice, bill etc made for affecting such sale. They have claimed the sale of goods by relying on the entry made in the book of accounts for the purchase of goods.

4.4 In order to test the correctness of the claim made by the appellant we refer to the certain clauses of the Franchisee Agreement and Schedule C of the same with Lakme Lever Pvt. Ltd., reproduced below:-



- c. To fully participate and cooperate in all initiatives and schemes run by the Franchisor and satisfactorily perform and provide the entire range of services except those which may be excluded by the Franchisor by written communication from time to time.
- d. Acquire the Premises in accordance with the terms of this Agreement that is approved by the Franchisor in writing and to ensure that the Premises are without delay following such acquisition altered, furnished, equipped and fitted in accordance with the requirements agreed with the Franchisor and morefully described in Schedule "I", and also to procure all furniture and fixtures and equipments for the salon from the vendor nominated by the Franchisor. If the Franchisor has negotiated deals with supplier on a bulk purchase basis, in such case procure the same from the Franchisor and pay the Franchisor for the same.
- e. To maintain the Premises in a clean and hygienic condition and maintain all furniture and fixtures in a good state of repair as per the standards of the Franchisor and to further ensure that none of the furniture, fittings and fixtures appear as eye-sore or is detrimental to the brand image of the Franchisor.
- f. Ensure that adequate financial resources are available to the Franchisee by way of working capital and otherwise to ensure that the Franchisee is able to fulfill all the obligations herein contained.
- g. The Franchisee shall produce all the documents relating the acquisition of rights by the Franchisee for use of the Premises for the business of operating Salon or documents of its ownership, as the case may be, in original, for perusal, verification and consideration of the Franchisor, not later than the milestone dates agreed in the Letter of Intent; prior to the opening of any Salon, and obtain and produce to the Franchisor the original documentary evidence, all statutory approvals required for the opening and operation of the Salon. These shall include but not be limited to all the applicable approvals, trade and excise / service tax registrations / licenses and permits applicable statutes, bye-laws, rules of Government/local authorities, etc, in addition to the prior written consent from the owner/lessor/ licensor of the Premises. The Franchisee shall, at all times, be in compliance with local municipal laws, at its own costs. Any non-compliance shall be against the Franchisee and Franchisor shall be absolved of any such non-compliance. Further, the Franchisee shall maintain the requisite approvals, licenses and permits as the case may be in full force and effect during the Term and provide to the Franchisor certified true copies of the then current statutory approvals and permits as and when requested for by the Franchisor or any authorized person on behalf of franchisor such as Auditors, Trainers etc.
- h. Ensure that at all times adequate fund are available with the Franchisee to be used towards capital expenditure for the purpose of maintenance and up gradation of the Salon(s) as desired by the Franchisor as also to enable efficient fulfillment of its obligations contained in this Agreement;
- i. To operate the Business strictly in accordance with the provisions of the SOP and to conform in all respects and at all times with the System as modified from time to time, and not, at any time, to use any additional trademark or symbol, not do or permit to be done anything which is additional to or not in accordance with the System without the prior consent in writing of the Franchisor.
- j. To ensure that the Business conforms with other businesses operated in accordance with the System with regard to quality, service and cleanliness, the Franchisee acknowledging that such conformity is of utmost importance to the successful operation of the Business and the protection of the goodwill attaching to the Trade Marks, and the failure to conform to the quality, standards and cleanliness shall irreparably damage the reputation and goodwill of the Franchisor.

- k. To ensure that all employees of the Franchisee undergo a pre-joining medical examination by the the Franchisor's certified doctors as specified by the Franchisor.
- l. The Franchisee shall sincerely and minutely follow all the instructions contained in the SOP and such other instructions as may be issued by the Franchisor from time to time for the purpose of running the business according to the System, and shall regularly report compliance/partial or total failure (along with reasons therefore) to the Franchisor on a monthly basis, by the 5th day of the following calendar month and in addition to comply with all advice and instructions given by the Franchisor from time to time with regard to the operation of the System.
- m. The Franchisee shall place upon all letter heads, bills, invoices and all other documents and literature used in connection with the Business of the Salon in such manner and place as the Franchisor may direct the following words "***a Lakme Lever Private Limited Franchisee owned and operated under License***" followed by the name of the Franchisee OR such other words to similar effect as may from time to time be specified by the Franchisor. The use of said phrase by the Franchisee in any other format shall amount to a breach of this Agreement.
- n. The parties hereto agree that the Franchisor will place the key personnel including but not limited to CEM hair expert and/ or skin expert to supervise and maintain quality services for the salon. Such key personnel will be placed through a manpower agency appointed by the Franchisor and will be paid for by the Franchisee. The said aspect is required for the purpose of keeping superior quality of the salon and maintain goodwill of Franchisor's brand.
- o. Without prejudice to the aforesaid, forthwith on commencement of the Business to engage all staff and other persons required for the successful operation of the Business and to ensure that all such staff and replacements for such staff who are required under the terms of this Agreement to undergo training in the System, are trained in the System and any improvements thereto and if and when required by the Franchisor to procure their attendance at such time and place as may be specified by the Franchisor for such purpose, the Franchisee bearing the salaries, cost of any travel and subsistence incurred in connection therewith of such persons. Recruitment of staff shall be the entire responsibility of the Franchisee, the Franchisor may, upon on request of the Franchisee, assist in such requirement.
- p. Ensure that the persons, employees, stylists, technicians responsible for managing the Business attend such further periods of training as and when required by the Franchisor, or at such intervals as and when the trainings are organized and informed by the Franchisor; and to bear the salaries, training material travel and subsistence expenses incurred in connection therewith.
- q. At all times to maintain the interior and exterior of the Premises and all parts thereof to the highest standard of decoration, repair and cleanliness and promptly to ensure that any requirements of the Franchisor in this regard are fulfilled.
- r. To ensure that all personnel employed in the Business shall at all times present a neat and clean and smartly groomed appearance and render competent and sober and courteous service to customers and comply with any and all directions of the Franchisor in this respect relating to dress, appearance and behavior.
- s. To diligently to carry on the Business and to use best endeavors to promote and increase the Business and co-operate with the Franchisor and other franchises of the Franchisor in this regard by providing the services promptly, efficiently and with the high standard of care, skill and diligence in accordance with Best Industry Standards by ensuring that

neither the franchisee or any of its employees take any action which is detrimental to the business or reputation of the Franchisor.

- t. As per the Code of Business principles, the Franchisor does not accept or subscribe in any way to soliciting payments, which may amount to bribes. However, given the specific nature of the services being rendered under this agreement, the franchisee will agree and follow the stipulated guidelines as may be formulated by the Franchisor with regard to tipping of its employees by the customers:
- (i) To comply with the principles and policies laid down in Unilever's Business Partner Code and Anti-Bribery Policy (Policy attached to this Agreement as Schedule I) as may be amended from time to time, a copies of which are attached to this Agreement and ensure that all its personnel including the Franchisee itself/ himself/ herself/ themselves shall act in accordance with the same as well.
 - (ii) Will ensure that any person who performs or has performed services for or on its behalf in connection with this Agreement complies with this clause (a) above.
 - (iii) Not to enter into any agreement with any person in connection with this Agreement, unless such agreement contains undertakings on the same terms as contained in this Clause.
 - (iv) Have and mantain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement.
 - (v) Not to offer gift, consideration or benefit of any kind, which constitute illegal or corrupt practice to any one, either directly or indirectly, as an inducement or reward for continuance of this agreement.
 - (vi) From time to time, at the reasonable request of the Franchisor, it will confirm in writing that it has complied with its undertakings in this clause and will provide any information reasonably requested by the Franchisor in support of such compliance.
 - (vii) Shall notify to the Franchisor as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware
- u. To ensure that the salaries, allowances, PF, ESIC, gratuity, bonus, incentives or any statutory dues are paid on time and all labour laws and labour welfare legislations applicable to it are complied with and to defend itself in case of any legal action arising out of non-compliance of such applicable laws without placing any such arising liability on to the Franchisor.
- v. To ensure that at no point of time manual bills are issued to customers buying the products. In case of failure or non-functioning of the computers, the Franchisee shall immediately inform the Area Manager of the Franchisor and thereafter, on such consultation, provide any such bills. Any such bill book shall be purchased from the Franchisor only and duplicate copy of all such bills shall be sent to the Franchisor within 30 days of the bill date for verification.
- w. To procure Products only from the Franchisor, or such Approved Suppliers of the Franchisor and also ensure purchase of front and back bar products, and other materials specified in the SOP at the prices and charges set out therein to be in the Salon.
- x. To source or procure the requirements of equipment's, supplies, consumables etc. from such suppliers as are recommended by the Franchisor unless the Franchisee is able to procure or secure the supplies from an alternate supplier of the same quality at a cheaper rate without in any way affecting the quality of service rendered under this business. In case of inability of the Franchisor to supply any item for reasons beyond its reasonable control, the Franchisee may purchase the same from other vendors after securing written permission from the Franchisor.

- y. To maintain minimum stock value as may be prescribed by the Franchisor time to time and employ sufficient staff to meet demand from the customers of the Business and to permit the efficient operation of the Business as prescribed under Schedule "C" of this Agreement.
- z. To make such changes in design, furniture, color, ambience of the salon by the franchisee at its own cost as and whenever asked to do by the franchisor.
- aa. To fully comply with the stock policy/ guidelines as also the terms of trade set by the Franchisor. Further to promptly pay as per the terms of the trade all suppliers of goods and services procured by the Franchisee for the purposes of the Businesses.
- bb. Ensure installation of CCTV's at its own cost as per the specified vendors and specified standards provided by the Franchisor at the Salon being operated and provide remote access to the Franchisor by connecting it with the server of the Franchisor under this Agreement. The Franchisee shall also obtain corporate telephone connections from vendors of the Franchisor in the name of Franchisor for the purpose of the Salons. The Franchisee shall only use the telephones, pay its bills and all maintenance costs regularly but all rights and ownership in the telephones and all rights and title in the telephone shall vest in the Franchisor only.
- cc. To permit the Franchisor and its representative(s) without any further authority at all reasonable times, whether or not the Salon is operational, to enter upon the Premises for the purpose of inspection of the premises and the business being carried out therein, and to cooperate with the said representative(s) in all respects, including by allowing the said representative(s) to take any still/video photography, measurements, drawings etc. of the premises, products and the equipment's etc. kept therein, or the employees or persons working for the Franchisee, and provide all information's, samples of products or any other materials kept in the premises free of cost, as may be demanded by the said representative(s) from the Franchisee and to write, sign or record any acknowledgement, receipt, memoranda or document that records the status of the System, products, equipment, premises, personnel or any other thing related to the business.
- dd. To procure all hardware, software and network requirements from the vendor recommended by the Franchisor and further bear all applicable maintenance costs and licence fees for the recommended state of the art Information Technology systems that may be specified by the Franchisor from time to time.
- ee. To ensure timely payment of the Franchisor's costs of instruction and training, whether or not the Franchisee derives any direct, indirect, tangible or intangible benefit from it.
- ff. Obtain adequate insurance for the Salon Premises, assets and other insurance policies as defined and specified in the SOP;
- gg. Responsible for promoting, advertising and publicizing the Salon and its products and services.
- hh. Maintain the database of the customers availing services. It is hereby clarified that such database shall be construed as Confidential Information of the Franchisor and the copyright in the said database shall vest with the Franchisor and the Franchisee shall transfer the same in favour of the Franchisor as and when required by the franchisor and especially on the determination of agreement either by expiry or termination. The Franchisee shall in no case format the data storage media in which such confidential information is stored without the express written permission of the Franchisor.

- ii. Be entitled to avail of the services of the course developments and research in the technical know-how and the training resource material, if any, introduced by the Franchisor in order to improve the operation and it shall be incumbent upon the Franchisee to follow the improved contents and methodology introduced by the Franchisor from time to time. The Franchisee shall make payment of such additional amounts as may be prescribed by the Franchisor for such improvement in the training contents and methodology.
- jj. In case the Franchisee receives any notice regarding any breach of any law, rule or regulation, the Franchisee shall ensure that it remedies the breach and also gives intimation thereof to the Franchisor as early as possible and shall also ensure that it intimates to such issuing authority the relationship between the Parties hereto and also clarify that the Franchisor in no way is /shall be concerned with such litigation.
- kk. Alone be held responsible in respect of any suit, application for interim or ad-interim order (s) or any legal proceedings or any legal notice of whatsoever nature or any complaint filed by any customer or any person or any Authority in any court, tribunal, consumer redressal forum/ commission or before any authority, pertaining to operation of Salon, any dispute between the customer and the Franchisee or in respect of any matter related to or concerning the Salon and the Franchisor or its Directors or officials shall not be held responsible and made party to any such suit, complaint or any legal proceedings related to or in respect of any of the matters of the Salon operated by the Franchisee.
- ll. Assume sole and entire responsibility for and indemnify and save harmless the Franchisor from any and all claims, liabilities, losses, expenses, responsibility and damages by reason of any claim, proceedings action, liability or injury arising out of the Franchisee's conduct or business whether arising out of negligence or misconduct on the part of any of its employees, staff, agents or servants or as a result of the Franchisee's relations with its customers and other third parties or because of any default or failure of Franchisee in discharging its obligations under this Agreement or as a result of any breach of this Agreement by the Franchisee.
- mm. To have professional indemnity insurance. The Franchisee shall be solely responsible for any acts or omissions of the Franchisee that constitute medical negligence or deficiency in services or and ensure that the Franchisor shall not be liable in any manner whatsoever for any acts/omissions of the Franchisee that give rise to any claim, action, liability for loss, damages, criminal or otherwise by any affected party instituted before any legal or administrative forum.
- nn. Not permit any activities at the Salon, which are not allowed under the statutory laws, rules and regulations for the time being in force in India or as may be notified by the government from time to time and/or this Agreement.
- oo. Not alter, modify or convert the Salon or the external/internal layout or display of any signage without the prior written consent of the Franchisor.
- pp. Not object to the Franchisor or its representatives from speaking or writing to the customers of the Salon for any purpose whatsoever.
- qq. Not grant any sub-license or assign in whole or in part in respect of the Franchise or to sub-license or assign the use of SOP or sub-delegate the rights and duties granted to it under this Agreement;
- rr. The Franchisee shall make itself available for the quality audits that will be conducted by the Franchisor from time to time. The improvements suggested in these audits will be binding on the franchisee and in the event of non compliance; the Franchisor shall be entitled to terminate this Agreement forthwith.

- ss. To promptly register all customer feedback and complaints in the system prescribed by the Franchisor and to resolve such complaints within a maximum of 7 days by refunding the price paid by the customer or damages claimed by customer as the specific situation may warrant.
- tt. The Franchisee shall at such periodical intervals as required by the Franchisor demonstrate to the Franchisor, with appropriate documentary proof, of satisfactory compliance with the obligations as given hereinabove.
- uu. The Franchisee shall be solely responsible to establish and sustain at all times all safety measures and practices in its premises and amongst its employees, in full conformity with all laws in this regards. In addition it shall comply with the Franchisors Safety policy which is applicable to Franchisor's business partners. The Franchisee has read and understood all the Franchisors policy.

5. PREMISES

- 5.1 The Franchisee shall run and operate the salon only from the Premises as per description provided in schedule - B of this Agreement.
- 5.2 The Franchisee shall not relocate the business without the prior written consent of the Franchisor, which may be withheld at Franchisor's sole discretion. In the event that the Premises are destroyed, condemned or otherwise rendered unusable or as otherwise may be agreed upon in writing by Franchisor and Franchisee, the Franchisor may in its reasonable discretion allow Franchisee to relocate to another suitable premises, to the satisfaction of the Franchisor.
- 5.3 Any such relocation shall be at Franchisee's sole expense and shall proceed in accordance with the requirements set forth in this Agreement. Franchisor shall not be under any obligation to provide relocation assistance. In case the parties are unable to agree upon a substitute location within (90) Ninety days after the lease of the present Premises expires or is terminated or the approved location is rendered unusable, this Agreement shall be terminated forthwith in terms of Clause 22.

6. PRODUCTS

- 6.1 The Franchisee shall purchase the Products from the Franchisor at list price in accordance with the terms of sale as applicable to the other customers of the Franchisor.
- 6.2 The Franchisee shall sell the Products at prices recommended by the Franchisor from the Salon. The Franchisee shall not sell any product at a price higher than MRP The Franchisee is recommended to follow the price rates fixed and/or modified from time to time by the Franchisor. In case it is found that the Franchisee has contravened the provisions of this clause and has earned personal profits from the same, then the Franchisee shall be liable to pay damages on actuals with interest of 18 %. However, this shall not prejudice the right of the Franchisor to terminate this Agreement for non-payment of the amounts due to the Franchisor.
- 6.3 The Franchisee is recommended to procure at Franchisee's own cost through Franchisor or appointed party the following:

- b) to provide any information and support as may reasonably be requested by the Franchisor to enable it properly and efficiently to discharge its duties under this Agreement.
- c) to warrant that all Products supplied by it to the Franchisee shall be of satisfactory quality and reasonably fit for use.

10. THE FRANCHISEE'S UNDERTAKINGS

- 10.1 The Franchisee undertakes and agrees, at all times during the Term, to do the following:
- a. keep the Franchisor informed at all times regarding the management structure of the Franchisee as well as the management structure at the Business. In case of any change thereof, written consent of the Franchisor shall be taken, which the Franchisor may withhold at its discretion;
 - b. to use all reasonable endeavors to fulfill its duties and obligations as per the terms of this Agreement and the Schedules annexed hereto.
 - c. to use reasonable endeavors to promote the Trade Mark and sale of the Products in the Salon;
 - d. to employ suitably qualified personnel to ensure the proper fulfillment of the Franchisee's obligations under this Agreement;
 - e. irrevocably undertakes and warrants that it shall not, directly or indirectly make any use of the Trade Mark outside the Salon Premises. The Franchisee hereby further agrees and undertakes that it shall not sub-franchise the Franchise granted to it under this Agreement.
 - f. to maintain on its own account an inventory of the Products at levels which are appropriate and adequate for the Franchisee to meet estimated customer requirements of the Products in the Salon.
 - g. to keep full and proper books of account in accordance with the applicable law and records showing enquiries, quotations, transactions and proceedings relating to the Salon.
 - h. to allow the Franchisor at its cost, access to its accounts and records relating to the business under the agreement for the purpose of inspection;
 - i. to keep all stocks of the Products which it holds in conditions appropriate for their storage to provide appropriate security for the Products all at its own cost;
 - j. To submit annual information reports to the Franchisor as per its requirements;
 - k. to insure at its own cost with an insurance company all stocks of the Products as are held by it against all risks which would normally be insured against by a prudent businessman to at least their full replacement value and to produce to the Franchisor on written request full particulars of that insurance and the receipt for the then current premium within a period of 15 days of such request;
 - l. to conform to SOP as notified to the Franchisee from time to time by the

m. The Franchisee understands the dynamic nature of the business environment and that the processes, vendors, services, technology may change in course of time and undertakes to adopt, adhere to and follow the instructions of the Franchisor in this regard as may be issued from time to time.

11. SUPPLY OF PRODUCTS

- 11.1 The Franchisee shall place order for supply of products in the manner stipulated by the Franchisor guidelines from time to time. Provided however, that the Franchisee shall take all endeavors and reasonableness to place the order well in advance in order to enable the Franchisor to make timely delivery of the products.
- 11.2 The Franchisor agrees to use all reasonable endeavors to ensure that its Approved Suppliers meet all purchase orders for the Products received by it from the Franchisee on a continuous basis and the Franchisee agrees to purchase the Products for its own account for resale pursuant to this Agreement.
- 11.3 The Franchisee shall inspect the stock received against the Purchase Order at the time of delivery. In case of any inconsistency, the Franchisee shall make a written complaint to the Franchisor, for replacement within 48 hours of receipt of delivery of the stock. The Franchisee shall make an endorsement on the delivery receipt with regard to any shortage or damage claims; and no such claim shall be entertained without any such endorsement on the delivery receipt.

12. TERMS OF PAYMENT

- 12.1 The Franchisee shall, in consideration of the grant of the Franchise by the Franchisor under this Agreement, make the following payments along with applicable taxes to the Franchisor:

12.2 Royalty Fee:

12.2.1 The Franchisee shall pay to the Franchisor on a TDP (Ten Days Period) basis a fee for the Salon operated at the Premises, which shall be an amount equal to such percentage of the Net Sales of the Salon as specified in Schedule - C payable on the Payment Day, being morning of each TDP (Ten Days Period), (commonly known as "**Royalty Fee**") without deduction or set off except applicable statutory deductions to the Franchisor. The Franchisee shall pay the Franchisor as per the invoice issued to franchisee, of sales proceeds at the end of each TDP and effect payment of Fee to the Franchisor on the Payment Day.

12.2.2 The Franchisee shall make arrangements for payment to the Franchisor in terms of this Agreement as per guidelines and instruction issued by the Franchisor time to time. The instructions may be in the forms of joint bank account solely used for the payment to be made to the Franchisor or through standing instructions for debiting their account.

12.2.3 The Franchisee shall ensure that there is no default/delay in complying with the above procedure. In the event of any default/delay, the Franchisee shall be fully liable for the cost/loss to Franchisor arising out of such default/delay including interest for the delayed deposit. All credit card machines/clearance will be through the Franchisor or its approved vendors only. Further the Franchisor may make changes in the process of making payments by the Franchisee in line with the banking innovations and regulations time to time. Any such new procedure of payment shall be notified to the Franchisor in writing and in advance.

12.2.4 In the event, any aforesaid payments (in whole or in part) have not been paid by the Franchisee to the Franchisor on the respective due dates, the Franchisee shall pay interest at the rate of 18% per annum rests on all overdue amounts and such interest at the rate of 18% shall be payable by the Franchisee from the date on which the overdue amounts were due till the date of actual payment both before and after judgment. The Franchisees acknowledges and agrees that the rate of interest contemplated in the aforesaid Clause is not by way of penalty but the genuine pre-estimate of damages which the Franchisor may suffer if the payment is not made within the stipulated time;

12.2.5 Any existing and/or future taxes or duties imposed or assessed by the central government, state government, local authority or any other governmental department by virtue of any existing and/or new enactment or amendment to the existing statutes or otherwise in respect of any payment made or due by the Franchisee to the Franchisor, under this Agreement at a subsequent date, including but not limited to sales tax, service tax, VAT, etc, shall be borne and paid by the Franchisee and, if paid by the Franchisor, the Franchisor shall be entitled to recover such taxes and the Franchisee shall reimburse the same immediately upon the receipt of a debit note from the Franchisor, without any demur or protest. It shall be the sole responsibility of the Franchisee to complete all the assessments for taxes, duties & levies under all the applicable laws and submit copy of all such proof of payment including but not limited to challans, TDS certificate etc. and the Franchisor shall in no way, be responsible for any fines, penalties and prosecution for violation of any provisions of such applicable laws;

12.3 Payment for Products Purchased from the Franchisor:

The Franchisee shall make immediate payments to the Franchisor as per the agreed terms/instruction issued by franchisor from time to time for purchase of products for the Business. The above payment shall be effected by the Franchisee to the Bank Account of franchisor as and when the invoices are raised towards the purchase of the Products.

✓ 12.4 Contribution towards Marketing/Advertisement/Promotional Activities:

The Franchisee shall contribute towards local marketing and advertisement for special initiatives and promotional activities undertaken in that region time to time. This marketing fund will be shared with other Franchisees and Franchisor for such development of advertising programs, materials, and creative work as per prevalent policies.

12.5 Payment of Rental and All Incidental Expenses related to the premises obtained on Lease:

- i. The Parties agree that the Franchisee shall make regular and timely payment of rental of the premises taken on lease and all incidental expenses related to the premises like electricity, water, telephone bills etc.in order to continue running the salon operations from the premises taken on Lease by the Franchisee.

12.6 The aforesaid commercial terms agreed by the Parties herein shall be for the Term of this Agreement only and upon expiry of this Agreement by the efflux of time the Agreement, if renewed, shall be renewed as per the standard terms and conditions prevalent at that time.

12.7 Renewal Fee

18.1 The Franchisor has invested huge amount of money on developing/has developed and acquiring /acquired technical expertise in the Business of Hair and Beauty Care, particularly in regard Salon Services. Franchisor has further invested in Trainers who have been trained from International Experts and has accordingly developed special SOP, technical knowhow, training manuals, clientele, data base, software, special professional products, contacts etc. The Franchisor, in terms of the Franchisee Agreement, agrees to share such expertise with the Franchisee; in addition to the brand name and publicity, for which the Franchisee has agreed to pay Royalty in terms of Schedule C. Now in furtherance, the Franchisee agrees to undertake as under:

- (a) The Franchisee inclusive of its direct beneficiaries in business, interest and title, shall undertake franchise activities in terms of the provisions of this Agreement, during the Term of this Agreement, and the Franchisee hereby further undertakes that the Franchisee shall not directly or indirectly engage/compete in similar business activities as that of the Franchisor during the term of this Agreement, without the prior written consent of the Franchisor.
- (b) The Franchisee undertakes that it shall not use any Confidential information or the Intellectual Property of the Franchisor, which the Franchisee currently or will in the future possess in any way that will be detrimental to the Franchisor's Business System and will not take any action that will be detrimental to the Franchisor's Business System, provided, however, that nothing in this Clause shall prevent or hinder the Franchisee from making such public disclosures and providing such information to regulatory authorities, including information regarding the Franchisor and its Business, as may be required to comply with the relevant Indian laws.
- (c) The Franchisee covenants and agrees with the Franchisor that during the term of this Agreement, neither the Franchisee nor any of its associate or subsidiaries shall either solely or jointly, or through any person, company, partnership, joint venture, enterprise or unit other than the Franchisor and its subsidiaries, develop, carry on, participate in, engage in, or be involved in any businesses or activities that result in or may result in direct or indirect competition with the Franchisor's Business in the Indian market or foreign market, including but not limited to (i) making investments in businesses that result in or may result in direct or indirect competition with the Franchisor's Business; (ii) soliciting any business, for itself or for other persons, from any person that has business relationships with the Franchisor; (iii) soliciting the employment of, or hiring, any officer, directors or employee of the Franchisor and (iv) interfering with the Franchisor's Business or encouraging other persons to interfere with the Franchisor's Business [(i), (ii), (iii) and (iv) collectively, the "competing conduct"].
- (d) During the Term of this Agreement, , the Franchisee shall not engage in or be concerned with, directly or indirectly, any similar business in respect of or in connection with the business of the Franchisor, other than those referred in this Agreement.

19. INSPECTION

- 19.1 The Franchisor shall be entitled to depute any person or persons, whether persons in its employment or not to inspect the Premises, without prior intimation to the Franchisee.
- 19.2 The person or persons so deputed by the Franchisor shall be entitled to do all such acts, deeds and things as they may consider necessary for the purpose of overseeing the conduct of the Premises.
- 19.3 The person or persons deputed by the Franchisor shall be entitled to study the operation of the Salon, interview employees and customers, and scrutinize assessments thereof and

do all such things as may be necessary to ensure that conduct of the Salon is in accordance with the standards expected by the Franchisor.

19.4 The Franchisee shall implement all the recommendations or suggestions made by the Franchisor in the light of the report of the persons deputed by it to oversee the conduct of the Salon.

19.5 The Franchisee shall ensure adequate feedback from the customers treated in the Salon is taken periodically as defined by the Franchisor and such feedback is properly recorded sent to the Franchisor as part of the monthly course conduct report and action taken on the suggestions and complaints, if any, of the customers. The records of such feedback shall be open for inspection by the Franchisor;

19.6 The Franchisee shall submit to the Franchisor reports, statements relating to the Salon or conduct in such form and manner and at such intervals as may be required, from time to time, by the Franchisor.

19.7 The said statements shall contain the following information, namely –

- a. The number of customers being treated, giving particulars of each customer;
- b. The total amount collected (along with the copies of relevant invoices and receipts issued by the Franchisee); and
- c. The statement shall be verified by an official of the Franchisee in a form and manner required by the Franchisor.

20. RECORDS, ACCOUNTS & AUDIT

20.1 The Franchisee shall maintain a record of the costs of materials, salaries and wages and direct operating expenses. Such records shall be made available to the Franchisor, in a format and at a frequency determined by the Franchisor, in order to enable the Franchisor to properly assist and advise the Franchisee in the efficient operation of the Salon.

20.2 The Franchisee shall submit audited profit and loss statement and balance sheet of its business to the Franchisor for the preceding financial year of the Franchisee not later than 90 (ninety) days following the end of such year, in the standard format or as prescribed by the Franchisor time to time.

20.3 The Franchisee agrees that the Franchisor or its authorized representatives shall at all reasonable times have the right to examine and/or audit the books of accounts of the Franchisee to verify the figures reported. Further, in case any discrepancies are found in the accounts, the Franchisor shall have the right to install such measures, as it deems fit.

20.4 The Franchisee hereby agrees that on any of its stationery, advertisements, course materials, the Franchisee shall not use the trade name or its logo failing which the Franchisee shall be solely responsible for the consequences thereof and the Franchisor shall not be held responsible for the same.

20.5 Appointment of Auditor

Franchisor or a nominated party will periodically carry out the following audits to determine and ensure compliance to all clauses referred to in this agreement:

AGREEMENT

1

SCHEDULE - C
TERMS OF PAYMENT

The Franchisee shall, in consideration of the grant of the Franchise by the Franchisor in the Territory under this Agreement, make the following payments along with applicable taxes to the Franchisor:

1 Royalty Fee:

- 1.1 The Franchisee shall pay to the Franchisor on a TDP (Ten Days Period) basis a royalty fee for the Salon operated at the Premises, @18 % (Eighteen percent) of the Net Sales of the Salon payable on the Payment Day, being morning of each TDP (Ten Days Period), (commonly known as "Royalty Fee") without deduction or set off except applicable statutory deductions to the Franchisor. The Franchisee shall pay the Franchisor as per the invoice issued to franchisee, of sales proceeds at the end of each TDP and effect payment of Fee to the Franchisor on the Payment Day. The payment day as mentioned above shall be as per the instruction issued by franchisor time to time subject to maximum of end of next TDP.
- 1.2 The Franchisee shall make arrangement of making payment to franchisor in terms of this agreement as per guidelines and instruction issued by the franchisor time to time. The instructions may be in the forms of joint bank account solely used for payment to franchisor or through standing instructions for debiting their account.
- 1.3 In the event, any aforesaid payments (in whole or in part) have not been paid by the Franchisee to the Franchisor on the respective due dates, the Franchisee shall pay interest at the rate of 18% per annum rests on all overdue amounts and such interest at the rate of 18% shall be payable by the Franchisee from the date on which the overdue amounts were due till the date of actual payment both before and after judgment. The Franchisees acknowledges and agrees that the rate of interest contemplated in the aforesaid Clause is not by way of penalty but the genuine pre-estimate of damages which the Franchisor may suffer if the payment is not made within the stipulated time;
- 1.4 Any existing and/or future taxes or duties imposed or assessed by the central government, state government, local authority or any other governmental department by virtue of any existing and/or new enactment or amendment to the existing statutes or otherwise in respect of any payment made or due by the Franchisee to the Franchisor, under this Agreement at a subsequent date, including but not limited to sales tax, service tax, etc, shall be borne and paid by the Franchisee and, if paid by the Franchisor, the Franchisor shall be entitled to recover such taxes and the Franchisee shall reimburse the same immediately upon the receipt of a debit note from the Franchisor, without any demur or protest. It shall be the sole responsibility of the Franchisee to complete all the assessments for taxes, duties & levies under all the applicable laws and submit copy of all such proof of payment including but not limited to challans, TDS certificate etc. and the Franchisor shall in no way, be responsible for any fines, penalties and prosecution for violation of any provisions of such applicable laws.
- 1.5 In case franchisee is deducting TDS from the payment made to the Franchisor, the Franchisee shall send the TDS certificate to the Franchisor monthly/quarterly or within one month of filling the return whichever is earlier, failing which deducted amount will be subject to interest @18% from the time of deduction.

2 Payment for Products Purchased from the Franchisor:

The Franchisee shall make immediate payments to the Franchisor as per the agreed terms/instruction issued by franchisor from time to time for purchase of products for the Business. The above payment shall be effected by the Franchisee to the Bank Account of franchisor as and when the invoices are raised towards the purchase of the Products.

EMBELLISHMENI

For Embellishment

3 Contribution towards Marketing/Advertisement/Promotional Activities:

The Franchisee shall contribute towards local marketing and advertisement for special initiatives and promotional activities undertaken in that region time to time. This marketing fund will be shared with other Franchisees and Franchisor for such development of advertising programs, materials, and creative work as per prevalent policies

4 Payment of Rental and All Incidental Expenses related to the said premises

The Franchisee shall make regular and timely payment of rental of the premises taken on lease along with all incidental expenses related to the premises like electricity, water, telephone bills etc.

5 Renewal Fees

Upon renewal of the term of this Agreement, in order to enable to franchisee to run and operate the salon business under the same name and style "Lakme Salon", the franchisee shall pay to the Franchisor a sum equivalent to 50% of the start-up fees prevailing at the time of renewal plus service tax or any other applicable tax, as one-time, non refundable renewal charges for such renewal.

EMBELLISHME..

Proprietor

(FRANCHISEE)

For Embellishment

Proprietor

(LAKME LEVER PRIVATE LIMITED)

From the above it is evident that appellant

- was required to pay royalty @ 18% on the net sale value from the parlour every tenth day.
- All the purchase price of the goods was to be paid immediately as per agreed terms and instructions.
- Was required to maintain complete accounts in respect of each customer serviced from the salon.
- Could not have issued any paper bill/ invoice in respect of transactions undertaken from the salon.
- The account statements were to be submitted to the franchisor.
- The accounts were subject to audit and inspection by the franchisor.
- Was liable for payment of all taxes both central and state;
- Before the commencement of business service tax registration was to be taken.

Thus we find that appellant was required to maintain the details each transaction whether in respect of the sale of the goods or provision of the services and report the same periodically to the franchisor also. Appellant has been asked to produce the documents in respect of the sale of goods by the authorities at the time of search, investigation and adjudication. However they have failed to produce the same before either of authorities. Certain manual bills which were produced by the appellant before the Commissioner have been rightly rejected by him. In terms of the above agreement appellant could not have issued any invoices/ bills in respect of sale transactions under this agreement. Appellant has not produced any invoice, which has been issued in the manner outlined by this agreement even before us either along with the paper book or subsequently at the time of hearing. In case there were transaction of sale of goods in retail by the appellant why are they shying away and not producing the same. In absence of any direct evidence in form of invoices issued in prescribed manner, we are not in position to accept the claim put forth. We also observe that no

Notes on Accounts, which would have been part of the audited balance sheet/ profit and loss account, showing the proceeds from the sale of goods have been produced during the entire proceedings. In profit and loss account the receipts are shown under the head "Receipts from Beauty Salon", No break up is available. In absence of any assumption the authorities have rightly presumed that the entire receipts are in respect of provision of services. Looking from another angle if appellant was selling the goods from their beauty salon, then definitely they would have been registered with VAT authorities and would be paying VAT in respect of the goods sold. No document in respect of discharging the VAT in respect of the sales affected has been produced. Thus we reject the claim made by the appellant in this respect.

4.5 To understand the manner of computation of the franchisee fees, as per the Schedule C to the agreement we reproduce one of the invoices issued, for charging franchisee fees from the appellant. This invoice is also depicted in the ledger account of Franchisee Fees maintained by the appellant:

259
LAKME SALON

TAX INVOICE

To,
Embellishment
Op-1, Sector-3, Ashiyana, Salem Nagar, Kurla Road, Mumbai
Mobile : 9415201200
Email-ID : myvns@gmail.com

Invoice No : 7021003721
Invoice Date : 10/2/2017
Salon Code : 22601201
Period : 01/02/2017 to 10/02/2017

Fees payable pursuant to the franchise arrangement

Particulars	Amount (Rs.)
Basic Service Sale made in Current TDP	330971.39
Unbilled Basic Service sale from last TDP	3585.00
Total Service Sale	334556.39
Franchisee Fees	96220.15
Less: On Invoice Discount	0.00
Net Franchisee Fees	96220.15
VAT@ 5%	5773.21
Service Tax@ 14%	13470.82
Swachh Bharat Cess@ 0.5%	481.10
Krishi Kalyan Cess@ 0.5%	481.10
Invoice Total	116426.38

In Rupees: One Hundred And Sixteen Thousand Four Hundred And Twenty Six

Service Category : Business Auxiliary Services
Service Tax Regn No : AARCL555503T001
Maharashtra TIN No: 27655216235V
GST No: U24247MH2008PTC189539

Bank Detail:
Lakme Lever Private Limited
Bank Account No. - 002497760-003
Bank Name- HK and Shanghai Banking Corp Ltd
IFSC Code- HSBK0400002

Declaration Under Maharashtra Vat:
We hereby certify that our registration certificate under the Maharashtra Value Added Tax Act, 2002 is in force on the date on which the sale of the goods specified in this tax invoice is made by us and that the transaction of sale covered by tax invoice has been effected by us and it shall be accounted for in the turnover of sales while filing of return and the due tax, if any, payable on the sale has been paid or shall be paid.

Note: Payable to Lakme Lever within 10 days from the date of invoice, failing which interest @ 18% p.a. will be levied
*Computer Generated Form, Do not require signature

Lakme Lever Pvt. Ltd.
Regd. Office address: 1st floor, Shriwas House, H. Dornani Marg, Fort, Mumbai-400001
Tel: 91 (22) 39692117, Fax: 91 (22) 22976110, Website: http://www.lakmeindia.com/lakme-salon/

For Embellishment
Amber
Proprietor

From the above invoice it is evident for calculation of the franchisee fees, the total sale value of services as per franchise agreement for the ten day period is taken (in the invoice it is Rs 5,34,556.39/-). Then the franchisee fees is computed @ 18% of the sale value as per Schedule C to the franchise agreement reproduced above. ($0.18 * 534556.39 = \text{Rs } 96,220.15/-$). On this value of franchisee fees VAT, Service Tax, Swacch Bharat Cess and Krishi Kalyan Cess is paid.) Thus we can compute the value of services provided under this agreement just by dividing the Franchisee Fees paid by the appellant to its franchisor by 0.18. (Rate of Franchisee Fees as per the Schedule C)

4.6 We further observe from the ledger account maintained by the appellant in respect of franchisee fees paid by them during the each year that appellant has paid the franchisee fees as indicated in column 3 of the table below. This franchisee fees as per ledger is shown as expense in the profit and loss account of the appellant for each year.

Financial Year	Franchisee Fees		Calculated Net Sale Value	Receipts as per profit Loss A/c
	@ % as per Schedule C to agreement	Amount		
1	2	3	4	5
2013-14	18	6932365	38513139	20434509
2014-15	18	8211377	45618761	44513346
2015-16	18	9647112	53595067	48114244
2016-17	18	8522284	47346022	44474511
Total		29557621	164209005	157536610

From the perusal of the column 4 and 5 of the table above, the reason for non production of the invoices is apparent. The values even indicated in the Profit and Loss Account as receipts from the Beauty salon services do not tally with the invoice value. However though above table clearly shows the mismatch in the data, we are helpless at this stage. Revenue authorities have failed to investigate this crucial aspect at the time of investigation, and we cannot make a new case at this stage.

4.7 Appellant has claimed that they should be allowed the benefit of the CENVAT Credit in respect of the input services received by them during the period of dispute. They have also

produced invoices evidencing the payment of service tax against such input services. They have relied upon the following decisions in support of their claim:

- Antares Seervices Pvt Ltd. [2024 (160) Taxmann.com 23 (CESTAT Chandigarh)];
- Kaybee Developers Private Ltd. [Order dated 30.09.2025 in Service Tax Appeal No 87531 of 2023]
- mPortal India Wireless Solutions P Ltd. [2012 (27) STR 134 (Kar)]
- Indus Valley Partners (India) (P) Ltd. [Final Order No 70026/2024 dated 17.01.2024]

The issue in respect of the admissibility of CENVAT Credit if not claimed within prescribed period from the date of invoice is no longer res-integra. By Notification No 21/2014-CE (NT) dated 11.07.2014 following amendments were made to Rule 4 of the CENVAT Credit Rules, 2004:

3.In the said rules, in rule 4, -

(a) in sub-rule (1), after the second proviso, the following proviso shall be inserted with effect from first day of September 2014,namely :-

"Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9."

(b) in sub-rule (7),-

(i) for the first and second provisos the following provisos shall be substituted, namely:-

"Provided that in respect of input service where whole of the service tax is liable to be paid by the recipient of service, credit shall be allowed after the service tax is paid:

Provided further that in respect of an input service, where the service recipient

is liable to pay a part of service tax and the service provider is liable to pay the remaining part, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9:

Provided also that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, except in respect of input service where the whole of the service tax is liable to be paid by the recipient of service, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules :"

- (ii) (ii) *after the fifth proviso, the following proviso shall be inserted with effect from first day of September, 2014, namely :-*

"Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six

months of the date of issue of any of the documents specified in sub-rule (1) of rule 9.”

4.8 Larger Bench of Tribunal has in case of Kusum Ingots [2000 (120) E.L.T. 214 (Tribunal – LB)]

12. *We find that after the decision of the Hon'ble Supreme Court in the case of Eicher Motors Ltd. v. Union of India (Supra), Sub-Section XXVIII is introduced in Section 37 to provide for Rules which empower the Government to make rules for not allowing credit to be utilised for payment of duty on excisable goods, by Section 131 of Finance Act, 1999. Therefore, after this amendment reliance by the appellants on the decision in the case of Eicher Motors Ltd. v. Union of India will not help them. If a manufacturer wants to avail the benefit of Modvat credit in respect of inputs used in or in relation to the manufacture of final product on payment of duty on such final products under Rule 57A of the Central Excise Rules, he should follow the procedure laid down under the Modvat Scheme. The contention of the appellants is that if on the inputs the manufacturer had already paid the duty on the basis that when the goods are utilised in the manufacture of final product then tax on these goods are to be adjusted and this right accrued to the manufacturer on the date when they paid the tax on the inputs. The right will continue till the facility is available. A manufacturer who is working under the Modvat Scheme can certainly utilise the credit of the duty paid on the inputs used in or in relation to the manufacture of final product for payment of duty on such final product; but he has to take credit on such inputs within six months from the date of issue of the duty paying documents. After the amendment credit cannot be taken on duty paying documents which are more than 6 months old.*

13. *In view of the above discussions, we answer the question referred to Larger Bench in the favour of Revenue. Therefore, the view taken in case of Osram Surya Pvt. Ltd. v. Commissioner of Central Excise, Indore, reported in 1998 (29) RLT 684 is the correct view and the contrary view taken in correct.*

The decision of tribunal in case of Osram Surya Pvt. Ltd. referred in para 13 of the above decision has been upheld by the Hon'ble Supreme Court as reported at [2002 (142) E.L.T. 5 (S.C.)] and following was observed:

8. *It is vehemently argued on behalf of the appellants that in effect by introduction of this rule, a manufacturer in whose account certain credit existed, would be denied of the right to take such credit consequently, as in the case of Eicher (supra), a manufacturer's vested right is taken away, therefore, the rule in question should be interpreted in such a manner that it did not apply to cases where credit in question had accrued prior to the date of introduction of this proviso. In our opinion, this argument is not available to the appellants because none has questioned the legality, or the validity of the rule in question, therefore, any argument which in effect questions the validity of the rule, cannot be permitted to be raised. The argument of the appellants that there was no time whatsoever given to some of the manufacturers to avail the credit after the introduction of the rule also is based on arbitrariness of the rule, and the same also will have to be rejected on the ground that there is no challenge to the validity of the rule.*

9. *Without such a challenge, the appellants want us to interpret the rule to mean that the rule in question is not applicable in regard to credits acquired by a manufacturer prior to the coming into force of the rule. This we find it difficult because in our opinion the language of the proviso concerned is unambiguous. It specifically states that a*

manufacturer cannot take credit after six months from the date of issue of any of the documents specified in the first proviso to the said sub-rule. A plain reading of this sub-rule clearly shows that it applies to those cases where a manufacturer is seeking to take the credit after the introduction of the rule and to cases where the manufacturer is seeking to do so after a period of six months from the date when the manufacturer received the inputs. This sub-rule does not operate retrospectively in the sense it does not cancel the credits nor does it in any manner affect the rights of those persons who have already taken the credit before coming into force of the rule in question. It operates prospectively in regard to those manufacturers who seek to take credit after the coming into force of this rule. Therefore, in our opinion, the Tribunal was justified in holding that the rule in question only restricts a right of a manufacturer to take the credit beyond the stipulated period of six months under the rule. Therefore, this appeal will have to fail.

4.9 It is evident from the records of the case that though appellants were registered for payment of service tax with the department, they were during the period neither paying any service tax nor filing any return. They have never claimed the CENVAT Credit in respect of the input services at any time before the commencement of adjudication proceedings. The proceedings against the appellant were initiated on the basis of intelligence gathered and are not on the basis of comparison of figures from the Income Tax data and ST-3 return. In fact appellant has never filed any ST-3 return. The observation made by the Chandigarh Bench in case of Antares Services (P) Ltd. & Mumbai Bench in case Kaybee Developers Private Ltd., which go contrary to the above provisions of the Rules and decision of Larger Bench of Tribunal and Hon'ble Supreme Court cannot be relied as binding precedent. The decision of Allahabad Bench in case of Indus Valley Partners (India) Pvt. Ltd. is clearly distinguishable. In that case the credit was sought to be claimed

in respect of the tax paid on reverse charge basis within the prescribed period.

4.10 We also observe that the decision of Hon'ble Karnataka High Court in case of mPortal India Wireless Solution P. Ltd. is for the period when there was no such restriction prescribed for taking the credit. Hence that decision is also distinguishable. Hon'ble High Court has in the said decision held as follows:

"7. Insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside."

The necessary corollary of the above observation is if there was restriction prescribed by the statute then the same should be respected. Thus we also do not find any support from this decision to hold in favour of appellant. Thus we do not find any merits in the submissions made by the appellant to the effect that the demand should be adjusted against the CENVAT Credit, which could have been claimed by them against the input services received by them.

4.11 From the perusal of the franchisee agreement and the fact that appellant was registered with the service tax department for providing the beauty parlour services we are of the view that appellant was fully aware of its liability to pay the service tax in respect of the services provided. The agreement specifically

provided that the franchisee i.e. appellant was responsible for discharging the service tax liability in respect of the services provided. The submission made by the appellant that she was under impression that the service tax would be paid by the franchisor goes contrary to the express provisions of the agreement reproduced above. It is evident that appellant had knowingly suppressed the facts in respect of the services provided by her from her beauty salon, with intent to evade payment of service tax. She also in her statement recorded on 24.01.2017 admitted her liability to pay service tax for the entire period and in fact provided the cheques as detailed below to the officers who had visited the premises:

S No	Details of Cheque			Amount
	Bank	No	Date	
1	Kotak Mahindra	000268	24.02.2017	2500000
2	Kotak Mahindra	000269	15.03.2017	2500000
3	Kotak Mahindra	000271	31.03.2017	5000000
	Total			10000000

We also reproduce the letter dated 09.11.2017 of the appellant:

362

To,
The Assistant Commissioner(Preventive)
Central GST & Central Excise
7A, Ashok Marg
Lucknow

Dear Sir,

Sub:- Submission and payment intimation regarding Service Tax Investigation :-
Please refer to your summon letter dated 30.10.2017 with reference to that following points
are submitted for your information please.

01. For the financial year 2012-13

Financial year	Total receipt from beauty salon	Service Tax Rate during the period	Service Tax payable	Interest
2012-13	1,79,90,806	12.36	22,23,664	23,22,589

The above amount may please be appropriated from payments made by us vide challan number 10066 dated 27.02.2017 of Rs.10,00,000/- challan No. 11040 of Amount Rs.25,00,000/- dated 25.04.2017 & Challan No. 10007 Dated 24.08.2017 of amount Rs.20,00,000/-.

You are further requested to kindly reduce our penalty as @ 15% of the duty amount for the period 2012-13 amounting to Rs.3,33,550/- may also please be appropriated from above payments in light of circular 137/46/2015-Service Tax 18.08.2015.

For the rest of the period the liability will be cleared at the earliest .You are requested to kindly settle the period 2012-13 as requested above .

Thanking You,

Anita Vinod Mishra
9/11/2017

Anita Vinod Mishra
Prop. M/s Embellishment
4/15, Vivek Khand , Gomtinagar
Lucknow

For Embellishment
Anita Vinod Mishra
Proprietor

From the discussions as above and from the conduct of the appellant we have no hesitation in holding that the appellant has with sole intent of evading payment of due service tax, suppressed the facts in relation to the services provided by her. Extended period of limitation has been rightly invoked in the present case to demand the tax. Tribunal has in the case of Applied Solar Technologies (India) Pvt. Ltd. [2023 (70) G.S.T.L. 378 (Tri. - Del.)] held as follows:

26. *There is no error in the finding recorded by the Commissioner in this regard, as indeed the appellant did try to evade payment of service tax by treating the amount as a security deposit when in fact it was clearly an advance, which fact was very specifically mentioned in the Agreement. The intention to evade payment of service tax by suppression of material facts is writ large.*

Hon'ble Allahabad High Court has in case of Sharp Carbon India [2016 (331) E.L.T. 513 (All.)] held as follows:

15. *Thus we find that firstly the assessee had not produced invoices, etc., despite being demanded by the Central Excise Officers vide letters dated 10-1-1990, 23-1-1990, 5-3-1990, 27-3-1990, 24-4-1990 and 14-5-1990 and when the Central Excise Officers visited the manufacturing unit on 17-5-1990 then the appellant took the stand that the records have burnt in a fire accident on 20-4-1990. The inquiry made by the Central Excise Officers revealed that neither fire brigade was called in the alleged incident of fire accident nor any furniture in the premises get damaged. It is also relevant to note that although the appellants were knowing well that the Central Excise Officers are repeatedly asking certain documents to be produced yet they had not given any intimation with regard to the alleged fire accident to the concerned Central Excise Officers about the alleged fire accident except stating that the intimation was sent by letter under Certificate of Posting. All these facts and circumstances were clearly indicative of suppression of material facts by the appellants.*

4.12 Thus we hold that extended period of limitation has been rightly invoked for making this demand. As we find that appellant had suppressed the facts with the intention to evade payment of service tax and extended period as per proviso to Section 73 (1) of the Finance Act, 1994 is justifiable, penalty under Section 78 will follow as held by the Hon'ble Supreme

Court in case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)] observing as follows:

14. *Sub-section 1A of Section 11A provides that in case the person in default to whom the notice is given under the proviso to sub-section 1 makes payment of duty in full or in part as may be accepted by him, together with interest under Section 11AB and penalty equal to 25% of the accepted amount of duty within thirty days of the date of receipt of notice then the proceeding against him would be deemed to be conclusive (without prejudice to the provisions of Sections 9, 9A and 9AA) as provided in the proviso to sub-section 2 of Section 11A. Sub-section 1A and the proviso to sub-section 2 were inserted with effect from July 13, 2006 and, therefore, have no application to the periods relevant to the two appeals.*

15. *Sub-section 2B of Section 11A provides that in case the person in default makes payment of the escaped amount of duty before the service of notice then the Revenue will not give him the notice under sub-section 1. This, perhaps, is the basis of the common though erroneous view that no penalty would be leviable if the escaped amount of duty is paid before the service of notice. It, however, overlooks the two explanations qualifying the main provision. Explanation 1 makes it clear that the payment would, nevertheless, be subject to imposition of interest under Section 11AB. Explanation 2 makes it further clear that in case the escape of duty is intentional and by reason of deception the main provision of sub section 2B will have no application.*

16. *The other provision with which we are concerned in this case is Section 11AC relating to penalty. It is as follows :*

[11AC. Penalty for short-levy or non-levy of duty in certain cases.- where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (2) of section 11A, shall also be liable to pay a penalty equal to the duty so determined :

[Provided that where such duty as determined under sub-section (2) of section 11A, and the interest payable thereon under section 11AB, is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty so determined :

Provided further that the benefit of reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purpose of this section, the duty as reduced or increased, as the case may be, shall be taken into account :

Provided also that in case where the duty determined to be payable is increased by the Commissioner

(Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available, if the amount of duty so increased, the interest payable thereon and twenty-five per cent of the consequential increase of penalty have also been paid within thirty days of the communication of the order by which such increase in the duty takes effect

-

Explanation. - For the removal of doubts, it is hereby declared that -

(1) the provisions of this section shall also apply to cases in which the order determining the duty under sub-section (2) of section 11A relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(1) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

17. The main body of Section 11AC lays down the conditions and circumstances that would attract penalty and the various provisos enumerate the conditions, subject to which and the extent to which the penalty may be reduced.

18. One cannot fail to notice that both the proviso to sub-section 1 of Section 11A and Section 11AC use the same expressions : "...by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,...". In other words the conditions that would extend

the normal period of one year to five years would also attract the imposition of penalty. It, therefore, follows that if the notice under Section 11A(1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under Section 11A(2) there is a legally tenable finding to that effect then the provision of Section 11AC would also get attracted. The converse of this, equally true, is that in the absence of such an allegation in the notice the period for which the escaped duty may be reclaimed would be confined to one year and in the absence of such a finding in the order passed under Section 11A(2) there would be no application of the penalty provision in Section 11AC of the Act. On behalf of the assesseees it was also submitted that Sections 11A and 11AC not only operate in different fields but the two provisions are also separated by time. The penalty provision of Section 11AC would come into play only after an order is passed under Section 11A(2) with the finding that the escaped duty was the result of deception by the assessee by adopting a means as indicated in Section 11AC.

19. From the aforesaid discussion it is clear that penalty under Section 11AC, as the word suggests, is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section.

23. *The decision in Dharamendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no discretion in quantifying the amount and penalty must be imposed equal to the duty*

determined under sub-section (2) of Section 11A. That is what Dharamendra Textile decides.

4.13 As the appellant was not filing the ST-3 returns and paying the service tax by the due date, penalties imposed under Section 77 (2) are also upheld.

4.14 As we uphold the demand of service tax, demand of interest in terms section 75 of Finance Act, 1994 to is upheld.

4.15 Revenue has filed appeal challenging the imposition of penalty @ 50 % of the Tax evaded for the period 2015-16 and 2016-17. The reason for making such a challenge that the amendments made in section providing for 50% penalty in specific cases were introduced by Finance Act, 2015 and the statutorily penalty of 50% of tax evaded was provided for the period upto the day of enactment. We reproduce the amended section below:

"Penalty for failure to pay service tax for reasons of fraud, etc. –

(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the date on which the Finance Bill, 2015 receives the assent of the President both

days inclusive), the penalty shall be fifty per cent of the service tax so determined.

(Emphasis supplied)

The Finance Act, 1994 received the assent of the President on the 14th May, 2015).

4.16 From perusal of the above amended section it is evident that statutorily it has been provided that penalty imposed in respect of transaction taken between the period 08.04.2011 to 14.05.2015 only penalty at @ 50% of the tax evaded is imposable. For the period after 14.05.2015 the penalty has to be 100% of the tax evaded. This being statutorily provided the adjudicating authority was not having any discretion to impose lesser penalty for the period after 14.05.2015, this what has been held by Hon'ble Supreme Court in case of Rajasthan Spinning and Weaving Mills Ltd., referred earlier by us. Delhi bench in the case of Indus Media and Communication Ltd. [Final Order No. 50734 /2025 dated 19.05.2025 in Customs Appeal No. 50229 OF 2020] held as follows:

"11. This section was introduced effective from 13.7.2006. Evidently, if any person knowingly made or used any false material in any document after this date, it would attract this section. The Bill of Entry and all the documents with it were filed on 26.6.2003 when this section was not in the statute. There is nothing in this section which suggests that it has retrospective effect. Unless otherwise indicated, all laws will only apply prospectively...."

4.17 Thus we find merits in the appeal filed by the revenue, penalty imposed upon the appellant for the period 2015-16 and 201-17 is modified accordingly to 100% of the tax evaded. Thus we modify the penalty imposed upon the appellant under Section 78 as follows:

Financial Year	Service Tax Demanded	Penalty under Section 78
2013-14	22,87,910	11,43,955

2014-15	49,48,658	24,74,329
2015-16	61,99,070	61,99,070
2016-17	58,01,023	58,01,023
	Total	1,56,18,377

4.18 Thus we summarize our findings in the matter as follows:

- Demand of Service Tax of Rs 1,92,36,661/- is upheld.
- Demand of Interest on the above amount of service tax not deposited by the due date is upheld.
- Penalty under Section 78 is modified to Rs 1,56,18,377/-
- Penalty under Section 77 (2) is upheld.

5.1 Appeal filed by the Appellant is dismissed.

5.2 Appeal filed by the revenue is allowed.

(Order pronounced in open court on- 18 December, 2025)

(P. DINESHA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)